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## **THE STRUGGLE FOR WORLD ORDER: REFLECTIONS IN TIMES OF GLOBAL REALIGNMENT**

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### **I**

As long as sovereign states have existed, international order has been shaped by the *will* to preserve the status quo, and the *revolt* against it. The dominant actors of the moment – those that prevailed in the struggle for power, whether in a hot or cold war, or in some other form of rivalry – will always do whatever is needed, in their assessment,<sup>1</sup> to preserve and perpetuate their privileged position, at the expense of all others.

Unlike as suggested by the beneficiaries of the post-Cold War status quo, we are not now witnessing the advent of a new era of lawlessness or, in reverse, the end of a so-called rules-based international order. The “law of force” has determined the course of events ever since the beginning of history. This did not change with the adoption of international agreements or the creation of organizations aimed at the prevention of war. In spite of solemn proclamations to the contrary, neither the *Treaty of Westphalia* after the Thirty Years’ War (1648) nor the *Holy Alliance* after the Napoleonic wars (1815), the *League of Nations* after the First World War or the *United Nations* after the Second World War did put an end to the use of force between states. More often than not did the conclusion of a war herald not an era of peace (not to speak at all of the Kantian vision of “perpetual peace,” *ewiger Friede*), but a renewed struggle for power – either among the group of victors or by a single hegemon, aiming for imperial rule. Those who are – or see themselves as – the winners try to perpetuate their dominant position. This was true for the “Concert of

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<sup>1</sup> Since the end of the Cold War in particular, the phrase “all necessary means [measures]” – used in resolutions of the Security Council – has become common parlance in self-serving justifications of excessive uses of force.

Powers” after the Vienna Congress as it (still) is true for today’s P5, the five permanent members of the United Nations Security Council, who Hans Morgenthau once referred to as “the Holy Alliance of our time.”<sup>2</sup> The military interventions in the European periphery, justified in the name of “humanity,” by the “Powers” of the 19<sup>th</sup> century are mirrored by the “humanitarian interventions” of Western powers after the end of the Cold War.<sup>3</sup>

Notwithstanding the ban on the use of force between states in the Kellogg-Briand Pact of 1928 and in the Charter of the United Nations, powerful states have continued to wage war also in our era, without due attention to issues of legality. In all the years since the end of the Second World War, the UN system of “collective security” has remained utterly ineffective. Devastating wars, in fact unilateral military interventions – in Korea, Vietnam, Afghanistan, and more recently in Yugoslavia, Iraq, Syria, or Libya – have been testimony to the primacy of *national* interests over *international* law all along, in spite of the United Nations’ solemn commitment “to save succeeding generations from the scourge of war.”<sup>4</sup>

In that regard, nothing has changed in 2022. Those who now deplore the end of a “rules-based order” are disingenuous. It has never existed. Notwithstanding the grand proclamations in the wake of Europe’s, or the world’s, major catastrophes – in 1815, 1918, and 1945 –, every new beginning was fraught with contradictions and inconsistencies. Whether it was the promise by the signatories of the Holy Alliance Treaty to uphold “the precepts of Justice, Christian Charity, and Peace”<sup>5</sup> or the solemn intention of the founders of the United Nations “to unite our strength to maintain international peace and security”<sup>6</sup>: instead of heralding a new era of peace, the moral triumphalism of the victorious states only resulted in further unrestrained struggles for power and for regional or global supremacy.

In particular, the promise of the founders of the United Nations, assembled in San Francisco, to create a new world order of peace – based on a strict ban on the use

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<sup>2</sup> Hans Morgenthau, *Politics among Nations: The Struggle for Power and Peace*. New York: Knopf, 6<sup>th</sup> ed. 1985, p. 503.

<sup>3</sup> Cf. Köchler, *The Concept of Humanitarian Intervention in the Context of Modern Power Politics: Is the Revival of the Doctrine of "Just War" Compatible with the International Rule of Law?* Studies in International Relations, Vol. XXVI. Vienna: International Progress Organization, 2001.

<sup>4</sup> Preamble to the Charter of the United Nations (1945), first sentence.

