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Mădălina Virginia ANTONESCU

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Institutionalizing the Global Order of Peace

Mădălina Virginia ANTONESCU¹

Abstract: Far from being an “obsolete and unsubstantial” premise for shaping the 21st century reality, the “global order of peace” paradigm is a necessary tool for the pursuit of some major targets in building a non-conflict type of society. This paradigm is adequate to fulfill the basic international needs of this century: stability, mutual trust and a general will to reduce the military race (and focus on creating complex new architectures of global security and reinforcing the binding spirit of the old 20th century international treaties, instead). Conceiving and implementing new institutions, designed especially for responding to the global, asymmetrical crisis and conflicts of 21st century (such as urban terrorism, migratory massive fluxes, climate changes and rapid global responses to global or major natural /technological catastrophes and pandemics etc.) entail preparing adequately for the un-conventional order of 21st century. Despite claims of necessity to return to the benefits of the Westphalian old formula, the 21st century real order will never be again a classical, predictable, simple order of nations-states, built according to the traditional Westphalian model. Instead, we will be forced to face a dynamic, even turbulent, chaotic and multi-layered order, changing permanently its belts of security and prosperity, from one region to another. It is a changing order and nobody can predict where this order will move its chain of stability and prosperity, also due to the lack of adequate, global, un-conventional institutions.

Keywords: complex order, turbulence, global order of peace, Global Council of Engaging the Peace, global institutions for peace.

1. Legitimacy in the Deconstruction/Construction of the Global Order: States of Supranational Entities such the EU?

In our opinion, *the “global order of peace”* should be based on several legal keystones, observed by all the participants in this order (state and non-state actors):

- interdiction to solve *global issues* unilaterally (even in the case of a hegemony in the global order), bilaterally or in a small group (a group of great powers, in closed circles).

¹ Ph.D., scientific researcher, Bucharest University, Bucharest, Romania, vam55ro@yahoo.com.

- The principle according to which “a global issue can be solved only at global level and in a global manner”.

- obligation of all the states to acknowledge and maintain *fairness and justice* of the global order of peace (participation of all the states in identifying, management and resolution of a global issue).

- *adapting* the principle of multilateralism (fundamental principle in the Westphalian order) to the global order, in order to maintain the *democratic, universally accepted* nature of the global order regulations, as an order acknowledged by all the states, therefore a *legitimate order*.

The issue of *the legitimacy of a global order* stems from the need for the architects of the global order (*sovereign states* whose common will is the basis for global institutions with special competences in managing global issues) to relate to *their very nature of sovereign entities*. Only *sovereign* entities can build a *legitimate order, including a global order*. Non-state actors (such as terrorist groups, global mass-media, multinational corporations, individuals etc.) can build personal financial empires, can influence entire states and regions, but they can *neither build, nor legitimate a global order*. Even if based on visions of personalities or groups of states, international or global systems must take shape and consolidate only *with the approval, acknowledgement and the contribution of the legitimate actors in the system*, irrespective of its form. In our opinion, *only states* and, indirectly, international intergovernmental organizations (as expressions of will of certain sovereign states, according to the international law, therefore valid and enforceable) are legitimate actors (Diaconu, 2002, pp. 448-451; Gonidec & Charvin, 1981, pp. 92-94).

Thus, the states cannot build or contribute to building new global orders focused on *violating* the principles of the UN Charter. *The global nature* of the new world order of the 21st century *does not justify and cannot violate the keystones and principles of the UN order*, in which *legitimate* actors (nation-states, as sovereign entities) act. States *cannot withdraw completely or partially* from the UN order, they *cannot state in a valid and enforceable manner that they will no longer observe* the principles of the UN Charter, *that they no longer want to be tied to them*, because such position would isolate them from a still functional international legal order. Even if *all* the UN member states signing the UN Charter denounced the UN Charter, stating that they do not consider that they are legally connected to the principles of the UN Charter (a prologue for a world war, in this case), *they could not be considered members of a legitimate order*. On the other hand, *only the states* can denounce the UN order and its principles, as *they signed and acknowledged the UN Charter and principles of the order*

created on the UN basis. The non-state actors would denounce the UN order with no legal effect, since they are not considered sovereign entities, or subjects of international law.

