The Politics of Global Powers*

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I. Preliminary remarks on terminology

The era of globalization has brought with it a new awareness of the impact "global power" has not only on the international legal, economic and social order, but also on everyday life.[1] The rapid development of technology in the 20th century, particularly in the field of information, has increased to a dramatic extent, both qualitatively and quantitatively, the possibilities to exert power.

For the purposes of this essay, a country is understood to be a "global power" if it is able to extend its power and project its influence over all regions of the globe not only in terms of military capability, but in a *multidimensional* sense. As such, a "global power" does not necessarily have to compete with the majority of states of which the "international community" consists, but will be involved in a struggle for "power and privilege" with a limited number of countries that, similar to itself, have been able to establish a hegemonial position within their region and command a similar strength, albeit with differently weighted parameters of power in terms of their political, economic and socio-cultural influence. In this sense, a "global power" is to be understood as protagonist within an international balance of power which provides the arena for a test of wills among actors each of whom is powerful enough not to be subordinated to the other's will.

Accordingly, a global power is a state that is able to impose its will upon medium and smaller powers, but that is not necessarily a global hegemon. In the

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[1] On the notion of "globalization" and its implications for world order see Hans Köchler (ed.), *Globality versus Democracy? The Changing Nature of International Relations in the Era of Globalization*. Studies in International Relations, Vol. XXV. Vienna: International Progress Organization, 2000.

history of mankind, global unipolarity has always been an exceptional constellation. Not surprisingly, the "New World Order" that was prematurely declared after the collapse of the East bloc,[2] has not become the foundation of an undisputed and sustainable unipolar order.

The term "global power" has connotations that are similar to the more common terms "superpower" and "great power." In today's international relations theory, both refer to a country's ability to project its power virtually over the entire globe, whereby a "superpower" is seen to possess this capacity to a higher degree, just one step below the position of global hegemon. In this sense, the cold war-term "superpower" comes closest to the meaning of "global power" as it is used in this essay. Under the actual circumstances of international realpolitik, at least three of the permanent members of the United Nations Security Council – the United States of America, the Russian Federation and the People's Republic of China – will fall under the category of global power.

In order to understand the politics of global powers in the present historical context, and to properly relate it to what is called the "international rule of law," we shall first reflect on the antagonistic relationship between power and law, domestically as well as internationally, and subsequently assess the implications of the dynamics of this relationship in the transnational realm.

II. The antagonism of power and law

A. "The paradox of the rule of law"

Essentially, the rule of law means *general respect* for legal norms – irrespective of power and privilege enjoyed by people in a given state or society. This "equality before the law" is considered to be one of the major achievements of civilization and as the form

[2] For details see, *inter alia*, "Bush I and the New World Order," in: P. Edward Haley, *Strategies of Dominance: The Misdirection of U.S. Foreign Policy*. Baltimore: Johns Hopkins University Press, 2006, pp. 11ff. – See also Hans Köchler, *Democracy and the New World Order*. Studies in

of social organization that distinguishes a polity from nature's state of anarchy. It is obvious that, because of the nature of the human being, general norms of behaviour – laws – can only be enforced if the state possesses the required *power*. The system of law, understood as the state's coercive normative order, is intrinsically linked to the state's authority and ability to use violence to enforce that order. Herein lies the distinction between *moral* and *legal* norms.[3]

The coercive normative order of any polity, indeed the rule of law, requires the state's monopoly of violence. In practical terms, *power*, in its extreme form, is required to prevent the arbitrary exercise of power, including the resort to violence, by the citizens of the state in the pursuit of their proper interests. Citizens may only pursue their goals, and use their wealth, power and influence, within the constraints of the law and, in case of violations, will be subjected to coercive measures, including the use of violence, on the part of the state. This is the essence of the rule of law in distinction from a state of anarchy. However, in a constitutional state the norm-enforcing power of the legitimate authority is not exercised arbitrarily, but within an elaborate framework of checks and balances. The *separation of powers* is the organizational precondition of a "just" (i.e. non-arbitrary) use of violence by the state and, thus, the *sine qua non* of a legitimate legal order and, subsequently, a just society.

At the domestic level, the separation of powers is realized in varying degrees,

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International Relations, Vol. XIX. Vienna: International Progress Organization, 1993.

[3] See Kelsen's theory of the law as a coercive normative order ("normative Zwangsordnung"): *Reine Rechtslehre. Einleitung in die rechtswissenschaftliche Problematik*. (Ed. by Matthias Jestaedt.) Tübingen: Mohr Siebeck, 2008 (1st ed. 1934). – On Kelsen's understanding of the state as a coercive normative order see his *Allgemeine Staatslehre*. Vienna: Österreichische Staatsdruckerei, 1993 (reprint of the 1925 edition). On the validity of norms according to Kelsen's theory see also Hans Köchler, *Philosophie – Recht – Politik. Abhandlungen zur politischen Philosophie und zur Rechtsphilosophie*. Vienna / New York: Springer, 1985, esp. pp. 3ff.

depending upon a multitude of historical and socio-cultural factors, and the extent to which this goal – namely an elaborate system of checks and balances – is achieved is a measure of the rule of law. At the international level, however, a separation of powers is virtually non-existent. One could even say that the *differentia specifica* between municipal and international legal order lies in the absence of a separation of powers. It is indeed the predicament of the United Nations Organization and of most other intergovernmental organizations that there exists no mechanism to enforce the norms of international law in a unified and non-discriminatory manner.

Thus, in relations between states, the "paradox of the rule of law" acquires a much more serious dimension; it becomes the "paradox of law enforcement": the enforcement of international norms is entrusted to the most powerful actors (states), who are able to operate outside the constraints of a separation of powers. Under the United Nations Charter, the countries that – on a *permanent* basis – are given the "primary responsibility" (Art. 24[1]) for the enforcement of international law are not only among the most powerful actors on the global scene (at least as regards nuclear capacity), they are themselves *de facto* exempted from the application of the very norms they are entrusted to enforce. The veto privilege – accorded to the permanent members on the basis of Art. 27(3) of the UN Charter – renders them virtually immune from any enforcement measure in cases of transgressions of the law committed by themselves (such as wars of aggression).

B. Power politics and International Law

The politics of global powers exemplify this internal contradiction in the system of international law in two distinct respects:

a) Factual aspect: Because of their predominant position in the international power constellation, global powers are lacking an incentive to "behave by the rules." Unlike weaker states who have to follow those rules for the sake of

self-preservation, global powers may think that they can ignore the *principle of mutuality* at no, or negligible, cost. The Iraq expedition of 2003ff is a case in point for this kind of assessment, indeed for the arrogance of power on the part of that war's major allies, the United States and the United Kingdom, who thought that they "could go it alone" – in defiance of the basic norms of international law, and in particular of Art. 2(4) of the United Nations Charter.[4]

b) Normative aspect (in regard to the status of the five permanent members of the United Nations Security Council): Through Art. 27(3) of the UN Charter, global powers are effectively "immunized" against any transgressions of the law committed by themselves. The "normative privilege" written into the Charter means (1) that no enforcement measure can be taken without their consent, and (2) that, even in a situation where a permanent member is itself party to a dispute (e.g. as aggressor state), nothing can be decided without the involved party's consent.[5]

There is no doubt that the development of the system of international law – in the sense of a gradual codification and of an evolution of mechanisms for the enforcement of international norms – has witnessed steady progress since the creation of the nation-state order in 17th century Europe; the absolute principle of state sovereignty has been "tamed" and gradually redefined in a context of equality and peace, a development that resulted in the Briand-Kellogg Pact's ban on the use of force,[6] which was later enshrined in the United Nations Charter's Art. 2(4).

Nonetheless, in spite of the devastating experience of the two preceding world wars, that same Charter effectively subordinates the "normative" to the

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[4] For the details in terms of international legality see Hans Köchler (ed.), *The Iraq Crisis and the United Nations: Power Politics vs. the International Rule of Law. Memoranda and declarations of the International Progress Organization (1990-2003)*. Studies in International Relations, Vol. XXVIII. Vienna: International Progress Organization, 2004.

[5] On the normative contradiction that is inherent in these regulations see Hans Köchler, *The Voting Procedure in the United Nations Security Council. Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations*. Studies in International Relations, Vol. XVII. Vienna: International Progress Organization, 1991.

"factual" in all matters related to the international use of force – a dramatic *capitulation to power politics* from which the world order has not recovered so far. The rules outlining the voting procedure in the Security Council privilege five countries, the victors of the Second World War, who, due to their status as "permanent members," are *de facto* exempt from the strict legal régime (meant to ensure the enforcement of international law) that is set out in Chapter VII of the Charter. Hans Morgenthau has aptly described the resulting constellation of power as a modern version of the "Holy Alliance," namely a system of great power rule in the tradition of the 19th century's concert of powers.[7] As far as the obvious negation of the norm of sovereign equality (Art. 2[1] of the Charter) is concerned, this is a historical regress behind the rules of consensus that were enshrined in the Covenant of the League of Nations. The military and political unipolarity that prevailed for a period of several years after the end of the cold war (1989ff) has further sharpened the contours of global power politics and has made us even more aware of the detrimental impact of the absence of a separation of powers on global peace and security.

III. The politics of global powers: epitome of power politics

At the price of inconsistency of the normative order, today's system of international relations favours countries that prevailed in a global military confrontation; the essentially *anarchic* character of global power has become more than obvious. The United Nations Charter is the most drastic, and deplorable, acknowledgment of a post-World War II capitulation to power politics, which still plagues the community of nations and renders the mechanisms for the universal enforcement of international law, envisaged in Chapter VII of the UN Charter, completely ineffective.

Those countries that, in a given historical constellation, proved to be more

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[6] The treaty was concluded on 27 August 1928 and entered into force on 24 July 1929.