<sup>5</sup> *The Holy Alliance Treaty – TREATY between Austria, Prussia, and Russia*, signed at Paris, 26<sup>th</sup> September 1815, Para. 2 (“Government and Political Relations”).

<sup>6</sup> Preamble to the UN Charter.

of force in relations between states that was to be enforced through an elaborate system of collective security as laid out in Chapter VII of the UN Charter – was flawed from the outset. The system they created was designed in such a way as to *exempt* its enforcers, the victorious powers of 1945, from that ban. One just needs to read the fine print of the Charter. Article 27, Paragraph 3 provides, in somewhat oblique language, that the permanent members of the Security Council can veto any coercive measure against themselves, even if they are party to a dispute, including in cases when they use force or threaten other states with the use of force.<sup>7</sup> This strange kind of “procedural immunity” effectively also applies to states that are allied with a permanent member. Thus, what was actually created was a system of *anarchy* among the great powers. Ever since its foundation, the United Nations has been helpless against the abuses of their privilege. Whether one is prepared to admit it or not: a system of anarchy among the great is a system of anarchy among all. The long list of unilateral uses of force by permanent member states, since the early years of the organization, is testimony to this predicament of the international rule of law under UN auspices. Whenever a permanent member, or one of its allies, is involved in a dispute, the Security Council is paralyzed.

What, since 1945, prevented a new global conflagration was not the United Nations system of collective security, but the – albeit fragile – *balance of power* among the two major actors of the Cold War period, the Soviet Union and the United States. Global security was based on mutual *deterrence*. This changed with the events of 1989. After the end of the bipolar balance of power, the self-proclaimed winner of the power struggle of the Cold War, together with its allies, was able to use war to advance its geopolitical agenda, and to do so with total impunity – whether in Yugoslavia, Iraq or Afghanistan, just to mention some of the most consequential uses of military force in this period. In a triumphant speech in March 1991, President George H. W. Bush, declaring victory in the Gulf War, misleadingly spoke of “the very real prospect of a new world order.” He claimed that “the United Nations, freed from cold war stalemate,” would now be able “to fulfill the historic vision of its founders,”

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<sup>7</sup> For details, see Köchler, *The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction and its Consequences on International Relations*. Studies in International Relations, Vol. XVII. Vienna: International Progress Organization, 1991.

and, borrowing from a speech of Winston Churchill after World War II, he suggested that this would be a world where the “principles of justice and fair play” will prevail.<sup>8</sup>

Nothing could have been further from the truth. In the hegemonic setting of the 1990s, the earlier mentioned structural flaw in the UN Charter became even more consequential, and detrimental to global order. Suddenly, the United States was able to set the global agenda not only without any procedural challenges within the UN system of collective security (due to its privilege under Article 27[3]), but also without having to face any competitor in terms of power politics. This elevated international anarchy to an entirely new dimension. To emphasize it yet again: The element of anarchy was built into the Charter of the United Nations. According to that very statute, the prohibition of aggressive war is necessarily *ineffective* when it comes to restraining the assertion of power by the most powerful. This means lawlessness by virtue of the law (namely, the letter of the Charter). Thus, the United Nations Organization is condemned to the role of a mere bystander if a conflict involves a permanent member of the Security Council. There should be no illusion of the “laws” of international realpolitik (or, more precisely, power politics): Impunity, under the Charter, of certain members in cases of their own transgressions is not an innocent procedural mishap (in certain specific situations), but a statutory fact. Double standards are part and parcel of the functioning of the world organization in its most important responsibility, the maintenance of international peace and security. The organization would never have been established if this had not been the case. Commenting on the veto, former US Secretary of State Cordell Hull did not mince words: “our government would not remain there [in the UN] a day without retaining the veto power.”<sup>9</sup>

## II

However, the primacy of power over law, evidenced in statute and practice of the UN (as shaped by some of its leading members), may ultimately be self-defeating. It this seems to be a lesson of history never learned: Every assertion of power, particularly by a state claiming hegemony, provokes a counter-assertion. The quest for perpetual

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<sup>8</sup> *Address Before a Joint Session of Congress on the End of the Gulf War*, March 6, 1991. Cf. also, Köchler, *Democracy and the New World Order*. Studies in International Relations, Vol. XIX. Vienna: International Progress Organization, 1993.

