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A NEW DEMOCRATIC INTERNATIONAL ORDER AND THE ROLE OF THE EUROPEAN UNION

La recente (e tuttora pendente) crisi irachena ha fatto vacillare consolidate certezze del modello di ordine internazionale basato sulla sovranità degli Stati, mettendone a nudo fragilità e debolezze, ma anche contraddizioni e ambiguità di atteggiamenti (oscillanti tra 'idealismo' e 'realismo'), a fronte della sfida di garantire pace e sicurezza insieme, come fondamento di ogni convivenza civile, accanto ai valori di libertà, giustizia e democrazia, che di tale fondamento sono le premesse e pure il fine. Nel contesto odierno delle relazioni tra popoli, in presenza di fenomeni all'insegna per un verso della globalizzazione come fattore di omologazione socio-culturale e per altro verso della diversificazione identitaria di etnie, tradizioni e civiltà si pone l'esigenza di un nuovo modello di ordine internazionale o, meglio, mondiale, oltre i limiti delle sovranità locali (nazionali), in una dimensione di pluralismo democratico che accentui la partecipazione e la responsabilità, anche nelle sedi istituzionali e decisionali, della società civile e delle sue istanze rappresentative. Di questo nuovo ordine, un modello possibile può essere offerto, almeno su base regionale (con riguardo all'area euro-mediterranea), dall'Unione europea, come sistema di relazioni tra Stati e tra popoli operante a fini di integrazione socio-economica nel rispetto delle diversità culturali. A sua volta, peraltro, la credibilità del modello europeo ha bisogno di essere temprata attraverso il fondamentale passaggio della sua radicazione su una base costituzionale, che metta l'Unione in grado di svolgere un proprio autonomo ruolo sulla scena internazionale, nella condivisione tuttavia di un patrimonio di valori comuni all'intero mondo occidentale.

1. Some initial remarks

The theme we are called upon to discuss in today's conference* is indeed a difficult one. Even more so, when considering the rather ambitious as well as problematic title of our conference: *Peace, Secu-*

* [N.d.A.] Viene qui riprodotto il testo del *report* presentato nella citata conferenza internazionale, tenutasi a San Pietroburgo, il 12 Aprile 2003, per iniziativa della Facoltà di giurisprudenza della locale università (in occasione del conferimento della *lurea honoris causa* al cancelliere tedesco Gerhard Schröder, alla presenza altresì del presidente francese, Jacques Chirac, e di quello russo, Vladimir Putin): esso è destinato ai relativi Atti. Si è ritenuto opportuno pubblicarne l'originale versione in inglese, per non alterarne la natura di documento portato in tale consesso (dal momento che la sua traduzione in italiano ne avrebbe comportato una sostanziale riscrittura).

city and International Law: an Outlook into the Future. Due to unprecedented challenges confronting our world today such a future (if any) seems to be predictable only in terms of great uncertainty. While previous more traditional certainties reached by international law seem to have been suddenly swept away by changes and innovations advancing far ahead of legal concepts, rules and principles as they have stood thus far. Therefore forcing legal science and its scholars to take the uneasy position and task of running behind such changes and innovations as they happen in real life and try to bring them under the cover of old interpretative techniques and categories. An attempt which reveals in its turn the need to reshape these techniques and categories and adapt them to new situations and circumstances.

On the other hand this simply shows that both law and legal science always stands in close connection with social and political life, in the sense that each of them gets influence by social and political issues. This is even more so, of course, in the field of public international order where the balance of relations between nation-states, just because of the sovereign powers they claim to exercise, tends naturally to be struck on both political (diplomatic or strategic) and legal considerations. As it is well known, this field much more than anyone else suffers or benefits, according to one's own viewpoint, of strict and almost inextricable relations between politics and law. Politics being the art of what is possible and law the art of what is just, and taking into account the fact that what is possible is not always just and vice-versa, international legal order comes out to be a necessary compromise of actual (national and state) interests pursued in the name of nation-states sovereignty, on one hand, and ideal (universal) values looked at in the name of justice and limitations of such sovereignty, on the other. That is to say, a compromise of realistic and idealistic attitudes.