[7] Hans J. Morgenthau, *Politics among Nations*: *The Struggle for Power and Peace. Brief Edition. Revised by Kenneth W. Thompson.* New York: McGraw-Hill, 1993, p. 321: "The United Nations is an international government of the great powers which resembles in its constitutional arrangements the Holy Alliance …"

powerful than the rest were given a status that equals the position of the sovereign ruler under the state doctrine of *absolutism*, namely to be above the law, which he himself creates. No euphemistic description of the veto rule of Art. 27 can do away with the crude reality of power politics – also expressed in the dictum "might makes right" –, which manifests itself in this provision. It has been demonstrated on numerous occasions when one or the other of the great powers, under the protection of the Charter, had resorted to the unilateral use of force against a sovereign state. In his farewell speech as President of the United Nations General Assembly, Miguel d'Escoto Brockmann has addressed the predicament faced by the world organization in no uncertain terms: "Certain Member States think that they can act according to the law of the jungle, and defend the right of the strongest to do whatever they feel like with total and absolute impunity, and remain accountable to no one."[8]

In the absence of legal constraints, the politics of those global powers that enjoy the status of permanent member in the UN Security Council have become the most obvious, though not the only, manifestation of power politics. In a system that is based on the normative inequality of states – a condition that openly contradicts the wording of the Charter –, the politics of the global powers are indeed the epitome of power politics. Under the prevailing circumstances, in normative as well as factual terms, the politics of powers (states) such privileged are characterized by a collective behaviour that is governed almost exclusively by the "national interest" as the unmitigated desire to (a) preserve a given power balance and (b) accumulate power in order to eventually change the balance in the respective state's favour. The respect of principles that are binding upon all – namely observance of the international rule of law – is merely of secondary importance. Common norms will only be upheld insofar as such behaviour is not detrimental to the respective power's "legitimate interests" (as defined by that country, and not by an international institution or as measured according to criteria commonly agreed upon).

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[8] President of the 63rd Session, United Nations General Assembly, To the Final Session of the Sixty-Third Session of the General Assembly, New York, 14 September 2009, at www.un.org/ga/president/63/statements/finalsession140909.shtml, visited on 20 September 2009.

In the context of a system of institutionalized power politics, represented by the United Nations Organization, it appears appropriate to further analyze the basic maxims that underlie the politics of global powers.

In a framework of institutionalized inequality such as the present concert of states within the United Nations Organization, the weaker state will have to "play by the rules" in order to preserve its sovereignty and territorial integrity. A violation of the rules may be punished at any moment should the Security Council's self-righteous "power brokers" so decide and if there is unanimity among the permanent members. The cases of Iraq, Libya and Iran have vividly demonstrated up to what extent the "international community," when "represented" by the five permanent members, may be prepared not only to interfere into a country's sovereignty, but to subject the entire population to collective punishment in the form of economic sanctions.[9] Since the end of the cold war's bipolar system, economic sanctions have become almost a standard tool in the leading Western countries' arsenal of power politics. The most brutal measure, in that regard, has been the imposition of comprehensive economic sanctions on Iraq for over a decade, which caused widespread suffering and resulted in the death of around a million Iraqis.[10] The two (initially three) permanent members that were mainly responsible for the indefinite prolongation of the sanctions (until they had succeeded in régime change), did not show any regret for their behaviour and used the Security Council, through their veto power, to enforce those punitive measures in violation of the basic tenets of humanity, and in particular of international humanitarian law.[11]

The countries targeted by such sanctions régimes are in fact reduced to the status of *protectorates* – of the United Nations Organization (in cases where its authority

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[9] On the problematic nature of sanctions in terms of human rights see Hans Köchler, *The United Nations Sanctions Policy and International Law*. Penang (Malaysia): Just World Trust (JUST), 1995.

[10] For details see **"**Analysis and perspectives on the humanitarian disaster in Iraq: 1990-2000." *The Ploughshares Monitor*, Vol. 21, No. 1, March 2000, published by Inter-Church Action for Development, Relief and Justice (ICA), Waterloo, Ontario, Canada.

[11] On the illegality of the sanctions régime in terms of international law see*: Memorandum on the United Nations Sanctions and Monitoring Régime in Iraq, submitted by the International Progress Organization to the United Nations Security Council.* Vienna, 14 November 1997, published at i-p-o.org/memiq.htm, retrieved on 11 Sep. 2009.

has effectively been seized by the most powerful members of the Security Council) or of a "coalition of the willing" (where such formal authority has not been obtained due to a lack of unanimity among the permanent members), not to speak of situations of strictly unilateral sanctions that are imposed by the leading global power on specific countries and enforced extraterritorially, which includes the interdiction of trade between the targeted state and third parties.[12] None of the countries that have been subjected to this form of collective punishment has ever received compensation for the losses of life and the lasting damage done to infrastructure and economy.[13]

For the weaker state, abiding by the rules and, in particular, not violating the sovereignty of other states makes sense for two distinct reasons: (a) the state may avoid "punishment" on the basis of coercive measures according to Chapter VII of the UN Charter (should the interests of the permanent members so dictate), and (b) it may count on the other states' respect of its sovereignty on the basis of *mutuality*.

In the present international system, a global power does not need to consider such options. As we have explained with reference to Art. 27, the United Nations Charter does not provide any incentives for norm-abiding behaviour. A global power can put all its trust in what German legal philosophy has characterized as *normative Kraft des Faktischen*,[14] the "normative power of facts," namely the actual power a country possesses to create norms that are conducive to its interests. As we have stated earlier, this situation is rather similar to the rationale of *absolute rule* (a form of government that has been preserved, if not in name but in fact, up to the present day): The ruler (authority) who, through his monopoly of violence, is able to ensure the

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[12] In the case of Cuba, the "Helms-Burton Act" of the U.S. Congress extended the territorial application of the U.S. trade embargo to foreign companies trading with Cuba. (*Cuban Liberty and Democratic Solidarity [Libertad] Act of 1996*, Pub.L. 104-114, 110 Stat. 785, 22 U.S.C. § 6021-6091.)

[13] On sanctions as a foreign policy tool in the context of the post-cold war system see Hans Köchler (ed.), *Economic Sanctions and Development*. Studies in International Relations, Vol. XXIII. Vienna: International Progress Organization, 1997.

[14] The German legal philosopher Georg Jellinek has introduced the term in his state theory: "Aber nicht nur für die Entstehung, auch für das Dasein der Rechtsordnung gibt die Einsicht in die normative Kraft des Faktischen erst das rechte Verständnis." (*Allgemeine Staatslehre*. Leipzig: O. Häring, 2nd ed. 1905, p. 331.) See also Andreas Anter (ed.), *Die normative Kraft des Faktischen: Das Staatsverständnis Georg Jellineks*. Baden-Baden: Nomos, 2004.

respect of norms in a given system is himself exempt from the application of those very norms. In an absolutist – or totalitarian – system, the ruler (the ruling élite, clique, junta, etc.) is himself "above the law" as far as the domestic realm is concerned.

This describes exactly the status of a global power, namely the conditions under which such a country positions itself within the community of states. Because of its relative strength in comparison to the large majority of states, that power can rely on the "normative force of the facts," one of the rationales of realpolitik. In legal terms, the United Nations Organization has enshrined this iron law of power politics in its Charter. Because of the veto privilege accorded to the five "great powers" of 1945, the organization effectively conveys the message that "might makes right," and the victorious powers have ensured that this state of affairs, afflicting the UN Charter with a delegitimizing normative inconsistency, can never be challenged within the organization's statutory framework. According to Art. 108, any amendment requires the votes of the permanent members of the Security Council.

It is quite natural that within a framework of immunization of the exercise of power by certain countries – three of who are global powers – an attitude of *self-righteousness* has taken hold among those privileged in such a way. This habit is paired with a *lack of cooperativeness* due to the absence of fear of coercive measures in cases of transgressions of international norms. In that regard, the "psychology" of global powers is not much different from the psychology of the individual. Selfishness is an inherent trait not only of individual, but even more so of collective behaviour – and in the latter case it is idolized as the "national interest." Unlike weaker countries, global powers feel that they are not obliged to subject the exercise of their vital interests to commonly accepted norms;[15] they only concede that they have to make their behaviour *appear* to conform to internationally agreed upon norms and values. The lack of the will to co-operate on the basis of (normative) *equality* and the self-

[15] This fact has been most aptly and honestly described by a President of the United Nations General Assembly: "… some of our most powerful and influential Member States definitely do not believe in the rule of law in international relations and are of the view, moreover, that complying with the legal norms to which we formally commit, when signing the Charter, is something that applies only to weak countries." (Miguel d'Escoto Brockmann, *loc. cit.*)

righteousness resulting from it have often led global powers to resort to elaborate legitimization strategies when the assertion of their national interests, as defined by them, has involved measures that are clear-cut violations of international law. The mantras resorted to by the United States during the war in Vietnam or by the Soviet Union in the course of the invasion of Afghanistan testify to the global powers' use of the most sophisticated methods of information warfare and mind control.

A global power will always try to support its agenda of power politics through an enforcement of the "political correctness" of the respective public's views on actions that would otherwise be qualified as *illegal* or patently *immoral*. The efforts of "Machiavellian" mind control are aimed not only at the domestic polity but, as the information campaign in the wake of the events preceding the 2003 Gulf war has exemplarily demonstrated, virtually to the global public; in the information age, mastery of the techniques of mind control – the "manufacture of consent" described by Walter Lippmann in his communication theory for the modern industrial state[16] – is considered an indispensable ingredient of a global power's pursuit of its national interests.

Because of the reliance on self-help that characterizes a global power's view of how the international order is established, excessive *emphasis on national sovereignty* is one of the corollaries of global power. In the absence of any real pressure to abide by rules commonly agreed upon – how else should the veto provision of Art. 27 of the Charter be interpreted?[17] –, an obsession with the preservation of power will take hold when it comes to decisions that may affect the *status quo*, namely an existing balance of power. In the atmosphere of self-help, which characterizes global power politics – or the politics of global powers –, it is considered unacceptable – on the part of the respective power – that other countries change their position of relative strength in a prevailing balance of forces. It appears to have been a common habit of history's great

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[16] Walter Lippmann, *Public Opinion. With a New Introduction by Michael Curtis*. New Brunswick/London: Transaction Publishers, 1991.

[17] It is to be noted that the veto power is nowhere openly mentioned. The term does not exist in the language of the Charter. Par. 3 of Art. 27, which establishes the veto privilege, merely states – as a requirement for a resolution to be adopted – "the concurring votes of the permanent members."

powers that countries will, again and again, engage in a kind of strategic "denial of reality," trying to arrest history at the very moment of their predominance. The security doctrine proclaimed by the United States administration in 2002 (updated in 2006) is a case in point.[18]

The overall philosophy on which such a strategic doctrine, aimed at the eternalization of a given balance of power, is based is that of autonomy in the strict sense of the term (as defined by Kant in regard to the status of the moral subject).[19] A state, acting as a global power, will never accept to be the "object" of the actions of other states, but will always aim at preserving the position of subject, i.e. of keeping the position of sovereign agent in all potential scenarios. The United Nations Charter testifies to this tendency and has had to pay the price for the global powers' tendency at self-preservation – namely with normative contradictions that threaten the consistency of the entire system. Through the voting privilege enshrined in the Charter, the victorious powers of 1945 have indeed tried to eternalize the special position they enjoyed at the end of the Second World War, and have thus engaged in a collective Machiavellian effort at arresting history in their favour. As has become obvious in the course of the geopolitical changes after the end of the cold war, the insistence of today's global powers on this particular privilege threatens the very future of the world organization. The organization can effectively not be reformed – as was also acknowledged by a President of its General Assembly. It would need to be "reinvented."[20]

There are other serious implications for the United Nations and the present system of international law, resulting from the stubborn insistence of the global powers on their inherited privilege in terms of decision-making procedures, first and

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[18] *The National Security Strategy of the United States of America*, *September 2002*. Washington, D.C.: The White House, 2002. This document also outlined the Bush administration's doctrine of "preventive self-defense."