<sup>9</sup> *The Memoirs of Cordell Hull*. Vol. 2. New York: Macmillan Co., 1948, p. 1664.

dominance, inherent in the logic of hegemonial rule, brings never-ending challenges to any guardian of the status quo in his strategy to prevent a competitor from reaching strategic parity. The “blow-back effect,” as it was aptly described by Chalmers Johnson in his seminal work, “The Costs and Consequences of American Empire,”<sup>10</sup> may lead to conflict and armed confrontation in all corners of the world.

The global struggle for power has entered a new phase. At the beginning of the 21<sup>st</sup> century, it is the challenge to *pax Americana* that determines the transformation of global order in the direction of a new multipolar constellation that will be different from the one that had existed among the P5 (the five permanent members of the Security Council) for a short period after 1945. As we explained in regard to the provisions of Chapter VII of the Charter, the United Nations was conceived of as a tool of the P5 to rule the world.

After several decades of bipolarity (after the 1950s) and a relatively short “unipolar moment” (after 1990), a new and complex dynamic of power relations is unfolding of which the late Zbigniew Brzezinski spoke as the “global realignment.”<sup>11</sup> The great power consensus embodied in the UN Charter does not anymore reflect the reality of today. The predominance not only of the West, but also of the traditional industrialized world, is coming to an end. Due to the absence of checks and balances in the UN system of collective security, US-dominated unipolarity has profoundly destabilized global order and created a power vacuum in strategically vital regions. New alliances are being shaped by countries that were left out of the power equation in the Cold War period, and even more so under the conditions of unipolarity.<sup>12</sup> While centers of economic gravity are shifting from the Western world towards the East, new, alternative trade and financial networks are being set up that better represent global realities and build new bridges between North and South. The process is accelerated by the Western powers’, in particular the United States’, insistence on setting the rules and excluding those who do not abide by the unilateral standards set by those states. The illegal policy of unilateral sanctions, imposed – and in many instances also enforced extraterritorially – by the United States and the

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<sup>10</sup> New York: Metropolitan Books, 2000.

<sup>11</sup> “Toward a Global Realignment,” in: *The American Interest*, Vol. 11, No. 6 (July/August 2016), pp. 1-3.

<sup>12</sup> For details see Köchler, “World Order in an Age of Transition,” in: *The Saint Petersburg Lectures: Civilization and World Order*. Studies in International Relations, Vol. XXXIV. Vienna: International Progress Organization, 2019, pp. 61-73.

European Union, is evidence of an exclusivism that is at variance with the purposes and principles of the United Nations. This policy has not only seriously undermined the free trade system of the WTO [World Trade Organization], but also has poisoned the climate of international co-operation and profoundly destabilized the system of global security.<sup>13</sup> The unilateralist strategy is essentially revisionist. It is part of a larger struggle for power in the beginning 21<sup>st</sup> century, namely for the preservation of the dominant position of the West under an emerging new order that will be different from the fragile multipolar balance of power after World War II.

In its structure, it resembles the competitions for power in earlier periods of transition. However, what has changed in the constant struggle for power are its implications for the survival of mankind. Any “repositioning” – or realignment – within the global balance of power, involving the major global players, now occurs under the sword of Damocles of nuclear annihilation. It is to be hoped that this risk will at least caution rational rulers who understand the logic of “mutual deterrence.” The argument in favor of deterrence is based on the rationale of “mutually assured destruction,” another term from the inventory of the Cold War era. However, an appeal to the rationality – and responsibility – of leaders of the great powers in the Security Council may not be enough. In spite of the grand strategy of non-proliferation embodied in the NPT,<sup>14</sup> nuclear weapons capability has already spread beyond the traditional “nuclear club.” The unstable global situation and the regime change interventionism of the post-Cold War years seem to have led an increasing number of countries to view nuclear arms as insurance policy for national survival. The Advisory Opinion of the International Court of Justice, leaving open whether in a case where a state’s survival is at stake – “in an extreme circumstance of self-defence”<sup>15</sup> – the use of nuclear arms might be in conformity with international law, hasn’t made things any easier. Legal ambiguities notwithstanding, in the logic of mutually assured destruction, an insurance policy for survival may quickly turn into a guarantee of collective suicide.