This has been clearly put in evidence by the debate on the Iraqi crisis where these two attitudes have emerged although, it must be added, not in strict correspondence with the position respectively of those in favour of the military enforcement of the UN resolution 1441 and those in favour of the idea instead that UN inspections should have been carried further. Indeed the idealistic vision, far from being a monopoly firmly held in the hands of the supporters of a peaceful (diplomatic) action it has infected, so to speak, the front of those in favour of a military action as intended ultimately not so much to give effect to UN resolutions against Iraqi government but much more to assert the universality of democratic values and bring liberty and justice to Iraqi people. In such a way to lead to what could be seen as an odd exchanging of roles. With supposed warmongers taking the

role of passionate dreamers of a world of liberty, justice and democracy where all kinds of dictatorships are banished for ever, along with terrorism, and imagining a visionary world without any evil left on the face of earth. Whilst pacifists appear on the contrary much more realistically inclined to tolerate even some actual injustice and accept even some potential insecurity, due to the existence here and there of undemocratic regimes, as they are much more worried of avoiding the outbreak of graver consequences such as, according to different viewpoints, terrorist attacks, an increase in the support of an Islamic revolution, or the coming of US imperialistic hegemony over strategic areas in the world.

But this does not mean that realistic and idealistic attitudes match respectively political and legal views in terms of a clear-cut opposition between these two views of international order. On the contrary, such attitudes and related views stand together in rather complementary terms as being mutually dependent. In this sense one has to recognise that political visions are indeed essential to a proper legal understanding too of the international (UN) system, its functioning and possible ways of reforming it. Law scholars must therefore be aware of the political, as well as moral and social foundation, upon which a better and more stable international order could be built for the future.

2. Points at issue: a collective security system and the democratisation of the international order

This brings about the fundamental issue concerning the democratisation of international order and in general terms how to arrive at it.

In brief and although in a rather schematic way it seems possible to address this central issue of the shaping of a new international order taking into account the following aspects.

During the final decade of the last century the international relations system underwent a deep transformation which has eventually reached its critical focus with the problematic relation between old institutions governing international order and new structures characterising it, especially in the economic and politico-military field, as a result of the end of the cold war. Such event symbolised by the fall of the Berlin wall has opened the way to the spreading throughout the world of the market economy (so called globalisation), while giving rise to a potential US dominance over the international scene. Generally speaking, to many people globalisation has meant 'americanisation', that is an economic and cultural process leading to uniformity

under a hierarchical order with American (and other related Western) interests at the top of it. Although carrying benefits and offering opportunities for the well-being of both individuals and local communities at large, this phenomenon has however unsettled the balance of power at the international level changing it at least potentially into a monopoly in the hands of one mega-power only. Moreover, economic and financial structures, while becoming more and more dependent on the global free market through a process of growing deregulation, are becoming also fragile and unstable as shown by recurring international crises. In addition, fragility and instability will likely become even greater when looking on the whole to socio-political issues such as for instance those concerning the relations between richer and poorer countries (north-south of the planet), the ever-growing migration flow, cultural, religious and ethnic identities, the self-determination of peoples and the growth in the number of nation-states, the rights to self-exploitation of natural resources, sustainable development, environmental protection, and so forth. When considering that international terrorism and organised criminality together with economic and social malpractices are also connected to at least some of these issues, it may be assumed beyond any reasonable doubt that the risks of instability and potential disorder are due to grow if this one sided imperial-type world order will not be corrected and indeed replaced by a multilateral and democratic set of organisations operating for the implementation of cooperative (rather than competitive) practices, while enforcing and keeping peaceful conditions and relations to guarantee international security and justice, coupled with universal respect and the protection of human and fundamental political, economic and social rights.

The fore-mentioned transformation of the system of international relations is then relevant to any understanding of security problems as problems which have to be afforded in terms radically different from a more traditional set of institutions and policies (such as the Atlantic defensive system established at the time and in the light of the cold war). And this precisely in terms of a collective security system confronting the new risks of terrorism and weapons of mass destruction, but also bearing in mind that such threats to international security come primarily out of economic, demographic, environmental and by and large socio-cultural issues and phenomena, whose nature and dimensions, although localised, are nevertheless capable to potentially affect the entire world just because of its globalised structure.