[19] Immanuel Kant, *Critique of Practical Reason*. Trans. Lewis White Beck. New York: Macmillan, 1989, esp. Book I, Chapter 1, § 8. – See also Immanuel Kant, *Foundations of the Metaphysics of Morals and, What Is Enlightenment?* Trans. by Lewis White Beck. New York: Macmillan; London: Collier Macmillan, 1989, p. 65.

[20] "I have come to the conclusion that the time has already passed for reforming or mending our Organization. What we need to do is to reinvent it …" (Miguel d'Escoto Brockmann, *op. cit.*)

foremost in regard to the coercive powers of the Security Council. Because of the "exception" that is implicitly stated in Art. 27, the principle of "sovereign equality" of all United Nations member states (Art. 2[1]) has become totally meaningless. It has been further undermined due to repeated and unilateral military actions undertaken since the era of the cold war by global powers that exploited that legal loophole. (The most serious case has been the invasion and occupation of Iraq in 2003 by the United States, the United Kingdom and their "lesser" allies.)

No amount of sophistry can do away with the fact that this statutory privilege (the veto right of the five permanent members) creates two categories of UN member states whereby the non-veto-wielding countries are only legally equal *among themselves*. To distinguish between "inequality of sovereignty" and "inequality of decision-making power," as some commentators suggest,[21] only obfuscates the reality at the normative level. Inequality in terms of voting power, or the abrogation of the majority principle in favour of only five states, is tantamount to the negation of sovereignty of all other states in the normative (not factual) sense of the term. In view of the statutory reality, C. L. Lim's assessment appears to be dictated by wishful thinking: "Viewed as such, the veto power of the Permanent Five does not itself render the principle of sovereign equality nugatory."[22]

Equally serious and far-reaching are the implications of thus "immunized" global power politics, effectively freed from legal constraints – or from the fear of statutory punishment –, for a sustainable order of peace and the international rule of law in general. The repeated unilateral use of force by global powers – in outright violation of Art. 2(4) of the UN Charter – has had a profoundly demoralizing effect on the international community. The recognition of the universal validity of norms, the fundament of a stable and legitimate international order, has been seriously

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[21] C. L. Lim, "The Great Power Balance, the United Nations and What the Framers Intended: In Partial Response to Hans Köchler," in: *Chinese Journal of International Law*, Vol., No. 2 (2007), pp. 307-328; quote in Par. 24.

[22] *Op. cit.*, Par. 22. – An earlier effort at explaining the unpleasant truth of the negation of sovereign equality away has also failed: Boutros Boutros-Ghali, "Le principe d'égalité des États et les organisations internationales," in: [Académie de droit international] *Recueil des Cours,* Vol. 100 (1960), II, pp. 30ff. – For a critique see Hans Köchler, *The Voting Procedure in the United*

eroded.

The use of force and the threat of the use of force have always been part and parcel of the politics of great powers. In the post-1945 order, however, those practices have acquired new respectability due to the statutory privilege granted to the most powerful countries, something that resembles the patronizing approach towards international affairs which was typical for the 19th century's Holy Alliance. It goes without saying that this state of affairs has undermined the legal ban on the use of force, which has been considered a major achievement in the development of international law since its first affirmation in the Briand-Kellogg Pact of 1928. The privileged status granted in the UN Charter to certain powerful states has effectively reintroduced the *jus ad bellum*, since Art. 27 has made the general ban on the use of force unenforceable.[23] It goes without saying that the statutory privilege, in tandem with a clear pattern of unilateral action by the global powers, has introduced an element of *anarchy* into the system of international relations, something which observers of global affairs would have wished to be relegated to history.

Instead of a process in which relations between states steadily become more "civilized," the world has witnessed a regress into what, in German political terminology, is described as *Souveränitätsanarchie* – a state of anarchy resulting from the uncoordinated assertion of sovereignty by a multitude of nation-states –, a situation that has been accelerated by the most influential global power's unilateral strategy, especially since the events of September 11, 2001. The large-scale destabilization of the geopolitically sensitive regions of the Middle East and Central Asia, with repercussions on peace and security at the global level, is a vivid illustration of the destructive potential of power politics as opposed to the politics of multilateral consensus which would be required if the basic norms of the United Nations Charter, namely those derived from sovereign equality and the ban on the use of force, were

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Nations Security Council, pp. 33ff.

[23] For details see Hans Köchler, op. cit., p. 46, and The United Nations and International Democracy: The Quest for UN Reform. Published on the occasion of the 25th anniversary of the foundation of the International Progress Organization. Studies in International Relations, Vol. XXII. Vienna: International Progress Organization, 1997, pp. 10f.

taken seriously in a strategy of collective, not unilateral, security.[24]

It is obvious that in a system without effective mechanisms to hold the most powerful global actors in check, the latter will make confidence in "peace through strength" a cornerstone of their foreign policy. "*Si vis pacem, para bellum"* – if you wish for peace, prepare for war! – has indeed been the classical maxim of power politics since the era of the Roman Empire,[25] and – in terms of global realpolitik – it does not appear to have in any way been affected, or challenged, by the system of collective security propagated by the United Nations. As we have tried to explain earlier, the UN Charter itself encourages this approach because it renders the enforcement powers of the Security Council ineffective – and exactly in those cases where the interests of the most powerful actors, the Council's permanent members, are at stake. In a power-oriented environment such as the one envisaged, and thus created,[26] by the strongest competitors for worldwide influence, the global powers, *mistrust* about the motives of others is indeed one of the basic ingredients of the conduct of international affairs.

It is a fact that cannot be interpreted away by idealistic proclamations of the "Purposes and Principles" of a just and peaceful global order (as in the UN Charter's Preamble) that global powers first and foremost rely on their own strength – in military, economic, political and other terms –, and not on the respect of norms binding upon all. They are mainly concerned about the assertion of national power. As explained by Josef Hoffe in an essay on America's global supremacy, armies are the "principal agents for promoting the national interest," and a "warrior culture" is a

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[24] On the rationale of collective security in the context of the United Nations see the author's analysis: "The Precarious Nature of International Law in the Absence of a Balance of Power," in: Hans Köchler (ed.), *The Use of Force in International Relations: Challenges to Collective Security.* Studies in International Relations, Vol. XXIX. Vienna: International Progress Organization, 2006, pp. 11ff.

[25] The dictum is most probably derived from a sentence written by the Roman author Vegetius (Publius Flavius Vegetius Renatus) in his *Epitoma rei militaris.* Ed. A. Önnerfors. Bibliotheca scriptorum Graecorum et Romanorum Teubneriana. Stuttgart / Leipzig: Teubner, 1995, Libri III, Prologus, p. 101: "Igitur qui desiderat pacem, praeparet bellum."

[26] We allude here to the fact that the founders of the United Nations Organization, as drafters of the Charter, had, after turbulent negotiations at Dumbarton Oaks (USA), agreed to insert the veto provision into the Charter. For details of the negotiating process see, *inter alia*, Stephen C. Schlesinger, *Act of Creation. The Founding of the United Nations. A Story of Superpowers, Secret Agents, Wartime Allies and Enemies, and Their Quest for a Peaceful World.* Boulder, Co., and Oxford (U.K.):

basic ingredient of national power, offering a competitive advantage in the struggle for global influence.[27]

The defense policy of all major (global) powers testifies to the fact that confidence in the rule of law is virtually non-existent. Otherwise, they would, for instance, themselves have perceived the accumulation of potentials of "nuclear over-kill" as intrinsically irrational, even counterproductive in terms of collective security, and the doctrine of mutual deterrence, based on the notion of "mutually assured destruction," could never have been advanced. Nonetheless, the achievement of nuclear capacity has been a priority in the defense policy of all global powers and is a goal of all those international actors that aspire to the status of a major player. It is indeed considered a *sine qua non* of great power status. In contradiction to what is officially proclaimed, the Treaty on the Non-proliferation of Nuclear Weapons (NPT) effectively affirms the status quo *in favour* of the nuclear powers since it contains only a vague, and legally non-enforceable, commitment to general nuclear disarmament.[28] The NPT, with the fledgling arms control régime that is attached to it, is one of the most obvious examples of how global power politics is conducted at the expense of the weaker countries, in this particular case the nuclear have-nots. Far from allowing the NPT's professed goal – namely the achievement of general nuclear disarmament – to become reality, the nuclear powers, because of their obstinacy, may trigger the

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Westview Press, 2003.

[27] Josef Joffe, "The Default Power. The False Prophecy of America's Decline," in: *Foreign Affairs*, Vol. 88, No. 5 (Sept/Oct 2009), pp. 30f. – Joffe detects a "warrior culture" in the makeup of the political system of the United States and the United Kingdom – in sharp distinction from continental European powers such as Germany or France.

[28] On the resulting credibility problem (due to the failure of the NPT to initiate nuclear disarmament) see the news release of the International Progress Organization: *India / Pakistan / United Nations / Nuclear non-proliferation*, Vienna, 2 June 1998/P/K/15979c-is, at i-p-o.org/i-p-un.htm, last visited on 17 September 2009. – This credibility problem has again become obvious in Security Council Resolution 1887 (2009), adopted at the Council's 6191st meeting, held at the level of heads of state or government, on 24 September 2009. The nuclear powers in the Council – namely the veto-wielding members – have effectively only allowed the adoption of a legally non-binding resolution that refers to the NPT as "the essential foundation for the pursuit of nuclear disarmament," without suggesting in any way how this goal could be achieved. Like so many lofty declarations before, the resolution merely pays lip service to the cause, calling upon the Parties to the NPT, "pursuant to Article VI of the Treaty, to undertake to pursue negotiations in good faith on effective measures relating to nuclear arms reduction and disarmament." (Par. 5)

collapse of the treaty's non-proliferation régime; the treaty itself may indeed be phased out because of an unavoidable gradual erosion of its membership due to the legitimacy deficit caused by the discriminatory attitude of those powers.[29] The resolution adopted at the Security Council Summit on 24 September 2009 has done nothing to dispel those fears.[30]

The possession of nuclear arms, with the advantage this offers in terms of the global power balance, is no incentive for dialogue; to the contrary, it introduces an element of terror in the relations between sovereign states. Almost automatically, all non-nuclear states are reduced to a status of dependency and are thus condemned to live in a state of permanent fear vis-à-vis those who are in the possession of nuclear arms. Intimidation and the projection of fear are also the basic elements of a policy of nuclear deterrence; regrettable as this may be, the dubious "privilege" of nuclear capacity has become part and parcel of the global powers' self-definition and, as such, has been the most serious obstacle to general nuclear disarmament – since other states will be tempted to acquire nuclear status in order not to be sidelined in the global power struggle.