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<sup>13</sup> For details cf., Köchler, “Санкции и международное право,” in: *ВЕСТНИК МЕЖДУНАРОДНЫХ ОРГАНИЗАЦИЙ*, Vol. 14, No. 3 (2019) (Экономические санкции, глобальное управление и контуры будущего миропорядка), pp. 27-47. English version: “Sanctions and International Law,” in: *International Organisations Research Journal*, Vol. 14, No. 3 (2019) (“Economic Sanctions, Global Governance and the Future of World Order”), pp. 27-47.

<sup>14</sup> *Treaty on the Non-proliferation of Nuclear Weapons* (1968, in force since 1970).

<sup>15</sup> International Court of Justice, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict. Advisory Opinion*, Year 1996, General List No. 93 (July 8, 1996).

Also, the nuclear capability of an increasing number of states will severely distort power relations and may make global realignment much more unpredictable and chaotic, fraught with the risk of global conflagration. When in the possession of nuclear arms plus high capacity missile systems, a small, otherwise weak and uninfluential, country may totally upset an existing balance of power, and even dictate the actions of great powers. The disparity between the parameters of power – economic, political, and conventional-military versus non-conventional – defies even the most elaborate geopolitical calculations. In view of this state of affairs, a legal prohibition of nuclear arms such as the one recently adopted<sup>16</sup> can only be of *declaratory* nature – as an act of what we in German call *Gesinnungsethik* (“ethics of conscience”). Instead of adoption of a treaty that is unenforceable from the outset, what is needed is an act of *Verantwortungsethik* (“ethics of responsibility”) by the leaders of nuclear states committing their countries to a *policy of no first use*.<sup>17</sup> It is appropriate to recall here the consensus of just a few months ago among the five permanent members of the Security Council on a somewhat implicit no first use-declaration. In their joint declaration, the leaders of the five countries stated, *inter alia*, “that a nuclear war cannot be won and must never be fought” and “that nuclear weapons – for as long as they continue to exist – should serve defensive purposes, deter aggression, and prevent war.”<sup>18</sup>

### III

The state of international affairs as we have described it leaves the world with the question as to how to “organize” the greed for power – and the mutual mistrust among states that accompanies it – in such a way that it does not ultimately defeat itself, i.e. that, in the nuclear era, it will not lead to the self-destruction of mankind. What is needed is a new *honesty of realpolitik*. The history of power politics has been a sequence of grand delusions and dishonest proclamations by those who were out to rule the world or, more “modestly,” to change the balance of power in their favour

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<sup>16</sup> *Treaty on the Prohibition of Nuclear Weapons*, 7 July 2017. United Nations/General Assembly, A/CONF.229/2017/8.

<sup>17</sup> For details see, *inter alia*, Nina Tannenwald, “It’s Time for a U.S. No-First-Use Nuclear Policy,” in: *Texas National Security Review*, Vol. 2, Issue 3 (May 2019), pp. 130-137.

<sup>18</sup> *Joint Statement of the Leaders of the Five Nuclear-Weapon States on Preventing Nuclear War and Avoiding Arms Races*. The White House, Briefing Room, January 03, 2022, at [whitehouse.gov/briefing-room/statements-releases/2022/01/03/p5-statement-on-preventing-nuclear-war-and-avoiding-arms-races/](https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/p5-statement-on-preventing-nuclear-war-and-avoiding-arms-races/), accessed 30 April 2022.