What is much needed therefore is a new international solidarity linked together with an international democratic order to be built and

pursued especially at a regional level, through integration processes aimed at implementing conditions for better cooperation and a supranational (federal) union in both political and economic fields, while preserving diversity of local traditions with their social, religious and cultural identities.

From the viewpoint of existing international law as founded basically on the UN Charter, a collective security system may be envisaged according to the following principles and items. At first, there is the principle that: «all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered» (art. 2, 3). That is to say, the principle prohibiting war as a means of resolving international conflicts. Accordingly and consequently, there is the principle that: «the parties to any dispute, the continuance of what is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice» (art. 33). While the use of military force by a state is exceptionally allowed as a measure of self-defence against armed attacks (article 51), it is stated further that: «all Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities... necessary for the purpose of maintaining international peace and security» (art. 43). As a matter of fact, however, this kind of duty has proved so far to be inapplicable, thus making ineffective the UN security system.

What has become clear more recently in the case of both the Balkans and the Iraqi crises is the attempt to give lead to old conceptions of international order backed by the idea of nation-state sovereignty as prevailing over a new system of international relations based instead on limitations of state's absolute sovereignty according to the principle of equal dignity of individuals and peoples at the bottom of the legitimacy of any state authority. This attempt is aimed in particular at inhibiting the social as well as political role played on the international scene by NGOs and generally speaking by voluntary (no-profit) organisations and associations. This as means of expression and action by public opinion and civil society at large in support of moral as well as legal values centred around human rights, justice and democracy, solidarity and subsidiarity, sustainable development, ethno-cultural identities, dialogue and tolerance, environmental protection.

As we have said before, the old view about international order receives support from economic and socio-political factors which make the relations between Western most developed countries and the rest of the so called underdeveloped and developing countries highly problematic. But it must be added that a different vision of such relations seems to be emerging in the Western world with regard respectively to the US, on one side, and the EU, on the other.

To change this view for a new and more democratic one an idea of 'positive peace' and security as a 'collective responsibility' is needed and its pursuance must take place in a framework of international legality directly based on the will of the peoples as well as on the authority of the states. In other words, world peace and security cannot stand in terms solely of state affairs, left to (often secret) diplomatic and military strategies only, with the backing of a political theory or rather a mental approach that still applies the old-fashioned idea of negative peace (*si vis pacem para bellum*) and calls for state interventionism with the self-attributed sovereign right to make war (*tus ad bellum*). Thus leading, as Immanuel Kant observed and blamed, to a kind of "international anarchy", that is to say to a system of inter-states relations mutually dependent on the last resort on a state sovereign prerogative to use force, which makes war always possible. On the contrary, it should be left with supranational (federal) authorities, acting in their twofold capacity of being representative of both states and peoples, the task to fulfil policing and jurisdictional functions through an international military force and an international criminal court, so as to prevent and repress violations of the international order, its peace and security.

According to this model of international law and order, the UN system should be reformed shifting from the UN 'of states' to a UN 'of peoples'. Moreover, as said above, the UN should take direct responsibility in carrying out the function of policing through a permanent military force of its own, while having jurisdiction on crimes against world peace and security, and the task of checking (inspecting) the production and trafficking of weapons.

3. The role of the European Union and EU/US relations

From the arguments thus far forwarded can be drawn, although in a rather schematic and even simplistic way of reasoning, a further argument worth presenting here from a European viewpoint. It deals with the EU role in the future of world security, at least at a regional level insofar as European and Mediterranean areas are concerned.

This argument can be assessed in terms of option between the North Atlantic organisation (NATO) and the UN system, each one representing respectively the old and new model of international order. The first being inclined towards a traditional understanding of inter-states relations with prevailing nation-states interests backed by the retention of *ius ad bellum* as a fundamental state-sovereign prerogative. The second aiming at a more democratic order, carrying limitations on state sovereignty from both below and above it according to a multilevel order, whereby peoples and civil society at large come to the forefront of the international scene directly taking a share of the responsibility for peace and security, and thus giving rise to a complex and multiple set of concurring subjects, both public and private. Each involved at the corresponding level in the decision making processes. Not only central authorities of (national) government, but also local (territorial) authorities, voluntary (non-governmental) bodies, and finally supranational (federal) institutions, acting in their proper role and at their respective level for implementing dialogue, cooperation and common policies.