That international relations, as far as global powers are concerned, are effectively built on the negation of trust is also obvious in the recently revived doctrine of *preventive war*.[31] Although the proclamation of this doctrine has been a

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[29] On the problem of the enforcement of the non-proliferation régime and the conflicting and contradictory legal arguments in the case of Iran see: *MEMORANDUM on the dispute between the Islamic Republic of Iran and the United States of America and other states over the interpretation of the Treaty on the Non-Proliferation of Nuclear Weapons and related legal and political problems of the non-proliferation régime addressed by the International Progress Organization to the President of the United Nations Security Council*, Vienna, 15 April 2006, 2006-04-15/19667c, at i-p-o.org/IPO-MEMORANDUM-NPT-Iran-15April2006.pdf, last visited on 10 September 2009.

[30] To the contrary, resolution 1887 (2009) implicitly enshrines the "nuclear privilege" of the permanent members, namely their special status as "nuclear" States Parties of a treaty on the non-proliferation of nuclear arms. In Par. 4 of the resolution, the Council "*calls upon* all States that are not Parties to the NPT to accede to the Treaty *as non-nuclear-weapon States*." (Second emphasis by the author.)

[31] *The National Security Strategy of the United States of America* (2002, updated in 2006), esp. Chapters III and V. The unilateral approach and outright negation of trust in inter-state relations is most obvious in a phrase in Chapter V ("Prevent Our Enemies from Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction"), p. 15: "The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national

unilateral initiative of essentially one major power, it has set the tone in the discourse on the "global war on terror," an effort purportedly being waged for the *bonum commune* of the global community, but in actual fact serving the hegemonial interests of one global power.[32] That the very notion of "preventive war" is not compatible with contemporary international law – since it cannot be derived from the norm of self-defense enshrined in Art. 51 of the UN Charter[33] – appears to be of little interest[34] to those who have made it a basic element of their imperial strategy in the "global war on terror."

Preventive self-defense is indeed the basic rationale of the "global war on terror" which has destabilized the entire global system and poisoned inter-state relations as well as relations between the state and its citizens to such a degree that the fabric of democratic society is weakened and the legitimacy of constitutional order is eroded.[35] The underlying doctrine has introduced an element of mistrust, which forces the weaker states to prove their "loyalty" vis-à-vis those who have embarked on that global, and possibly never ending, "war." Due to mass mobilization for the goals of

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security. The greater the threat, the greater is the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively."

[32] On the ideology underlying the "global war on terror" see Hans Köchler, "The Global War on Terror and the Metaphysical Enemy," in: Hans Köchler (ed.), *The "Global War on Terror" and the Question of World Order*. Studies in International Relations, Vol. XXX. Vienna: International Progress Organization, 2008, pp. 13-35.

[33] See Hans Köchler (ed.), The Use of Force in International Relations: Challenges to Collective Security.

[34] Much earlier, in the period of the cold war, U.S. President Dwight D. Eisenhower had dismissed the notion of preventive war. When asked about whether the U.S. should embark on a preventive war with the Communist world, he said: "I would say a preventive war, if the words mean anything, is to wage some sort of quick police action in order that you might avoid a terrific cataclysm of destruction later. A preventive war, to my mind, is an impossibility today. How could you have one if one of its features would be several cities lying in ruins, several cities where many, many thousands of people would be dead and injured and mangled … (…) That isn't preventive war; that is war." (Dwight D. Eisenhower, *192 – The President's News Conference, August 11, 1954*, published by The American Presidency Project at www.presidency.ucsb.edu/ws/index.php?pid=9977, visited on 17 September 2009.)

[35] For details see the author's paper: *The War on Terror, its Impact on the Sovereignty of Nations, and its Implications for Human Rights and Civil Liberties*. I.P.O. Research Papers. Vienna: International Progress Organization, 2003, at www.i-p-o.org/koechler-war-on-terror-human-rights-

that war, people are made to live in a state of constant fear, and the state has created a situation that is equivalent to a permanent state of exception.

The obsession with preemption is just one aspect of a global power's excessive emphasis on national sovereignty, expressed in the (futile) effort to guarantee almost *absolute* security for the state, which is meant to include the preservation of its privileged position in the global power constellation for all time, as irrational as this may appear to any outside observer.

IV. Exceptionalism and the supremacy of the national interest

It is no surprise that the extreme obsession with self-preservation – of which the doctrine of the "global war on terror" is just the latest expression – is linked to an "ideology of power" that emphasizes the special role and responsibility the respective state supposedly bears for mankind. In all epochs, global powers have developed a sense of *exceptionalism*; emphasis on the exemplary nature of the polity and the "special" rights derived from this status has always been a basic ingredient of doctrines of global domination. This "imperial" ideology is at the roots of the arrogance of power, which has been proven to be an almost irresistible habit of the rulers of global powers of all epochs.

The recently introduced discourse about a special responsibility of "leader states" [36] – by reference to which their privileged position in the Security Council is meant to be justified, *inter alia* – is a further illustration of the "exceptionalist" approach. The tendency towards an idealization of great power politics is also obvious in Josef Joffe's

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2002.htm, last visited on 15 September 2009.

[36] Sienho Yee, "Towards a Harmonious World: The Roles of the International Law of Co-progressiveness and Leader States," in: *Chinese Journal of International Law, Vol. 7 (*2008), pp. 99-105. – See also C. L. Lim, "The Great Power Balance, the United Nations and What the Framers Intended: In Partial Response to Hans Köchler," ch. II.A ("The concept of great power responsibility"), §§ 12-13. – However, the author does not suggest that these writers propagate an imperial foreign policy. He only would like to draw the reader's attention to a notion that can be used to justify such a policy.

recent description of global powers as "guardians of the larger common interest."[37]

Madeleine Albright's famous statement about the United States as the "indispensable nation," which she had made in connection with a defense of her administration's policies vis-à-vis Iraq,[38] has alerted the entire world about the implications a global power's sense of exceptionalism may have not only for state sovereignty, but for the daily life of millions of people in the countries that have become the object – or target – of a global power's geostrategic projections. Similarly, in an essay on the great power role of the United States, Josef Joffe has characterized that country as "the twentieth century's indispensable nation," suggesting, at the same time, that this nation acted on the basis of noble motives, pursuing "its own interests by also serving those of others."[39]

The sense of exceptionalism expressed in these statements – more precisely: evaluations – goes along with an insistence on a privileged position of the leaders of global powers in the conduct of international affairs. Due to their predominant position, global powers have developed an attitude of *self-righteousness* that is most obviously expressed in the special treatment they expect and demand for their leaders in terms of personal criminal responsibility under international law. It should not surprise us that none of the major global powers so far has acceded to the Rome Statute of the International Criminal Court. The United States' position, emphasizing "sovereign immunity" for its head of state in the conduct of international affairs, including acts of war,[40] is typical of an approach that effectively puts leaders of global

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[37] Josef Joffe, *op. cit.*, p. 32.

[38] "And what we are doing is serving the role of the indispensable nation to see what we can do to make the world safer for our children and grandchildren, and for those people around the world who follow the rules." (*Secretary of State Madeleine K. Albright, Secretary of Defense William S. Cohen, and National Security Advisor Samuel R. Berger – Remarks at Town Hall Meeting, Ohio State University, Columbus, Ohio, February 18, 1998. As released by the Office of the Spokesman, February 20, 1998. U.S. Department of State.*)

[39] Josef Hoffe, *op. cit.*, p. 31.

[40] An exemplary case of the U.S. emphasis on "sovereign immunity" was the rejection by the District Court of Washington DC of the lawsuit by the families of the civilian victims of the bombing of Tripoli and Benghazi (Libya) that was ordered by President Ronald Reagan in 1986. The victims' lawyers had asked the following question which the court, by denying the admissibility of the case on the basis of "sovereign immunity," had implicitly answered in the

powers "above the law" – while the leaders of lesser powers are expected to submit themselves to the procedures of international criminal justice – or "will be brought to justice," should they not agree.[41] What self-righteousness and the arrogance of power mean under the conditions of international realpolitik has been unwittingly demonstrated by the then Vice-President of the United States, George H. W. Bush, who, in a spontaneous reaction to challenging questions in connection with the shooting down of an Iranian civilian airliner in 1988, said: "I will never apologize for the United States of America, I don't care what the facts are."[42] He could not have cared less for international justice and for his country's legal obligations under the notion of state responsibility.

A sense of *exceptionalism*, accompanied by an attitude of self-righteousness and vindictiveness vis-à-vis those who do not submit to their expectations, characterizes the approach of global powers towards the "international community" of which they claim to be the true representatives. This is, in rudimentary form, the – never reflected – ideology on which the projection of power by the self-declared guardians of the world is based. As will have become obvious from the preceding characterizations, the exercise of power by those states is basically amoral (a term the meaning of which is not to be confused with "immoral"); this implies that their

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affirmative: "Whether the President, executives or officers of the United States who ordered, planned and conducted an attempted assassination of a foreign leader and intentional killing of civilians by illegal surprise nighttime aerial bombardment of foreign cities in time of peace without constitutional or statutory authority for the purpose of overthrowing a foreign government are protected from liability for damages by doctrines of immunity." (Ramsey Clark / Lawrence W. Schilling, New York: *In the Supreme Court of the United States, October Term, 1989: Farag M. Mohammed Saltany, as personal representative of Khloud Hasan Al-Oraibi, deceased, and Hasan Mohamed Al-Oraibi, deceased, et al., Petitioners, vs. Ronald W. Reagan, President of the United States, et al., Respondents: Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit*. New York: Counsel Press, [1989], p. i.) – For details see Hans Köchler, *Global Justice or Global Revenge?*, pp. 101ff.

[41] This has been most drastically demonstrated in the case of the former Yugoslav President Slobodan Milošević. On the legal and political implications of his prosecution, extradition and trial see the author's "Memorandum" of 27 May 1999 published in: *Global Justice or Global Revenge?*, pp. 353ff, and the news release of the International Progress Organization: *Extradition of former Yugoslav President Milošević: Violation of international law and of the Constitution of the Federal Republic of Yugoslavia*, Vienna, 1 July 2001/P/RE/17210c-is, at i-p-o.org/milosevic-extradition.htm, last visited on 17 September 2009.