– whether it was Alexander the Great in his conquest of Asia two and a half millennia ago, the “Concert of Powers,” assembled at the Vienna Congress, the 19<sup>th</sup> century British Empire, or, in our “post-modern” age, the United States of America, undertaking – after having proclaimed “victory” in the Cold War – to reshape the world in its image.<sup>19</sup> They evoke “civilization,” “peace,” or – in modern parlance – “human rights,” “democracy,” “justice,” or “rule of law.” However, what they mean – in the overwhelming majority of cases – are the *national interests* of the conqueror or competitor for power. Because they are so typical of the disingenuous, self-aggrandizing imperial narrative, we quote here from the words of British Prime Minister Stanley Baldwin, in his Empire Day message of 1924:

“When we speak of Empire, it is in no spirit of flag-wagging. [...] I think deep down in all our hearts we look to the Empire as the means by which we may hope to see that increase of our race which we believe to be of such inestimable benefit to the world at large; the spread abroad of people to whom freedom and justice are as the breath of their nostrils, of people distinguished, as we would fain hope and believe, above all things, by an abiding sense of duty.”<sup>20</sup>

The false idealism of, and delusions nurtured by, proclamations of a *novus ordo saeculorum* have always stood in contrast to the sobriety of the reasoning and calculations of *realpolitik*. Today, when President Bush’s “New World Order,” proclaimed in 1991, has dramatically failed and the unilateral system which the United States aimed to establish on the basis of that proclamation is increasingly challenged,<sup>21</sup> new uncertainties emerge in an ever more complex *multipolar* framework. On the “grand chessboard”<sup>22</sup> the entire globe has become for the power game among more than the two or three traditional players,<sup>23</sup> new groupings emerge, and the “board” is constantly being reconfigured, which makes predictions almost impossible. Apart from the traditional “major players” and their regional or worldwide groupings such as the North Atlantic Treaty Organization, the European Union (EU) or the G7, intergovernmental organizations such as the African Union, the

<sup>19</sup> On the perception and development of the balance of power concept in Europe, cf. in particular, Henry Kissinger, *Diplomacy*. New York: Simon & Schuster, 1994, pp. 19 ff.

<sup>20</sup> Stanley Baldwin, *On England And other Addresses*. New York: Frederick A. Stokes, 1926, pp. 71f.

<sup>21</sup> This was also one of the main concerns of Russian President Putin in his speech at the Munich Security Conference in 2007; official transcript: *Speech and the Following Discussion at the Munich Conference on Security Policy*. Munich, February 10, 2007, en.kremlin.ru/events/president/transcripts/24034, accessed 30 April 2022.

<sup>22</sup> Zbigniew Brzezinski, *The Grand Chessboard: American Primacy and Its Geostrategic Imperatives*. New York: Basic Books, 1997.

<sup>23</sup> United States, Union of Soviet Socialist Republics, China – in the two decades since the 1970s.



Eurasian Economic Union (EEU), the Association of Southeast Asian Nations (ASEAN), BRICS (Brazil, Russia, India, China, South Africa) or the Shanghai Cooperation Organization (SCO), to mention only a few, have begun to challenge the Western-dominated global architecture.

Not surprisingly, this has initiated a flurry of “alliance diplomacy” according to the ancient imperial maxim, *divide et impera!* [divide and rule]. It’s essentially about “containing” the new emerging powers and/or their alliances in order to preserve the power and privilege of the self-appointed guardians of global order. Among those “reactive,” still somewhat informal, alliances figure the “Quad” (Quadrilateral Security Dialogue [QSD] between the United States, Japan, Australia and India) and “AUKUS,” a trilateral security pact between Australia, the United Kingdom, and the United States. The overlapping membership of these structures (global-regional) has enormous disruptive potential, bringing new risks of inter- and intra-regional rivalries (e.g. between India and China, Japan and China). These may in turn be opportunistically exploited by a global power struggling to defend its dominant position against any new rival. Stemming the influence of its main antagonist in Asia – or staving off the emergence of a new geopolitical constellation – was indeed the overriding motive, on the part of the United States, for entering into the above-mentioned ad hoc alliances.

Under the circumstances, there is no global arbiter, no intergovernmental organization that would be capable of moderating the repositioning of power in the gradually unfolding multipolar framework. Herein also lies the existential challenge for the United Nations: *how* to survive the transition from the multipolar order of 1945 to the multipolar order of the 21<sup>st</sup> century? The organization will simply become irrelevant if it continues to embody the power balance of an earlier era. In view of the statutory veto of the “powers of 1945” over any amendment to the Charter,<sup>24</sup> the problems appear almost insurmountable. After the post-World War II period of de-colonization, the four decades of the Cold War, and upon the end of a destabilizing hegemonial interlude, the grand task for the international community will be how to manage the *real* post-colonial constellation of the 21<sup>st</sup> century – with the former colonial countries finally emancipating themselves from the persistent

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<sup>24</sup> According to Article 108 of the Charter, an amendment requires the consent of the permanent members of the Security Council.

tutelage –, and how to integrate the Global South into the balance of power. This will, among other measures, require an enlargement of the Security Council in regard to permanent membership.

