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Challenges and Contradictions of World Order

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To ensure the *stability* of global order is one of the main imperatives in the ever more complex framework of international relations brought about by globalization. How to achieve this goal has become the basic challenge faced by the international community at the beginning of the 21st century. Stability requires rules that enable a just and balanced interplay of forces in all domains, whether political, economic or social. A transnational equilibrium in a comprehensive sense is indeed the *conditio sine qua non* for the maintenance of international peace and security as envisaged in the United Nations Charter.

After the collapse of the bipolar order of the cold war, world order has entered a transitory phase that is characterized by the antagonism between unilateralist (hegemonic) and multilateral tendencies. It should not surprise us that, at the beginning of the 1990s, the only remaining superpower was tempted to exploit the new constellation – or to fill the power vacuum – for its own benefit. The repeated unilateral uses of force – whether *openly* (as in the cases of the interventions in Yugoslavia in 1999 and Iraq in 2003) or *de facto* (as in the case of the 1991 Gulf war) – have made that hegemonic project more than obvious and have seriously undermined the United Nations Organization’s legitimacy insofar as it is based on the international rule of law and a multilateral approach towards world order.

Parallel to these developments in the political and military (or geostrategic) fields, the sudden end of the cold war’s power struggle has triggered a *new dynamic* in the process of globalization, since the flow of goods and information was freed from previous legal, political and ideological constraints (that were due to the competition and antagonism between the two power blocs). This process, however, has been characterized by an ever-widening imbalance in terms of the complexities of *economic interdependence* on the one hand and the *system of rules*, still in its incipient stage, that are required to ensure stability and fairness on the other. The recent financial and economic crisis testifies to this predicament.

In the period that has immediately followed the end of bipolarity, the traditional forms of governance “instruments” have proven to be more and more ineffective; they are not anymore sufficient to ensure the stability of world order. The norms of contemporary *international law* are mainly related to the interaction between nation-states on the basis of (sovereign) equality and essentially depend on *consensus* among the members of the international community, while the methods of global governance (on which the preservation

of order will largely depend as long as there exists no “common legal space”) are still in a rudimentary stage and cover only certain areas and aspects of inter-state relations.

Under these circumstances, the efforts at ensuring a stable global order are facing a double predicament (or paradox): (a) the international rule of law is supposed to be enforced without essential mechanisms of the law; (b) global governance is to be undertaken without government.

International rule of law

Apart from a few exceptional situations, the norms that govern inter-state relations do not meet the basic criterion that distinguishes a legal from a moral norm (in the sense of Kelsen’s definition): namely that violation of a norm is linked to a specific sanction (punishment). In most cases, abidance by the rules depends on the sovereign will of states. The jurisdiction of the International Court of Justice is mainly limited to legal disputes, which the member states refer to it, and depends on their voluntary recognition (which may be given conditionally and in a temporally limited way). The Court, thus, lacks compulsory jurisdiction and functions more as a “Court of Arbitration and Legal Advice.” A unified and effective system of enforcement only exists in the field of *collective security*, and only in cases where the Security Council acts on the basis of Chapter VII of the UN Charter; and even in this area of international law enforcement, which certainly goes beyond mere appeals and exhortations, the “punishment” (i.e. the specific sanction e.g. in cases of the violation of the norm on the non-use of force) is regulated not on the basis of exclusively judicial criteria but according to the rationale of power politics. Article 27 of the Charter ensures that the Council’s permanent members are effectively immune from coercive measures since any decision depends on their consent. The wars against Yugoslavia (1999) and Iraq (2003) have drastically illustrated the rudimentary nature of international law in this regard.

It goes without saying that another basic requirement of the rule of law, namely a functional, not merely formal, separation of powers, does not exist in the framework of inter-state relations. The “international rule of law,” thus, should be seen as an *ideal*, an imperative of practical reason, in the direction of which the community of states should develop its norms of co-operation and its commitment to the common good of mankind (which, in the era of global interconnectedness, ultimately means the survival of the human race).

Global governance

Similarly, the mechanisms for the co-ordination of policies (regionally as well as globally) in the political, social and economic fields – and which are frequently described as elements of “global governance” – are not expressions of governmental authority in the strict sense (since that would require compulsory action on the basis of laws). The management of global processes, described as “governance,” essentially depends on regulations that result from treaties or agreements between sovereign states or other actors, but without co-ordination by a global government. (The United Nations Organization certainly does not belong in that category.) As with the existing system of international law, the essential characteristic of this kind of governance is a horizontal relationship between equal actors (whereby equality is understood in the normative, not factual sense), not a vertical relationship between superior (sovereign) and subordinate (subject). “Governance” should thus be understood in a metaphorical sense, namely as a form of management of common global problems, undertaken by state and non-state actors alike, and on the basis of partnership and mutual interest. Only in specific regional frameworks where there exists a certain degree of socio-cultural and political homogeneity that has allowed the emergence of supranational structures may “governance” resemble methods of government and governmental authority (i.e. executive authority based on laws) in the strict sense.