[42] Quoted by Michael Kingsley in: "Essay: Rally Round the Flag, Boys," *Time Magazine*, 12

decisions on international policies, including the use of force, are made outside the confines of a system of norms that, by others, would be considered as binding upon all, irrespective of power and interest. A global power will only respect – and implement – the norms of international law insofar as they do not contradict its vital interests which, in the understanding of such a state, are synonymous with national sovereignty; the latter is obviously the most essential norm for the justification of great power rule.

There is indeed a certain irony in the fact that those who least need the legal protection afforded by the norm of national sovereignty (due to their preponderance in terms of power relations and the availability of a large arsenal of instruments of self-help), are the most adamant in upholding it, insisting that it shall not be subordinated to any other norm of *jus cogens*. As far as the United States is concerned, Michael Chertoff, a former Secretary of Homeland Security, has most stringently advocated this "great power philosophy." He is deeply suspicious of any norm of international law that is not based on "sovereign consent," which effectively excludes the recognition of norms of *jus cogens* insofar as they do not correspond to the will of the "sovereign" global power.[43] While acknowledging the "reciprocal nature of sovereignty in the modern era" (in connection with the containment of transnational terrorist threats),[44] Chertoff insists that "[i]mposing international legal mandates on a nation without its consent undermines [the] traditional concept of sovereignty and conflicts with the democratic will."[45] This position cannot be reconciled with the modern doctrine of universal jurisdiction nor will it encourage a country to recognize the jurisdiction of the International Criminal Court. The United States has most vigorously defended and consistently applied this "rejectionist" approach – even in the conduct of bilateral diplomacy.[46] It is indeed symptomatic for this kind of

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September 1988.

[43] Michael Chertoff, "The Responsibility to Contain: Protecting Sovereignty under International Law," in: *Foreign Affairs*, Vol. 88, No. 1 (January / February 2009), pp. 130-147.

[44] *Op. cit.*, p. 143.

[45] *Op. cit.*, p. 132.

[46] The United States has made extensive use of the provisions of Art. 98 of the Rome Statute of the International Criminal Court ("Cooperation with respect to waiver of immunity and

sovereignty-centered thinking that Chertoff would refer to the corpus of contemporary international law as "an inescapable fixture in today's global political landscape."[47] To someone like the former Homeland Secretary of the United States, who reflects on international law within the parameters of a global power's state doctrine, the argument "that international law creates enforceable legal obligations without consent" is highly problematic.[48] Obviously, for a global power, such obligations would be an unwarranted restriction of its strategic options.

It is an almost neurotic fear of the great powers that weaker nations – who need international law to protect their rights and to defend their status of sovereign equality – might intrude into a great power's sovereign domain by means of insisting on *jus cogens* obligations to which that great power had not consented earlier. The global power thus doubts the very validity of norms that are not derived from "sovereign consent;" in doing so, it further minimizes – in its own perception – the need to co-operate with other states in the enforcement of norms of *jus cogens*.

Irrespective of the differences in terms of legal doctrine, the incentive for the United States and other great powers to co-operate in any project for the *bonum commune* at the global level – whether in regard to measures of collective security or of international justice – is rather limited since those countries will always be able, if need be, to effectively assert their interests by means of old-fashioned power politics. There should be no illusions about the continuity of *Souveränitätsanarchie* from the era of the Holy Alliance and European imperialism until the present day. Apart from their actual preponderance, those who enjoy the status of permanent member in the Security Council will also be shielded from any adverse consequences in the form of Chapter VII enforcement measures – a state of affairs that is an open encouragement to arbitrary action and the abuse of national sovereignty.

Against this background of the *actual*, not merely *doctrinary*, supremacy of national sovereignty, defined as "the national interest,"[49] over virtually all other norms

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consent to surrender"). For details see Hans Köchler, *Global Justice or Global Revenge?*, pp. 245ff.

[47] *Op. cit.*, p. 137.

[48] *Op. cit.*, p. 136.

[49] On the concept of "national interest" in the U.S. context see Hans Morgenthau*, In Defense of the*

of international law, including human rights, it should not be surprising that the politics of global powers have become the paradigmatic expression of *realpolitik*, a term which was coined in the 19th century to describe Metternich's balancing act between his era's major powers.[50] Though often veiled in the robes of a lofty philosophical idealism that evokes a shared responsibility for the "welfare of mankind," realpolitik has not changed its nature since the great power rivalries of earlier centuries. As has also been demonstrated during the power struggles of the cold war, the "ideology" of global powers serves one basic purpose, namely the *justification of the trivial pursuit of power*. As long as those countries refuse to acknowledge the principle of *sovereign equality* (Art. 2[1] of the UN Charter) in all its implications, including subordination to norms that are binding upon all (in particular the norms of human rights as *jus cogens* of general international law), the notions of *bellum justum*, humanitarian intervention, or the more recently developed concept of the "responsibility to protect" will have to be understood, and evaluated, in the prosaic context of power politics.[51] Any idealistic interpretation would be artificial and utterly misleading. In view of actual practice, the recently expressed view that promotion of the *bonum commune* is an "unintended consequence" of a global power's policies[52] appears rather naïve.

As long as the invocation, for instance, of a case for humanitarian intervention or the creation of an international tribunal by the Security Council are effectively governed by the national interests of the permanent members, instead of by an unequivocal commitment to application of human rights as norms of *jus cogens* in a given conflict situation, no one should try to pretend that such measures, whether

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National Interest: A Critical Examination of American Foreign Policy. New York: Knopf, 1951.

[50] Ludwig August von Rochau introduced the term in his *Grundsätze der Realpolitik angewendet auf die staatlichen Zustände Deutschlands*. (Edited by Hans-Ulrich Wehler.) Frankfurt a.M., Berlin, Vienna: Ullstein, 1972.

[51] On the problematic practice of humanitarian intervention in a global environment that is determined by the politics of the national interest see Hans 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.

[52] Josef Hoffe, *op. cit.*, p. 31.

adopted within or outside the framework of the United Nations, will bring about a paradigm change in the interpretation of international law. As long as the iron law of power politics, namely the assertion of national interests as the ultimate criterion for the implementation of legal norms, determines the decision-making of the only international body with *transnational* coercive powers, the Security Council, nothing will have changed. The veto provision of Art. 27(3) cannot be interpreted in any other way. As post-World War II history has amply demonstrated, this privilege has been an open invitation to the five permanent members to assert their national interests, instead of acting on behalf of the common good of mankind (as the Preamble of the Charter would suggest). They are tempted to make use of it exactly in those cases that have the most serious impact on international peace and security – and in particular in conflict situations which involve those very countries.[53]

The "Machiavellian" provisions of the United Nations Charter in favour of the permanent members – inserted into the Charter by those very states due to the privileged position they enjoyed as "sponsoring governments" (with the exception of the People's Republic of China and France) – are indicative of a drive for power that leaves nothing to chance, or that is aimed at eliminating any risk of ever being defeated by a majority of states in decisions related to the most sensitive matters of national interest. It is in this context of "risk elimination" – leaving nothing to chance – that global powers also aim at influencing public opinion in their favour. The "manufacture of consent"[54] – which powerful countries have always considered as part of a long-term strategy to prevail in the global struggle for hegemony – is aimed at the "mainstreaming" of opinion at the domestic and, to a lesser extent, at the transnational level. While the domestic focus is on the *paradigmatic nature* of the respective polity and on a *threat perception* that allows the country's leadership to

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[53] It cannot be overstated that the wording of Art. 27(3) implies that the obligation that parties to a dispute abstain from voting does not apply to the permanent members in decisions under Chapter VII. For details see the author's paper: *The Voting Procedure in the United Nations Security Council*, ch. 5/b, pp. 29ff.

[54] Walter Lippmann has coined this term in his *Public Opinion* (first published in 1921), p. 185. – For a critical evaluation see Edward S. Herman and Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media. With a new introduction by the authors*. New York: Pantheon Books, 2002.

legitimize its projection of power, the international information policy is frequently aimed at influencing opinion leaders and the larger public in the target countries in favour of a "benign" image of an otherwise blunt assertion of national interests. A more recent development is the propagation of a country's policies by means of satellite technology and through other electronic media. However, whenever a government directly controls programs, their efficiency will be minimal due to the obvious propaganda aspect of any such undertaking. The preferred approach is to "exploit" the opportunism of the mainstream media. The coverage of the Iraq war (2003ff) and of the events preceding it by the establishment media of the invading countries was a dramatic illustration of what journalism, "embedded" in a superpower agenda, can achieve in terms of the "manufacture of consent."

Domestically, global powers tend to enforce a specific version of "political correctness" to streamline the population's views on the country's international policies. In such a context, the "construction" of political correctness is an important aspect of a global power's self-assertion, internally as well as externally. The population has to be convinced of the uniqueness and moral as well as civilizational supremacy of the country's social and political system, and has to be made aware of the threats allegedly posed by potential competitors who are portrayed as the "enemies" of one's own cherished way of life – whether as adversaries of freedom, or democracy, or socialism, depending on the respective power's "state ideology." The media campaigns waged by the cold war's two rival powers, highlighting the respective merits of capitalism or socialism, were a vivid illustration of this kind of information strategy that is aimed at public opinion leadership on crucial ideological issues. The present-day discourse on international terrorism and its presumed causes, with the labeling of terrorists as "the enemies of mankind" who are to be fought in a global war, etc., is just another example of the information strategy of a global power that wants to rally the citizens behind an essentially *imperial* project. The oppression of dissenting voices and the defamation of critics of the country's international policies as "unpatriotic" are the other side of the coin of a great power's manufacture of consent. (This has become particularly obvious in the debates about international terrorism in the United States.) Carl Schmitt's friend-enemy dichotomy, which he used

to explain the nature of politics, appears to be an adequate paradigm when it comes to the description of the ideology and information (or legitimization) strategy of global powers.[55]

Opportunism of the "mainstream media" and of large sectors of the intellectual élite is a characteristic element of the political climate in countries that act as global powers. Irrespective of the political system – whether capitalist or socialist –, the public discourse on the basic tenets of the state will always be apologetic and highly superficial. The lack of critical discourse in the mainstream media – or among "mainstream" intellectuals – on representative democracy in the United States is a case in point.[56] In polities that aim to project their power at the global level, the public opinion climate is distinctly less liberal than in countries without grand strategic ambitions and/or capabilities. Again, in the United States, the impossibility, so far, of a free and open debate on the real causes of the terrorist events of the year 2001, and on the path that country has taken since what has been declared an "attack" on the United States, testify to an informal system of mind control, serving that country's global agenda, that bears all the hallmarks of a totalitarian system. Dissenting opinions, discredited as "conspiracy theories," are relegated to cyberspace, while the mainstream media, symbiotically tied to the power establishment, appears to engage in a conspiracy of silence.