Therefore, *a global order can be built in a viable manner, only by the states* (the only sovereign entities acknowledged as such by the contemporary international law). The states can willingly waiver sovereign attributes, in order to assign the management of certain global issues to a set of global institutions.

In theory, by denouncing the UN order *the states*, as sovereign entities, can create *either an international anarchy* (lack of any legislative authority superior to the states, without a UN system, however, since it is considered “obsolete” and it is rejected as “incompetent at solving the global issues and asymmetric challenges of the 21st century”), *or a global order* (creation of an architecture of global institutions, with special tasks for the management of global issues and penalization of the states, when they violate a set of global legal obligations).

In our opinion, *only the states, by virtue of their sovereign nature*, can be the keystones of *a legitimate global order*.

Moreover, we must consider (for the legitimacy of the global order) *the interdependence between the sovereignty and equality of rights among all the states*. Again, we return to *adapting the principle of multilateralism to the global order and transforming it into an instrument of globalism* (Devin, 2005, pp. 23-24)². Only *sovereign states* can build a legitimate global order, but at the same time the legitimacy of this order (i.e. being enforceable in all states) must *stem from the equal rights exercised in all the states*; the global order resulted from the will of a hegemonic power or the common will of two great powers/blocks or the will of a group of states (founded as a supranational entity, or not) *cannot be legitimate*, in our opinion, because *it does not observe the principle of equality in rights among all states* (Mazilu, 1998, pp. 150-151)³. According to this principle of

² See Guillaume Devin, about the **flexible** nature of multilateralism (considered to be based on states and on “a policy of coordinating national policies, which are often marked by the hierarchy of powers – for example, the UN Council of Security”), and about the **dynamic** nature of multilateralism (the UN is regarded as a simple stage in the evolution of inter-state cooperation and “there is nothing surprising about the fact that its coordination methods are questioned”)

³ According to the doctrine, “the regulations and principles of the current law of peace must reflect the approval of the sovereign states, with equal rights, which represents the keystone of their engagement in the international life, as well as of assuming certain rights and obligations”.

international law, *all the states* must cooperate internationally, *all the states* have the same rights and obligations in the international legal order.

The global order based on a global law (for legitimacy) must be based on the common will of all the states existing in an international system, at a certain point (therefore, above all, it must be a universal order similar to the order based on the UN and its principles). *Universal order* means an order acknowledged and assumed by all the states participating at a certain point in an international system, *an expression of their sovereignty*, not the result of a hegemonic, imperialist policy or a policy of domination by a state/group of states over the rest.

Since there is *a series of specific interdictions* in the contemporary UN order, regarding hegemony, imperialism, colonialism, which apply to all the states, large and small, in their international behaviour, a hegemonic power/group of large powers challenging this UN order could remove (by force, not by law) the UN principles and UN interdictions regarding the practices and policies on hegemony, imperialism etc. only by *entirely and brutally denouncing* the UN order.

If we start from the premise of realism, based on which any order of law and any political order is merely *the expression of a ratio of forces among the states*, anarchy or the rise of a new global order, with new principles, is the *result of a policy of force*, developed by a hegemonic power/a challenger of the hegemonic power/a group of states, in the international system, at a certain point. No matter how powerful and influent they may be (global mass media groups, individuals, terrorist groups, migratory flows, transnational companies etc.), *Non-state actors cannot denounce the UN order in a valid manner, nor can they create a new order*, since *they do not have the power to denounce treaties or engagements in which they are not included*; they do not have sovereignty, therefore they do not have the quality to engage the nations of the world, either legally and politically, or from a military standpoint. A legal issue may arise in the case of *supranational organizations* (the European Union, for example), if they reach the level of being fully represented within the UN⁴ and to be distinct