To this purpose the EU, as a self-contained and prospective federal system of relations among nation-states, headed by common institutions deriving their legitimacy ultimately from the peoples of Europe and aiming at the protection of human rights, the implementation of the rule of law through jurisdictional competence, a development of inter-cultural dialogue, can be seen as an example of the new model of international democratic order. As it is written in the preamble of the first European Community treaty in 1951, following the path opened by Schuman declaration on the 9th of May 1950, the contribution of a united Europe to civilisation is essential for the maintenance of pacific relations in the world. It is a contribution going precisely in the direction of a supranational order as a new model of international order according to the idealistic vision but supported with the realistic project of such Community made by Jean Monnet, one of its founding father. Who in a concluding remark of his *Mémoires* stated that: "les nations souveraines du passé ne sont plus le cadre où peuvent se résoudre les problèmes du présent. Et la Communauté elle-même n'est qu'une étape vers le formes d'organisation du monde de demain".

Quite significant of the exemplary role the EU can play in a world where forces opposing peace and security are still at work in the shape of religious fanaticism, ethnic nationalism, racism and terrorism, and where regional conflicts, poverty and underdevelopment still provide a constant seedbed for them, is the statement delivered on this point at the European Council in Laeken whose tone is sounded in the following terms:

«What is Europe's role in this changed world? Does Europe not, now that is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples? Europe as the continent of humane values, the Magna Carta, the Bill of Rights, the French Revolution and the fall of the Berlin Wall; the continent of liberty, solidarity and above all diversity, meaning respect for others' languages, cultures and traditions. The European Union's one boundary is democracy and human rights. The Union is open only to countries which uphold basic values such as free elections, respect for minorities and respect for the rule of law».

«Now that the Cold War is over and we are living in a globalised, yet also highly fragmented world, Europe needs to shoulder its responsibilities in the governance of globalisation. The role it has to play is that of a power resolutely doing battle against all violence, all terror and all fanaticism, but which also does not turn a blind eye to the world's heartrending injustices. In short, a power wanting to change the course of world affairs in such a way as to benefit not just the rich countries but also the poorest. A power seeking to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development».

Indeed, it is now more than fifty years that Europe has been engaged in a great effort to establish common supranational and democratic institutions according to a far-reaching political project in course of being completed with a new constitutional treaty to give shape to a larger and deeper Union. This project, with regards especially to the European Parliament as the first and so far the only example in the world of both a multinational and supranational political assembly whose members are directly elected by the people they represent, may be seen to indicate the possibility of a reform of the UN organisation too into a democratic and self-contained system. That is to say, into a kind of world federation of states and peoples. A system which will therefore include executive and jurisdictional power, with regard to the newly constituted International Criminal Court, together with legislative (deliberative) power conceived of as a competence shared between the Security Council (perhaps to be better renamed as 'Peace and Security Council') and the General Assembly formed by representatives not only of state members but also of civil society at large, both lay and religious. In such a way to reflect the widespread consciousness which in times of globalisation has grown among public opinion in many countries, giving rise to a worldwide subjectivity in terms of an international community of peoples being itself a fundamental source of legitimacy of the international order. It is in

the name of this peoples' community as pre-existing to any state authority that human rights are recognised and protected. As it is in defence of such rights and therefore in the name again of such a community that humanitarian interventions are allowed and take place when needed for both peace-building and peace-keeping operations, especially in assuring the respect of human rights against heinous despotic regimes.

The enlargement of the EU recently accomplished in Athens summit (April, 2003) with the signature of the accession treaty marks a historic step forward in the way of the European integration process. Beyond the great significance of the goal thus arrived at, however it cannot be ignored that Europe is nowadays experiencing a difficult passage, especially concerning the relations with the US and with regard to the contrasting positions taken on the Iraqi crisis by various European countries.

On the whole it may be observed that the strengthening of European institutions is no longer the major issue, although the reform of such institutions, the attribution of clear competences to them together with the definition of decision making procedures (shifting from the unanimity to majority rule) are all things obviously much needed for the proper functioning of the Union with its 25 member states. What is nowadays more important to achieve, through political and cultural debate, is the general vision of this enlarged Europe, reconciled and eventually reunited, with regard to its presence and action on the world scene, together with its capacity (quoting once again the Laeken declaration on the future of Europe): «to play a leading role in a new world order». The role of: «a power resolutely doing battle against all violence, all terror and all fanaticism, but which also does not turn a blind eye to the world's heartrending injustices. In short, a power wanting to change the course of world affairs in such a way as to benefit not just the rich countries but also the poorest. A power seeking to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development».