The totalitarian trend in terms of the information policy of global powers runs parallel to the disproportionate influence of intelligence services in all areas of society, including the media and academic institutions, and in all fields of public life, not only those of foreign and defense policy. Since, under such circumstances, there may always be doubts whether an argument represents the genuine opinion of a citizen or is merely advanced on the behalf of an undisclosed organization or undeclared interest, this influence constitutes a serious threat to the authenticity of all

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[55] Carl Schmitt, D*er Begriff des Politischen. Text von 1932 mit einem Vorwort und drei Corollarien*. Berlin: Duncker & Humblot, 1963, p. 54: "Die politische Einheit setzt die reale Möglichkeit des Feindes und damit eine andere, koexistierende, politische Einheit voraus."

[56] For a critique see William B. Greider, *Who Will Tell the People: The Betrayal of American Democracy*. New York: Simon & Schuster, 1992. – See also Hans Köchler (ed.), *The Crisis of Representative Democracy*. Frankfurt a. M. / Berne / New York: Peter Lang, 1987.

discourse on public affairs. What Habermas has described as "*herrschaftsfreier Diskurs*" ("discourse free from domination")[57] will become not only a factual, but also a logical impossibility under conditions in which the state, often under a legal pretext, secretly infiltrates public discourse. Not only in the United States, the cases where journalists, researchers and professors have acted as proxies for intelligence services are numerous and well documented.[58] It is obvious that a state that has strategic interests in all corners of the globe will be more eager, or tempted, to exert influence on discourses on ideology, state identity, or public policy than a country with little international influence. The effects the elaborate mechanisms of mind control have in the field of public information have been analyzed and criticized, among others, by Noam Chomsky.[59] The infiltration of intellectual life by the "agents" of the state not only poisons the climate that is required for free and open debate, and prevents genuine international dialogue on crucial issues of peace and security, it also contributes to an erosion of democracy at home.[60] The fact that in most cases people would not dare to speak about an instance of secret state interference does not invalidate the point. As an observer of and participant in international debates on issues of terrorism and state security over three decades (within and outside the framework of the United Nations), the author has himself witnessed many instances where discussants have acted as proxy and used the fake identity of journalist or professor to gain credibility for an argument that was actually advanced on behalf of the agency (state) they secretly represented. Unlike what the stereotypical Western opinion, nourished by cold war sentiments, suggests, such cases were not exclusively

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[57] Jürgen Habermas, *Theorie des kommunikativen Handelns*. Vol. 1: "Handlungsrationalität und gesellschaftliche Rationalisierung," Vol. 2: "Zur Kritik der funktionalistischen Vernunft." Frankfurt am Main: Suhrkamp, 6th ed. 2006.

[58] The author has witnessed such instances himself during his tenure as international observer, nominated by the Secretary-General of the United Nations, at the trial of two Libyan suspects in connection with the midair explosion of Pan Am flight 103 over the Scottish town of Lockerbie (21 December 1988). For details see Hans Köchler and Jason Subler (eds.), *The Lockerbie Trial. Documents Related to the I.P.O. Observer Mission*. Studies in International Relations, Vol. XXVII. Vienna: International Progress Organization, 2002.

[59] Noam Chomsky, *Deterring Democracy*. London: Verso, 1991.

[60] See also the author's analysis: "The War on Terror, its Impact on the Sovereignty of Nations, and its Implications for Human Rights and Civil Liberties," in: Hans Köchler, *World Order: Vision and Reality. Collected Papers Edited by David Armstrong*. New Delhi: Manak, 2009, pp. 39-51.

related to the Soviet Union, but equally to other global powers, and they cannot be confined to the past, namely the era of the East-West conflict. For the sake of precision it has to be added that such "practices" are *generally* used by states involved in serious international disputes or armed confrontations, and not only by the great powers; it is obvious, however, that the instances where such methods are applied are much more frequent, almost endemic, when the ubiquitous interests of global powers are at stake.

The practices here described have not only eroded democracy at the domestic level in the countries pursuing a dominationist strategy and in those allied with them; in tandem with the imperial agenda of the global powers they are meant to bolster, they have contributed to a policy that "deters" democracy, to allude to the term introduced by Chomsky, in relations *between* states. Democracy at the international level, a goal advocated in all debates about United Nations reform since more than two decades,[61] is simply impossible if certain states, namely those with the greatest power potential, negate the idea of sovereign equality and essentially rely on the projection of power as instrument to advance their national interests. At the individual as well as at the collective level, democracy requires *equality* (in terms of rights) and *freedom* (especially in terms of the absence of threats or fear of repercussions). The notion of democracy evokes all those ideas which are seen as indispensable to ensure the legitimacy of a political system; the concept is, however, entirely meaningless in the absence of those conditions and should, thus, not be used in any debates on United Nations reform – unless the "major players" are effectively prepared to engage in a new form of partnership with the "lesser" powers, something

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[61] The International Progress Organization has initiated the global debate on international democracy at an international roundtable meeting on "Democracy in International Relations," held on the occasion of the 40th anniversary of the foundation of the United Nations Organization in New York City (1985). For details see Hans Köchler (ed.), *Democracy in International Relations*. (Studies in International Relations, Vol. XII.) Vienna: International Progress Organization, 1986. – See also the author's paper: "Foreign Policy and Democracy: Reconsidering the Universality of the Democratic Principles," in: Hans Köchler, *Democracy and the International Rule of Law. Propositions for an Alternative World Order. Selected Papers Published on the Occasion of the Fiftieth Anniversary of the United Nations*. Vienna / New York: Springer, 1995, pp. 18-36.

which, in all frankness, is only an abstract possibility.[62] How, for instance, should a country meaningfully take part in deliberations in the Security Council as a non-permanent member if its voting behaviour is actually determined by the fear of reprisals on the part of one or more of the permanent members? This is not a rhetorical question nor does it refer to an abstract or remote possibility; situations of blackmail have characterized many of the confidential bargaining sessions in the chambers of the Security Council that preceded, to give just one example, the resolution authorizing the use of force in the Gulf war of 1991.[63]

V. Paradigmatic cases of global power politics

To further illustrate the importance of the elements and methods of the global projection of power outlined above, it appears appropriate to briefly analyze, or comment on, some of the policies of the major global power, the United States, insofar as they are related to issues or events of recent history that had far-reaching implications for world order. The specific cases are chosen because they embody the "spirit" of the exercise of power by the category of countries here described – namely the *global nature* of power politics – in exemplary form. We shall refer here to aspects of global power politics in the context of the Gulf crisis (1990/1991ff); the evolving system of international criminal justice (since the coming into force of the Rome Statute of the International Criminal Court); the Lockerbie dispute between the United States, the United Kingdom and Libya (1991ff); and the terrorist incidents of

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[62] The author has reviewed the options for a comprehensive reform of the United Nations along democratic lines, especially as regards the decision-making procedures in the Security Council: *The United Nations and International Democracy: The Quest for UN Reform*, ch. III, pp. 29ff.

[63] Resolution 678 (1990), adopted by the Security Council on 29 November 1990. – For details concerning the use of political pressure in the Council see Erskine Childers, "The Demand for Equity and Equality: The North-South Divide in the United Nations," in: Hans Köchler (ed.), *The United Nations and International Democracy*. Vienna: Jamahir Society for Culture and Philosophy, 1995, pp. 32ff. Childers describes the situation much more honestly and precisely than most academic analysts of international affairs: "There is … a level of behaviour by the Northern powers that is virtually hidden from public view and that is by any norms of civilized society nothing less than criminal. This is the use of bribery and extortion to silence, or gain the votes of the acquiescence, of Southern governments for *political* and peace-and-security decisions at the United Nations." (p. 32)

September 11, 2001 with the subsequently launched, and still ongoing, "global war on terror."

After Iraq had invaded Kuwait in August 1990, the reaction of the Security Council was swift and decisive. In the volatile international constellation that followed the collapse of the East bloc, with the Soviet Union being in its last throws, the United States was able to obtain the unanimity required for the imposition of punitive sanctions on Iraq. Although the demand of the initial resolution (660[1990] of 2 August 1990), namely complete withdrawal from Kuwait, had been fulfilled after the armed intervention in 1991, a measure that far exceeded the mandate given by the Security Council to the self-proclaimed "Gulf war coalition" under U.S. leadership,[64] the sanctions régime was toughened and tied to further conditions about disarmament, etc., which Iraq, as we know by now, could not fulfill.[65] Because of the Security Council veto, the sanctions could not be lifted without the consent of their major proponents, namely the United States and the United Kingdom; thus, over the years, these punitive measures reached an almost genocidal dimension as has been acknowledged by numerous international non-governmental organizations.[66] Apart from the targeted country's delegate, no one in the chambers of the Security Council dared to speak out against the illegality of this form of collective punishment, and during many years no one on the higher echelons of the United Nations Secretariat, including the Secretary-General, did ask whether such measures were at all compatible

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[64] The stated goal was Iraq's complete withdrawal, not the destruction of the country's infrastructure. Ominously, resolution 678 (1990) of 29 November 1990 used the term "all necessary means" in connection with coercive measures that were meant to bring about Iraq's withdrawal from Kuwait. This phrase, inserted into the wording of the resolution at the initiative of the U.S., was interpreted by the states of the "Gulf war coalition" as open invitation to an arbitrary use of force – an approach that is typical of the arrogance of great powers.

[65] The International Progress Organization has documented the sequence of events: Hans Köchler (ed.), *The Iraq Crisis and the United Nations*, esp. pp. 21ff.

[66] In October 1998, upon resigning in protest from his office of United Nations Humanitarian Coordinator in Iraq, Fred Halliday wrote: "I am resigning because the policy of economic sanctions is totally bankrupt. We are in the process of destroying an entire society … I had been instructed to implement a policy that satisfies the definition of genocide; a deliberate policy that has effectively killed well over a million children and adults." Quoted according to Eric Herring (University of Bristol), *Iraq: The Realities of Sanctions and the Prospects for War*. October 2002, at uk.geocities.com/dstokes14/Eric/iraqppt.htm, visited on 11 September 2009.

with the basic goals of the organization, first and foremost the principles of human rights.[67] This is a vivid illustration of the lack of courage, even cowardice, on the part of state leaders and international civil servants vis-à-vis a *de facto* imperial power, a status the United States enjoyed in the, albeit transitory, unilateral constellation during the years following the collapse of the East bloc and the disintegration of the Soviet Union.