⁴ According to art. 19, line 2, paragraph 3/TEU, amending the Treaty of Lisbon, the EU is the one to “define a position regarding a subject on the agenda of the UN Council of Security”. The EU is represented within the UN by the “High Representative of the EU for external affairs and security policies, invited by the UN Council of Security, by demand of the member states, to present the position of the Union before the UN Council of Security”. Title VI/TFEU, art. 188 P, lines 1 and 2, clearly states that the Union “sets up any form of useful cooperation with the UN bodies and its specialized institutions” and that

entities from the member states⁵. In this case, could the EU denounce the UN order as such, in a specific circumstance? If the EU entered a stage of pronounced federalization, there would be *a transfer of sovereign attributions* from the member states to the increasingly supranational EU authorities (MC Cormick, 2001, pp. 5-6; Antonescu, 2009, p. 523), *strengthening the supranational level of decision-making and competence, up to the level of adopting decisions that are contrary to the member states*. Under certain circumstances, if in this position, *the EU could face the risk of becoming the victim of a force policy, of the hegemonic power/dominant group of state, and of having to create a new international order (regional order or global order) or to cope with international anarchy* (which it manages through a small number of powers), which is contrary to the principles set in the UN Charter.

The 21st century world is in permanent change, it lacks predictability. Even if supranational organizations are not state actors (they are not sovereign, unlike the states), *they cannot be excluded from an important political role, in the global order, since they work on the basis of a transfer of sovereign attributions from the members states*⁶. This transfer is considered legitimate, viable from the viewpoint of the contemporary international law. Since the states do not denounce this transfer of sovereignty that formed the supranational entity, *it can act on their behalf*, i.e. by substituting the member states, based on this transfer of sovereign attributions. Such an entity can find itself in the position to *denounce an order built by the sovereign states*, because it has the right to act in its own name in global or universal organization and to represent its citizens directly (the peoples of the member states, by default) and even to make decisions on behalf of the member states. Since “denouncing the UN order” is not part of the domains clearly stipulated in the treaties concluded strictly and directly under the exclusive competence of the member states (national defence and security – there is a clear separation between the internal and external affairs, in the Westphalian view (Held, et. all., 2004, pp. 77-79;

the High Representative of the EU and of Commission is in charge with enforcing the stipulations of this article.

⁵ According to art. 10A/Treaty of Lisbon, the Union is the one to “make efforts to develop relations and build partnerships with the third party countries and the international, regional or global organizations...” In the area of expertise of the EU covering the external action of the EU (chapter 1/TEU), the Union (not the member states) “promotes multilateral solutions to common issues, particularly at the UN”, text phrasing which allows us to consider that the EU can have a personal position within the UN, distinct from that of the member states.

⁶ See the doctrine in the field (Jean-Paul Jaqué, 2003; Pierre Pactet, 2002; Ion Jinga, 1999; Blumann, Dubouis, 2004), all quoted in (Antonescu, 2007, pp. 45-46).

Badie, 2005, pp. 94-99)⁷), there is no theoretical legal impediment to prevent supranational entities from denouncing the UN order, in the context of a potential global change in the political context.

Even if denouncing the overall UN order, with all its principles (in a hypothetical scenario) is neither allowed nor legitimate from the standpoint of the contemporary international law, since *denouncing the overall UN order* can only be the result of a force policy, supranational entities such as the EU (the most of evolved entity of this type) can respond at a certain moment to the political wills of a hegemonic power/group of dominant states, which use the attributions transferred by the states, *from a position of global challenger of the system*. This way, the entity becomes an authentic global actor, because it is use a vector to destroy an order considered obsolete and a vector to build a new type of order (post-UN).

A post-UN order is not necessarily a post-sovereign or global order. It can be a *hegemonic order*, based on force, when the old order was denounced by a supranational actor, in a valid manner (according to the rules of the current international law), or as the result of a force policy (which does not need confirmation and validation, since it is in itself the vector of change for the entire order, no longer subject to an existing rule).

These theoretical aspects about the actors which, besides the states, can act legitimately in an international system, to denounce an overall legal and political order, show us *how important a comprehensive perspective of peace is in such situations undergoing change*.

Therefore, peace is also faced with dangers and threats *when the existing order is weakened or incapable of providing an adequate response to the challenges of a new world*, not necessarily when the existing order is *visibly challenged* by an actor/group of actors able to act in the system.

The incapacity of the UN order to respond to the global challenges, to provide efficient responses, in due time, through the sovereign states, to a series of global issues can result in *denouncing the UN order or in its decline de facto* (it formalizes until it becomes an empty shell, abandoned de facto by the participants).