Where to go from here? World order and a multipolar balance of power

In view of the rudimentary forms of transnational co-operation that characterize today’s international order, the basic challenge before the global community (which is not identical with the Western-dominated and ideologically defined “international community”) is a further *evolution*, or refinement, of the regulatory mechanisms identified as the “international rule of law” on the one hand and the co-ordination procedures commonly described as “global governance” on the other – with the “strategic” aim of bolstering the development towards a genuine multipolar balance of power. Of utmost importance will be a *comprehensive* and *consistent* network of consensus-based rules and regulations that integrates the political and economic areas of transnational interaction. Only such a system will prevent anarchy and provide protection against arbitrary uses of power and privilege, making it more difficult for individual actors to exploit the volatility of a transitory constellation, such as the present one, according to the old hegemonic maxim of *divide et impera*.

As far as the international rule of law and the primordial role of the United Nations Organization are concerned, enforcement mechanisms in the field of peace and international security will gradually have to be adapted to the evolving multipolar structure. *Democratic reform* of the world organization will be an essential step in that direction since such a process will help it to overcome the imbalances in the Charter that were caused by the perpetuation of the post-war power constellation of 1945. Special priority should be given, in that regard, to a more even representation of the *global regions*, possibly in combination with provisions for *weighted voting*.

Steps in other fields such as that of international criminal justice (with the controversial notion of universal jurisdiction) will have to be undertaken with great care so that the development towards a multipolar order (that must be based on genuine multilateralism in terms not only of legal, but also of political, economic and social interaction) will not be obstructed or even reversed. The recent decision (11 June 2010) by the First Review Conference for the Rome Statute of the International Criminal Court concerning the jurisdiction of the ICC over the crime of aggression was a counterproductive step because – unlike in cases of a referral by the Security Council – the exercise of jurisdiction on the basis of state referral or *proprio motu* is to be made conditional upon the consent of the concerned State Party. The thus revised Rome Statute (to enter into force possibly after 2017) puts also in this vital area of jurisdiction (and the court's global legitimacy) the Council's permanent members effectively “above the law,” discrediting all efforts at promoting a sense of joint responsibility for global peace and justice, which are not only noble goals of mankind but indispensable ingredients of a stable world order. Under the pervasive influence of traditional power politics, particularly of those powers that stood at the cradle of the Security Council, the International Criminal Court cannot become a credible, and constructive, agent of the international rule of law; such a Court – where the Council determines the scope of jurisdiction – may make all efforts in that direction dysfunctional and will effectively contribute to the perpetuation of the balance of power of an earlier era.

As regards the evolution of global governance (in the participatory sense described above) – with the overriding goal of horizontal co-ordination among states and civil society actors alike, including co-ordination among the newly emerging global regions –, the development of a more comprehensive framework of rules for international economic and financial exchange as well as of communication and information will be of paramount importance. The time may have come to revisit the earlier proposals of the United Nations

Organization and Unesco, hastily abandoned under pressure from powerful lobbies in the era of the ideological conflicts of the cold war, for the establishment of a New International Economic Order and a New International Information Order respectively. In the economic field, the ongoing global crisis has certainly demonstrated that policies, which are exclusively based on the paradigms of neoliberalism, are in no way able to ensure a stable and balanced development.

It will be one of the main challenges for contemporary international relations theory to demonstrate how to reconcile the *stability* of world order with the notion of sovereign *equality*. The approach advocated by us is *realistic* – in the sense of its paying attention to the necessity of correcting the actual imbalances, instead of ignoring them or trying to do away with them merely through normative proclamations. A multipolar constellation on the basis of genuine partnership, not a unitary world state, is the desirable outcome of reforms of the system of international relations in the era of globalization. Traditional power politics – history’s “struggle for power” among rivals that only emphasize self-interest – has to be transformed towards new methods of “partnership among powers” where each of the actors, in their well-understood self-interest, pays attention to the global common good on the basis of *mutuality*. This can only be achieved through a *reinterpretation* and *adaptation* of the paradigms of “rule of law” and “governance” to the requirements of multipolarity.

All measures contemplated here will have to be oriented towards securing a peaceful world – a state of durable peace –, a goal that has been the focus of special attention in the Confucian as well as the Kantian tradition, and that is of special importance in a period of transition from unipolarity towards multipolarity. At the same time, we shall have to be aware of the conceptual *contradictions* in both, the notions of “international rule of law” and “global governance,” when applied to the international domain. In the absence of a world state as supranational entity – which we do not advocate because of the implications in terms of sovereign equality and self-determination –, neither of the two paradigms can be transferred statically, or one-dimensionally, from the conceptual framework of the sovereign nation-state (with its hierarchical structure of law enforcement) to the ever more complex system of interdependence between a multitude of states; but they can serve as guidelines – regulative ideas in the Kantian sense – for the building of a more just and peaceful world.