When Madeleine Albright, U.S. Secretary of State during the crucial years of the sanctions régime, was asked about the moral aspects of measures that had caused the death of up to a million innocent citizens, she replied that the régime change in Iraq was well worth the price.[68] If there was ever a case that illustrates the wisdom of the dictum: "power tends to corrupt and absolute power corrupts absolutely,"[69] it is Ms. Albright's spontaneous reaction in that interview in May 1996. As we have stated earlier, because of the great power veto in the Security Council, the sanctions could only be lifted after the strategic interests of the concerned global power were met, namely when régime change had been achieved (in 2003) as a result of armed aggression and in blatant violation of the United Nations Charter.[70] The facts speak

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[67] The International Progress Organization was the first to raise this question before the United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its forty-third session on 13 August 1991 in Geneva. See *Statement by the delegate of the International Progress Organization, Mr. Warren A. J. Hamerman, on UN sanctions against Iraq and human rights*, United Nations Doc. E/CN.4/Sub.2/1991/SR.10, 20 August 1991.

[68] On 12 May 1996 Ms. Albright appeared on CBS' *60 Minutes* program. When asked by the moderator: "We have heard that half a million children have died. I mean, that's more children than died in Hiroshima. And, you know, is the price worth it?," Madeleine Albright replied: "I think this is a very hard choice, but the price, we think, the price is worth it." (Text transcribed by the author from an audiovisual recording posted at www.youtube.com/watch?v=FbIX1CP9qr4, visited on 11 September 2009.)

[69] The dictum is attributed to Sir John Dalberg-Acton (1834-1902). He wrote the sentence in a letter dated April 1887. For a better understanding, one should also be aware that this sentence immediately follows the dictum: "Great men are almost always bad men, even when they exercise influence and not authority …" (John Emerich Edward Dalberg-Acton, *Essays on Freedom and Power. Selected, and with an introduction by Gertrude Himmelfarb*. Boston: The Beacon Press, 1948, p. 364.)

[70] On the specific elements of the illegality of the invasion, without Security Council authorization, see *MEMORANDUM by the President of the International Progress Organization, Dr. Hans Koechler, on the legal implications of the 2003 war against and subsequent occupation of Iraq and requirements for the establishment of a legitimate constitutional system in Iraq, including measures of criminal justice*, Vienna, 12

for themselves: the leading global power had no moral scruples to force an entire people into starvation, causing the death of up to a million individuals, and risk the death of thousands due to what is euphemistically referred to as "collateral damage;" the only thing that counted was the achievement of that country's strategic goals, namely régime change.

Since the end of the Second World War, the strictly *amoral* nature of power politics has never been more openly exposed than in the Iraq policy of the United States – before and after the cataclysmic events of September 11, 2001. When that policy was conceived at the beginning of the 1990s, the other two global powers in the Security Council were still paralyzed by the shock caused by the collapse of the Socialist system, and did not oppose the U.S. agenda. Although the artificial unanimity was short-lived – and misleading in geostrategic terms, without the consent of the instigators, themselves permanent members of the Security Council, nothing could be done to lift the punitive measures against Iraq. The in-built "structural defect" of the UN Charter (namely the provisions of Art. 27[3]) made all member states hostage of a previous Chapter VII decision. The sanctions could have continued into eternity if the United States would not have been satisfied with the situation they had themselves brought about by means of armed aggression. Nothing more can be said about the Machiavellian nature of the global exercise of power, as evidenced in these measures, except that other countries enjoying that same status and preponderance over others would not have behaved much differently.

In terms of international law and in view of the requirements of a just world order, the basic lesson to be learned from the Gulf crisis of 1990 and the Iraq wars of 1991 and 2003 is that the privileges given under the UN Charter to the most powerful countries are not only intrinsically immoral and incompatible with maxims of *jus cogens*, but constitute an encouragement, almost an invitation, to abuses of power by those countries. To state it yet again: those privileges are a relic of the era of absolutism and a scandalous capitulation vis-à-vis the arrogance of power.

August 2003/P/RE/18270, published in: Hans Köchler (ed.), *The Iraq Crisis and the United Nations*, pp. 65-71.

They have also had a profoundly detrimental impact on the evolving system of international criminal justice. Through the Security Council, the permanent members, principally the leading global power in the post-Cold war era in tandem with her two allies, have been able to politically instrumentalize issues of transnational justice, especially in regard to questions of personal criminal responsibility of politicians from non-allied countries, and have effectively established a new version of victor's justice. The *ad hoc* tribunals for the former Yugoslavia and Rwanda, created in the wake of the collapse of the Soviet Union – at a time when no one among the formerly "great" powers dared to withhold consent in the Council –, testify to a strategy that exclusively deals with international criminal justice in a context of national interests.[71]

It fits into the pattern of the supremacy of power politics that none of the global powers is prepared to accept criminal jurisdiction over its leaders to be exercised outside its domestic framework. For this reason, those countries will only consider the setting up of tribunals by the Security Council where their veto power effectively prevents the creation of courts that would have that kind of jurisdiction.[72] Furthermore, neither the United States nor the Russian Federation or the People's Republic of China has acceded to the Rome Statute of the International Criminal Court. China has not even signed the Rome Statute and had actually voted against its adoption.[73] (In 2002, the United States administration undertook a rather grotesque

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[71] For details see Hans Köchler, *Global Justice or Global Revenge?*, pp. 166ff.

[72] It is to be noted that in the case of the *territorial* jurisdiction of the International Criminal Tribunal for the Former Yugoslavia (ICTY) considerable influence was exerted on the Prosecutor so that no investigation was opened into possible crimes committed by high officials from NATO countries in the course of the Kosovo war of 1999. In her memoir, Carla del Ponte, former Prosecutor of the Yugoslavia Tribunal, makes an outright declaration of bankruptcy as prosecutor – who could not exercise her mandate independently – and explains her capitulation to the dictates of power politics in no uncertain terms: " … I quickly concluded that it was impossible to investigate NATO, because NATO and its member states would not cooperate with us. (…) I understood that I had collided with the edge of the political universe in which the tribunal was allowed to function. (…) it was impossible to go on politically without undermining the rest of the tribunal's work." (Carla del Ponte with Chuck Sudetic, *Madame Prosecutor. Confrontations with Humanity's Worst Criminals and the Culture of Impunity. A Memoir*. New York: Other Press, 2009, pp. 60f.)

[73] China's objections to the Rome Statute appear to be focused on issues of national sovereignty. For details see Lu Jianping and Wang Zhixiang, "China's Attitude Towards the ICC," in: *Journal of International Criminal Justice*, Vol. 3, Issue 3 (2005), pp. 608-620.

effort of "unsigning" the treaty, which the head of the previous administration had actually signed on his last day in office.)[74] The approach of other powers with nuclear capacity – such as India, Pakistan, or Israel – is almost identical.

Understandably, the leading proponent of political realism, Henry Kissinger, would only be prepared to accept international tribunals that operate under the authority of the Security Council, which, for the International Criminal Court, would mean that the exclusive right of the referral of cases ought to be given to the Council.[75] The predominant global power in particular has left no doubt about its outright rejection of the doctrine of *universal jurisdiction* and of all procedures of international criminal justice, including at the International Criminal Court, when questions of criminal responsibility of that country's officials or personnel are concerned.

A similar lesson about the supremacy of power politics should have been learned, by now, from the interference of two permanent members of the Security Council in the investigation and subsequent criminal prosecution in the case of the mid-air explosion of a civilian airliner over the Scottish town of Lockerbie in 1988. At the initiative of three permanent members, the United States, the United Kingdom and France, the Security Council took up the issue in a series of resolutions (of which only the first one, adopted in 1992, was not based on Chapter VII) and called upon the Libyan Arab Jamahiriya to surrender two of its citizens to Scottish jurisdiction. A

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[74] On 6 May 2002, the U.S. Under Secretary of State for Arms Control and International Security, John R. Bolton, sent a letter to the Secretary-General of the United Nations in the latter's capacity as depositary of the Rome treaty, stating "that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000. The United States requests that its intention not to become a party, as expressed in this letter, be reflected in the depositary's status lists relating to this treaty." (*Multilateral treaties deposited with the Secretary-General – Treaty I-XVIII* – 10. "Rome Statute of the International Criminal Court, Rome, 17 July 1998," Note 6.)

[75] Until the ICC statute has been renegotiated in that regard, Kissinger suggests that the United States only consider a system of reporting through a "Human Rights Commission" and, in cases of serious violations so determined, the creation of tribunals through the Security Council: "The Pitfalls of Universal Jurisdiction," in: *Foreign Affairs*, Vol. 80, No. 4 (July/August 2001), pp. 86-96. – In his analysis – that may also be interpreted as a treatise written *pro domo* –, he raises serious doubts about the doctrine of universal jurisdiction and regretfully remarks that "an unprecedented movement has emerged to submit international politics to judicial procedures." (p. 86)

number of coercive measures, including an air embargo, were imposed on Libya to force the country to fulfill the Council's conditions. The flight embargo was suspended after Libya had extradited the two suspects in 1999. Subsequent to a Chapter VII resolution of the Security Council (1192 [1998]), a special extraterritorial court was set up according to Scot's law in the Netherlands. On the basis of that resolution, the author was appointed by the United Nations as international observer of the criminal proceedings in the Netherlands (2000-2002); this enabled him to gain eyewitness experience of the handling of a case of criminal justice – the alleged terrorist bombing of a civilian airliner – in the context of an international dispute which the Security Council had dealt with on the basis of several Chapter VII resolutions.

As we know by now, the criminal proceedings were carried out in a constellation in which the United States and her ally, the United Kingdom, were effectively able to subvert the course of justice. Under these conditions, eight Scottish law lords (three at the original trial, five at the appeal proceedings) committed, as the author has hinted in a report to the United Nations, a *sacrificium intellectus*[76] that stands out in the history of miscarriages of justice as an example of inconsistency and arbitrariness almost beyond comprehension. In two reports submitted to the United Nations Organization in 2001 and 2002 respectively, the author has given detailed reasons for his evaluation.[77] In June 2007, the Scottish Criminal Cases Review Commission issued an 800-page report, citing six specific reasons (some of which are still kept secret) why it suspects that a miscarriage of justice may have occurred, and referred the case back to the appeal court.

U.S. influence was obviously one of the reasons why the U.K. government at the time (at the beginning of the 1990s) did not allow a public inquiry into the circumstances of the explosion and, more recently, decided to withhold evidence from

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[76] *Report on the appeal proceedings at the Scottish Court in the Netherlands (Lockerbie Court) in the case of Abdelbaset Ali Mohamed Al Megrahi v. H. M. Advocate by Professor Hans Köchler, international observer of the International Progress Organization nominated by UN Secretary-General Kofi Annan on the basis of Security Council resolution 1192 (1998),* Vienna, 26 March 2002/P/RE/17553, Par. 18.