The occurrence of global institutions and the creation of a global order of peace would be solutions to avoid a state of anarchy (the arming race, suspicion as a rule in international relations, force policy), *in case the UN order displays a prolonged incapacity of providing solutions, institutions, methods of penalizing*

⁷ References about the vague and flexible borders between the internal and external are available in (Badie, 2005, pp. 94-99).

and providing a quick response to the issues to which the Westphalian order has not gotten accustomed, or which it has not confronted. Instead of being faced with a period of anarchy, of generalized war, which would follow the fall/denouncing of the UN order, it would be more better to *find solutions to build a global order of peace and a set of institutions with the capabilities to solve global issues*, which outbalance the capabilities of the states individually and of the international community (which is not assigned to handle *global issues at a truly global level* – including penalizations or interventions *anywhere on the planet*, through the UN).

2. Institutions of the Global Order of Peace, Institutions for the Management of Transcontinental Migration Flows. High Representatives of the Global Law of Peace (GLP) and Mediators of Global Peace

In his work ‘Empire of Chaos’ (2002), Alain Joxe writes that the scenario in which “an imperial form generating forms of self-protection through violence at micro level” (micro-conflicts; the empire bans conflicts and chaos beyond its borders) (Joxe, 2003, p. 222) is one of the threats of the 21st century. According to Joxe, another possible objective assumed at global level for this empire (besides the management of chaos) would be *the management of the conflict state among civilizations*. However, we consider that *the global war among civilizations* can be regarded as *a specific form of threat to the 21st century peace*, in a *post-state century*, when the dominating political actors are not nation-states, **but cultures that generate empires** (the empire of a dominant culture, attracting compatible cultures, with similar sets of fundamental values, to the imperial nucleus). And we consider that, in order to prevent *this specific type of global threat to peace*, *a specific global institution* should be created. In our opinion, the institution of the **Global Mediator among Civilizations** and the institution of **the Global Council for the Resolution of Disputes among Civilizations** are such institutions.

In his work, “World Order” (2015), Henry Kissinger admits that “there has never been a truly global world order, what we call order in the current age is actually a Westphalian system” (Kissinger, 2014, pp. 10-11), dating back to 1648 and lasting until the present day, “a system of independent states, which acted in an atomized manner, not interfering in the internal affairs and acting on the basis of a general power balance, in a mutual counterbalance, thus reducing the conflicts” (Kissinger, 2014, p. 11). According to Kissinger, we are currently “at the paradoxical stage in which

the Westphalian system has become global” (“the international community”) (Kissinger, 2014, p. 13), stabilizing the world and protecting it from anarchy, through “an extended network of international legal and organizational structures, meant to enable free commercial exchanges and the existence of a stable financial system, to institute generally accepted principles for the resolution of international disputes and to set up certain limits in the evolution of wars, when they start” (Kissinger, 2014, p. 13). Kissinger considers that the world “insistently and even desperately aspires to a concept of global order” (Kissinger, 2014, p. 10), being threatened by chaos and “forces beyond the restraints of any order” (Kissinger, 2014, p. 10).

For the globalist doctrine, globalization is an indication of “a management logic in organizing the companies on a world-sized market” (Armand Mattelart) or “a global company, which sells the same things everywhere” (Theodor Levitt) or “a certain form of management, integrated at world level, specific to multinational companies” (Keinichi Ohmae, 1990)⁸. Thus, there is a long way from the initial commercial and financial view on globalization to creating a “global order of peace” (regulatory regime adopted and implemented at global level, by global institutions with special competences).

In his work “State-Building: Governance and World Order in the 21st century”, Francis Fukuyama (2004, p. 123) considers the international community to be “fiction, to the extent at which the implementation capacity depends entirely on the action of the individual state-nations”, acknowledging that “there is no such thing as an autonomous United Nations organization or a European army” (Fukuyama, 2004, p. 123). The question of enforcing the laws remains to be handled by the nation-states (Fukuyama, 2004, pp. 122-123), whence the issue regarding the efficient implementation of a “global order of peace”, which would depend on the sovereign states. At times, sovereign states are inefficient or unwilling to enforce regulatory adopted at global level to prevent conflicts, discourage the arming race and preserve peace.

