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The Dialectic of Power and Law The United Nations and the "New World Order"

Lecture delivered at The University of Iceland
Reykjavik, 19 August 2003

SUMMARY

The basic weakness of the system of international organization represented by the United Nations consists in the fact that it contains an irreconcilable *normative contradiction*, namely between (a) the principle of the *sovereign equality* of member states and (b) the *privileged position* of the five permanent members of the Security Council, expressed in the veto right. Thus, a heavy price has been paid by the international community for the (partly) *supranational* authority vested in the Security Council. Incorporating the power balance as it prevailed at the end of the Second World War, the world organization has been unable to reform itself along democratic lines.

The Charter is itself based on a *compromise between power and law*, combining two contradictory elements or procedures: (a) The international rule of law is ensured through a system of collective security guaranteed by the Security Council's enforcement powers under Chapter VII; whereas (b) the authority of the Council, guaranteeing the rule of law, is intrinsically linked to the veto power of the permanent members (i.e. to their individual security) – exempting them *de facto* from the application of the very rule of law they are supposed to ensure.

Ever since its foundation, this state of affairs – which may euphemistically be described as the "dialectic of power and law" – has condemned the world organization to a "policy of double standards" (a predicament which has become even more acute under the conditions of the present unipolar power constellation, prematurely called the "New World Order"). The unilateral actions of its most powerful member state increasingly threaten the organization with marginalization as the events of 2002/2003 in connection with the war against Iraq have drastically demonstrated.

Because the international rule of law cannot be enforced *against* a permanent member of the Security Council – i.e. because the Charter's ban on the unilateral use of force is ineffective vis-à-vis the permanent members –, the case will have to be made for a major paradigm shift by way of a *democratic reform* of the United Nations Organization (including the abrogation of the veto right) or, absent the endorsement of such a reform by the five permanent members, for the creation of a new international (eventually supranational) organization by *intergovernmental treaty* – similar to the initiative undertaken by United Nations member states, in defiance of the only superpower's declared will, for the creation of an international criminal court as *supranational* organization of criminal justice. If no action towards reform is undertaken and if the present state of paralysis prevails, the world organization may well suffer the fate of the earlier League of Nations.

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Structure/ main topics

- The Charter of the United Nations Organization – Legacy of the power balance of 1945
- The dialectical relationship between power and law in the international system: Can the United Nations Organization avoid the contradictions resulting from the international rule of law depending upon the power of the nation-state and at the same time requiring the taming of that very power?
- How can the Security Council be perceived as embodiment of supranational authority when it has to operate in the framework of an international organization based on the sovereign equality of states (and on the supremacy of its five permanent members)?
- The veto rule of Art. 27: normative inconsistency in the Charter resulting from a compromise with power politics? Is the veto provision compatible with the principle of sovereign equality?
- The United Nations' imperfect system of *collective security* versus the requirements of the international rule of law – The problems of *multilateralism* in a *unilateralist* framework
- The conditions for the United Nations' acting as guarantor of the international rule of law: (a) in the bipolar system of the Cold War; (b) in the unipolar system of the "New World Order;" (c) in an eventual multipolar system of the future.
- The *de-legitimization* of the United Nations Organization under the conditions of unipolarity: is there an alternative to the dilemma between the *paralysis* of the Security Council on the one hand and *post factum legitimation* (by the Council) of the actions of power politics on the other? (e.g. Gulf War 1991, Yugoslavia/Kosovo war 1999, Afghanistan war 2001/2002, Iraq war 2003)
- The unavoidable "policy of double standards" under the conditions (a) of the veto privilege in the Security Council and (b) the unipolar power balance in the "New World Order"
- The need of United Nations reform (by way of *democratization* of decision-making in the Security Council; introducing a genuine *separation of powers* between legislative, executive and judicial functions of the UN, etc.): assessment of the possibilities under the conditions of global power politics
- *Realism* versus *idealism* – The marginalization of the world organization in the framework of unipolarity: will the United Nations Organization escape the fate of the League of Nations?
- What, if any, are the alternatives for the future of international organization if the *international rule of law* is to be preserved – or reestablished – under the conditions of global power politics?
- Can the *dialectic of power and law* ever be brought in conformity with the requirements of international organization?

Selected literature by the author

- *The Voting Procedure in the United Nations Security Council*. Vienna, 1991.
- *Democracy and the New World Order*. Vienna, 1991.
- *Democracy and the International Rule of Law. Propositions for an Alternative World Order*. Vienna/New York, 1995.
- *The United Nations Sanctions Policy and International Law*. Penang (Malaysia), 1995.
- (ed.) *The United Nations and International Democracy*. Vienna, 1995.
- *The United Nations and International Democracy. The Quest for UN Reform*. Vienna, 1997.
- *Neue Wege der Demokratie. Demokratie im globalen Spannungsfeld von Machtpolitik und Rechtsstaatlichkeit*. Vienna/New York, 1998.
- *Globality versus Democracy? The Changing Nature of International Relations in the Era of Globalization*. Vienna, 2000.
- *Humanitarian Intervention in the Context of Modern Power Politics*. Vienna, 2001.
- *The United Nations, the International Rule of Law and Terrorism*. Manila (Philippines): Supreme Court of the Philippines, 2002.
- *Global Justice or Global Revenge? International Criminal Justice at the Crossroads*. Vienna/New York, 2003. (Forthcoming)