[77] The reports are published in Hans Köchler and Jason Subler (eds.), *The Lockerbie Trial.*

the defense (on grounds of national security and national interests). The lesson to be learned from this case is, first and foremost, that the administration of criminal justice is actually impossible in a context of global power politics – because the domestic guarantees for the separation of powers (as under Scots law) may be rendered dysfunctional due to the effective interference of an outside power.[78] Furthermore, as an instrument of great power rule and in view of the separation of powers, the Security Council, as supreme executive organ of the United Nations, should never have been in a position to deal with matters of criminal justice. The rule of law is simply not compatible with interests of global powers that are all-pervasive and recognize no separation of powers or judicial independence. Regrettably, their status as permanent members in the Security Council has enabled those countries to act as judges in their own cause. This has been clearly demonstrated in the Lockerbie case where two permanent members, involved in a dispute with a third country, took a direct influence on that dispute's judicial resolution, a point that was also made quite convincingly by then President Nelson Mandela.[79]

As other more recent developments have shown, it is virtually impossible to deal with issues of terrorism in a rational and judicially correct manner as long as there exists no independent international entity for the investigation and prosecution of terrorist acts. (Due to statutory limitations and the lack of jurisdiction for the time being, the International Criminal Court is not a suitable institution.)[80] There should be no illusions: under the prevailing global conditions, terrorist incidents with an international dimension will never be investigated *sine ira et studio*, but in conformity

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Documents Related to the I.P.O. Observer Mission, pp. 15ff.

78 For a comprehensive analysis see the author's paper: "The Lockerbie Trial and the Rule of Law," in: *The National Law School of India Review*, Vol. 21, Issue 1 (2009), pp. 149-162.

79 Commenting on the proposals for a trial of the two Libyan suspects in the United Kingdom, then President Nelson Mandela (who was involved in the negotiations for a settlement of the Lockerbie dispute between the U.S., U.K. and Libya) said during his visit to the Commonwealth Summit in Edinburgh in October 1997: "No one country should be complainant, prosecutor and judge." (Quoted according to *BBC News*, news.bbc.co.uk/2/hi/in_depth/scotland/2000/lockerbie_trial/715658.stm, visited on 11 September 2009.)

80 For details see the author's analysis: *Global Justice or Global Revenge? International Criminal Justice at the Crossroads*, ch. III: "The United Nations, the international rule of law, and terrorism," pp. 321ff, and: "Global Justice or Global Revenge? The ICC and the Politicization of International

with the affected – or concerned – global powers' interests. The aftermath of the events of September 11, 2001 has made this dramatically obvious. No credible investigation of the causes of these events has ever been undertaken and all efforts in that direction have been suppressed by the concerned global power (more precisely: by the political establishment of that country). The report issued by a Congressional commission[81] has virtually no investigative value because, among other shortcomings, it omitted central facts and events such as the collapse of World Trade Center 7.[82] The Commission's report – that outlines a scenario of a large-scale conspiracy of a foreign terrorist group – has to be interpreted in the context of the wars that have subsequently been launched against Afghanistan and Iraq, with the aim of permanently changing the geostrategic situation in favour of the global power that declared itself "under attack" on that fateful day, and instantly proclaimed a "global war on terror."[83] Any dissenting voices calling for an independent investigation have been instantly dismissed, by the government as well as by a complacent and complicit media, as views of "conspiracy theorists" that cannot be taken seriously.[84]

What we have described earlier as *mind control* in the interest of global empire has acquired here its most dramatic expression, resulting in the manufacture of a "powerful" narrative that has effectively served to mobilize the masses for an imperial agenda, namely that of the "global war on terror." Zbigniew Brzezinski, former

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Criminal Justice," in: Hans Köchler, *World Order: Vision and Reality*, pp. 312-321.

[81] *The 9/11 Commission Report with Related Documents. Abridged and with an introduction by Ernest R. May*. Boston: Bedford/St. Martin's, 2007. (The "National Commission on Terrorist Attacks Upon the United States" issued the report on 22 July 2004.)

[82] David Ray Griffin has published a painstaking analysis of the shortcomings of this report and of the political context in which the Commission had to operate: *The 9/11 Commission Report: Omissions and Distortions*. Northampton, Mass.: Olive Branch Press, 2005. – See also: David Ray Griffin, *9/11 Contradictions: An Open Letter to Congress and the Press*. Northampton, MA: Interlink Publishing Group, 2008. – Pepe Escobar, "Fifty questions on 9/11," in: *Asia Times Online,* column "The Roving Eye," Hong Kong, China, 11 September 2009, at www.atimes.com/atimes/Middle_East/KI11Ak02.html, visited on 11 September 2009.

[83] On the rationale of this "war" and the geopolitical implications see Hans Köchler (ed.), *The "Global War on Terror" and the Question of World Order*, esp. pp. 13ff.

[84] A comprehensive documentation of the critical views of senior military, intelligence service, law enforcement and government officials as well as of engineers and architects, pilots and aviation professionals, academics and 9/11 survivors is provided at the U.S.-based web site *Patriots Question 9/11* at www.patriotsquestion911.com, last visited on 22 September 2009.

National Security Advisor of the United States (who does not question the official explanation of the events of 9/11), has also critically acknowledged the intended mobilization effect that is, in his analysis, aimed at getting popular endorsement for "wars of choice."[85]

VI. Global powers and "imperial anarchy"

A global power may always see itself as the enforcer of "political correctness," at home and at the transnational level, and on all issues that affect the country's national interests. In the post-September 11 era, this relates first and foremost to the perceived threat of international terrorism that, supposedly, requires a "global war" or special "overseas contingency operations" (whatever the imperial newspeak may be),[86] and to a presumed "clash of civilizations" which arguably is to be prevented by the "reeducation" of entire peoples – or the "reinvention" of a non-Western civilization – according to the global power's model ideology.[87] This implies a strategy that is aimed at reshaping the political geography of the respective region (or regions) by "all necessary means," including punitive sanctions and the unilateral use of armed force.

The highly problematic term has been introduced into UN terminology through Security Council resolution 678 (1990), adopted on 29 November 1990, which authorized member states to use "all necessary means" to enforce previous Security Council resolutions demanding the withdrawal of Iraq from Kuwait. The ambiguous wording has encouraged the arbitrary use of force by interested states, i. e. by states that have a stake in a certain conflict. Although barely noticed at the time,

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[85] Referring to the "war on terror," Brzezinski speaks of "a false historical narrative that could even become a self-fulfilling prophecy": "Terrorized by 'War on Terror'. How a Three-Word Mantra Has Undermined America," in: *The Washington Post*, Sunday, March 25, 2007.

[86] The administration of U.S. President Barack Hussein Obama now appears to prefer the less suspicious and more "neutral" term "overseas contingency operation" although no formal position has as yet been taken on the terminology issue. See, *inter alia*, Scott Wilson and Al Kamen, "'Global War On Terror' Is Given New Name: Bush's Phrase Is Out, Pentagon Says," in: *The Washington Post*, Wednesday, March 25, 2009.

[87] See Hans Köchler, "Civilization as Instrument of World Order? The Role of the Civilizational Paradigm in the Absence of Balance of Power," in: *IKIM Journal of Islam and International Affairs / Jurnal Islam dan hubungan antarabangsa IKIM*, Vol. 2, No. 3 (2008), pp. 1-22.

this wording has done more damage to the international rule of law in the post-cold war era than many other ambiguous terms that have become part of standard Security Council terminology. Not surprisingly, the introduction of the phrase in a Chapter VII resolution was exploited to the maximum by the leading global power and interpreted as an open invitation to implement an imperial agenda and to do so with the full blessing of the world organization, but outside its control.

The adoption of this kind of "war authorization resolution" paradigmatically demonstrates how a global power may use its influence to create new "legal" terminology which it then seizes upon in a self-serving manner, whereby the main consideration is to be able to act without any procedural constraints; to be allowed to act as judge in one's own cause when the use of force is concerned has always been of paramount importance to those who are in the position to enact all means they consider "necessary" to achieve their goals. The phrase, introduced in a resolution on the basis of the collective security provisions of the Charter, has thus been used to justify an effectively unilateral use of force by the U.S. and her allies.[88]

The cases of an arbitrary exercise of power, which we have briefly referred to, are indeed paradigmatic expressions of how global powers define their role in a system of international organization that is still characterized by the paradigm of the nation-state. A global power, claiming for itself special responsibility on behalf of the "international community," will almost unavoidably see the world from a unilateral perspective. Because of its strength, it will not need to rely on legal rules; to the contrary, it will be able to bend those rules or to simply ignore them, depending on the actual constellation of interests and the specific parallelogram of forces. Action on a multilateral basis will always be at the global power's discretion.

As long as there exists no effective international authority to keep the arbitrary assertion of the national interest by the most powerful global actors in check, a state of "imperial anarchy" will prevail in which the norms of international law,

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[88] For details see Rachel S. Taylor, "The United Nations, International Law, and the War in Iraq." *World Press Review Online*, at www.worldpress.org/specials/iraq/, last visited on 22 September 2009.

including international criminal law, will be enforced in a discriminatory manner, namely in accordance with the interests of the global powers. A "policy of double standards" is the quintessential expression of this state of affairs. It should surprise no one if, in a context in which "might makes right," countries are mobilizing all their resources to obtain nuclear capacity, something which is seen as an indispensable element of the status of global power.

In this sense, a power-centered system of international relations that is perpetuated, first and foremost, by the era's global powers constitutes the most serious threat to international security. Ironically, the United Nations Charter entrusts those very actors with the principal responsibility for international peace and security. The world organization is indeed caught in a "fox-in-the-henhouse" dilemma. Unless this structural problem is addressed and the veto privilege in the UN Charter is abolished, all proclamations of a just new world order will be mere lip service.[89]

The dogmas and narratives – or myths – that serve to legitimize the strategy of global powers may change with the actual constellation of interests, but there will always be an entourage of satraps and vassals to assist in the enforcement of those powers' vision of world order. The philosopher should keep better company. *Realism in the robes of idealism* has always been the global powers' self-serving doctrine. Philosophy, however, should be more honest and confront the *real* with the *ideal*. "Without fear of empire," the philosopher should uphold the *idealistic* vision of an alternative world order that is rooted not in the supremacy of the "national interest," but in the universality of human rights as the *jus cogens* of international law.

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[89] On specific proposals for Charter reform see the author's article: *The United Nations and International Democracy. The Quest for UN Reform,* ch. II, pp. 17ff.