Finally: It is a delusion to believe in world order in a static sense – because this would create the impression as if there existed permanent, immutable rules, enforceable on everyone, and providing a stability frozen in time. In the real world, history is a sequence of ever-changing, dynamic constellations of power among those that achieve the status of “major player” at a given point in time. Their efforts, though ultimately vain, to preserve the *status quo* – and to stave off contenders “by all necessary means” – has always been a driving factor of international conflict.<sup>25</sup> Whatever provisions (norms, principles) and mechanisms the international community may agree on, the parameters of human nature will not change.

Against the background of an obviously permanent struggle for world order, “perpetual peace” – Immanuel Kant’s vision of *ewiger Friede*<sup>26</sup> – will remain a noble vision. It may nonetheless have the role of moral conscience, or of a corrective of the excesses of realpolitik that in our nuclear age can threaten the survival of mankind. A *world state* – which alone could do away with inter-state conflict and the “tragedy” of power politics, as John Mearsheimer aptly described it<sup>27</sup> – would be a totalitarian colossus whose organizational imperatives can never be compatible with the aspirations of mankind for freedom (individual as well as collective), for civilizational diversity, and self-determination.

Also, in today’s system of sovereign nation-states, there can not yet be international law in the strict sense of the term “law.” Unlike the norms of morality, the norms of law are, as Hans Kelsen convincingly argued,<sup>28</sup> defined by *unified* mechanisms of enforcement in the case of their violation. These are absent in the present system. The wording of the United Nations Charter leaves no doubt about one fact: namely, that *power trumps law* when it comes to the sovereign status of the

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<sup>25</sup> For details see, Köchler, “Power and World Order,” in: *Current Concerns – Special Edition*, Zurich, February 2022, pp. 1-4.

<sup>26</sup> Immanuel Kant, *Zum Ewigen Frieden. Ein philosophischer Entwurf*. Königsberg, 1795. (Philosophische Bibliothek, Vol. 443. Ed. Heiner F. Klemme. Hamburg: Felix Meiner, 1992.)

<sup>27</sup> John J. Mearsheimer. *The Tragedy of Great Power Politics*. New York: W.W. Norton & Company, 2014.

<sup>28</sup> See the chapter on the law as coercive normative order in: Hans Kelsen, *Reine Rechtslehre* [1934]. Ed. M. Jestaedt. Tübingen/Vienna: Mohr Siebeck / Verlag Österreich, 2017, pp. 94ff.

organization's permanent members, the enforcers of the "law" under the provisions for collective security according to Chapter VII of the Charter.<sup>29</sup>

In the absence of unified mechanisms of enforcement of the norms of international behavior, states may have to rely on the rules and maxims of old-fashioned *realpolitik*. In view of the consequences of nuclear war, any global realignment in the emerging new multipolar framework will need to be rooted in a *rational calculus* of each nation's interest to survive, on the basis of *mutuality*. (This also is the essence of the United Nations' principle of "sovereign equality" of states.<sup>30</sup>) As long as it is not effectively restrained by law, the struggle for world order will only then not end in collective suicide if a robust balance of power deters each actor from striking first. In the *real* world – and until mankind will have "reinvented" itself – peace, as disillusioning as it may be, is not "guaranteed" by law, but maintained by the fear of destruction.

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<sup>29</sup> For details see, Köchler, "The Dual Face of Sovereignty: Contradictions of Coercion in International Law," in: *The Global Community – Yearbook of International Law and Jurisprudence 2019*, Part 6: "Recent Lines of Internationalist Thought." New York: Oxford University Press, 2020, pp. 875-885.

<sup>30</sup> Article 2, Paragraph 1 of the Charter.