We consider that the occurrence of global institutions is a necessary instrument to build a global order of peace. Global peace cannot be managed based on the principle of multilateralism as such and only by state actors. They tend to follow the Westphalian principle of absolute sovereignty and oppose any globalism trend, seen as a threat to the

⁸ All quoted in (Simileanu, 2011, p. 19).

state in itself and to the nation. Such a negative perception of globalism can only lead to all the states accepting a state of overall anarchy, in which all the regional and international wars for domination become the status quo. The UN order seems to be an obsolete expression of a multilateralism which is now denounced by the states in pursuit of power (emerging powers), by the system challengers (powers which visibly take upon the challenger role) and by the hegemonic power as such (which intends to dominate the system as such, directly, not through the soft approach, i.e. indirect control of the official, multilateral order).

Due to the *unconventional* challenges and threats to peace in the 21st century, we consider that *an adequate global institutional architecture* is necessary to identify and manage the most appropriate responses to such threats.

Thus, building a “global order of peace”, at a stage that is superior to the possibilities of the current contemporary international law (as a level of response to the challenges and threats to peace), requires the setup of *global institutional systems*, such as:

- the Global Service for the Monitoring, Control and Management of Global Migration Flows (including massive and sudden migration flows, which move across countries and continents, endangering the sovereignty and integrity of the transit states and the host-states)

- the Global Service for the Control and Penalization of Flows of Transnational and Global Organized Crime (including the creation of Maritime and Land Global Patrols to counter the transnational and global criminal networks)

- setup of a Global Council to Ensure Peace (GCEP), with the special role to analyse and adopt certain decisions, in order to solve the most severe threats to global peace, to penalize the violations of global peace.

- the institution of the Global Mediator among Civilizations (to ensure mediation among the High Representatives of Civilizations, as global high officers, in case they choose to solve their inter-civilization disputes through mediation, not in the global jurisdictional framework)

- the Global Council for the Resolution of Disputes among Civilizations (for the protection and promotion of dialog among civilizations, for the prevention of conflicts among civilizations and the stimulation of coexistence, tolerance among civilizations, based on a **Global Charter of Peaceful Coexistence of Civilizations**).

- the Global Court for the Resolution of Disputes among Civilizations (according to the global law of peace, meant to handle the

asymmetrical and unconventional challenges to peace; *the civilizations become subjects of the global law of peace*, the can be represented in their name before this Global Court, through the High Representatives of Civilizations, in the global justice)

- the Global Court for the Trial of Global Conflicts (global court of law in charge with *litigations on global issues*, which are or can become severe, irreparable dangers to the global peace and the planet Earth, to the human civilization or the future generations, according to the provisions of a Global Charter of Peace and of the Global Principles of Peace, according to the rights results from the global right to peace, global legal stipulations based on which the High Global Judges of Peace will adjudicate)

- setup of a Global Centre of Peace (“GCP”) and a Global Patrol of Peace (“GPP”), for the control and monitoring, identification of unconventional threats to the global peace, for the identification of adequate solutions, submitted as proposals to be analysed and adopted by another global institution (GCEP) or by the Global Council of Peace

- setup of the global institution of the “High Representatives of the Global Law of Peace”, which monitors the threats to peace at regional and national level, and identifies the proposals for global legal regulations, regarding the response to these challenges

- the Global Mediator of Peace, global institution with the role to mediate among state and non-state actors, in traditional inter-state conflicts with global incidence, as well as in asymmetrical conflicts with global impact, based on the regulations of the Global Charter of Peace (regulatory document enforceable both to state and non-state actors)

Conclusions

The global order of peace cannot be built on the basis of the current regulations (although insufficient) of the contemporary international law. It is the expression of a traditional Westphalian system, structured around the nation-states, but which *is not capable of responding with its current instruments (bilateral, multilateral) to certain global challenges* concerning the humanity, the human civilization, the future generations, the planet, and the terrestrial ecosystems. Such issues exceed the capacity of a state or the capacity of all states to manage, control and even eliminate them, *using traditional Westphalian methods*.

In the 21st century, *an architecture of global institutions* can be created by becoming aware of the need for a prompt, efficient response to the unconventional challenges and threats, particularly against *the global peace*.

The globalization of *threats and challenges* to peace also generate a global nature of *the concept of peace*.

The 21st century jurists must take into consideration this globalization of the very concept of “peace” and to start defining the “global order of peace”, the “global law of peace”, as well as structuring *a new institutional architecture of the global peace*, which is able to provide an adequate response for the new threats to peace.

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