In other words, Europe (and, of course, a federal Europe, capable of speaking with 'one voice' in matters of foreign policy) is called upon to contribute to international order in the light of the alternative between an old model of an international legal system, based on the primacy of nation-states sovereign interests, and a new one democratically centred around multilateral organisations, human rights protection, implementation of values as universal legal rules, global governance through civil society participation, growth of integration processes in regional areas aimed at enhancing local cultural identi-

ties but in the context of transnational and supranational structures and institutions.

To this effect the relations between the EU and the US point at an interpretation-key according to which the supposed existence of differing and even contrasting views on each side of the Atlantic, while not affecting at all their common heritage of shared moral, political values and fundamental legal principles, nonetheless touch upon a different basic approach in dealing with international order in the light of the fore-mentioned alternative between the old and new model.

As far as the US are concerned, but the same holds true for other countries having continental dimensions (such as for instance China or India), there is a clear tendency to put emphasis on nation-state sovereignty as a gravitational centre of policies and interests of a hegemonic type. Therefore, far from reducing state-sovereignty primacy as a pivotal element of an international order (thus potentially reduced in the end to an international anarchy), the effects of globalisation have indeed strengthened, strategically speaking, the legitimacy of such an element, especially after September 11th, in favour of a more active (and even pre-emptive) defence theory against the threats of a terrorist attack with arsenal of mass destruction weapons.

It seems, on the contrary, that from both a historical and cultural viewpoint European countries have made a different choice by giving rise first to a small Community of 6 members which has now become an enlarged Union of 25 member countries. That choice of eliminating national rivalry in a successful effort of reconciliation, pacification and unification while establishing supranational common institutions at a European level was an almost necessitated answer to the tragic and indeed disastrous experience of the wars during last century. But it was made possible, one should never forget, thanks also to the US expenditures in the field of international security and in particular for military protection of the European region.

In this background it appears evident together with the originality of the EU model its potentiality to become a decisive factor of democratisation of the international order furthering the idea of states inter-dependence and shared sovereignty as a condition for the realisation of a common space of economic and socio-political relations whose only boundary "is democracy and human rights", as it is stated again in the Laeken declaration: "The European Union is open only to countries which uphold basic values such as free elections, respect for minorities and respect for the rule of law".

But this Europe acting as an economic and civil power, engaged even more in its enlarged composition of 25 member states to bring

prosperity and social development in the world at large and assert the rule of law principles upon which to build a system of pacific relations for maintaining and promoting international security and justice among people, cannot exist lacking its own armed forces and military capacity well rooted in a common defence and security policy to sustain its share of costs and responsibilities for the accomplishment of such a system. In other words, Europe can no longer stand being only a consumer, so to say, of security under the US protective umbrella, but should develop its own capacity of becoming a producer too of global security as well.

Of course, this does not mean that the EU should become a counter-power balancing or even worse being rival of the US. Indeed what is needed for Europe is a means of credibility to uphold its presence and action on the international scene as a power, quoting once more the Laeken declaration: «able to play a stabilising role worldwide».

It is precisely this role with its implementing measures in terms of a common foreign and security policy that should be put in the agenda of present and prospective commitments of the EU. Especially considering its expansion to both east European countries, including the Russian Federation, and the Mediterranean area where to enhance cooperation efforts together with the strengthening of historical, cultural as well as economic and environmental links among countries in that area, so as to build up a space of peace, dialogue and socio-economic exchange for the prosperity and security of their populations.

4. Some conclusive remarks:

supranational vs. international institutions

To recap briefly the main arguments of our presentation about the future of a system of international law we should concentrate on the followings.

The need for maintaining and indeed strengthening the UN system as a multilateral institution capable of debating, deciding and intervening on peace and security issues is as much obvious as the need for reforming such a system to make it more effective and democratic. This implies a search for a new model of international order, replacing however gradually the old one based on the traditional idea of state sovereignty and national security linked to hegemonic interests and strategies which do not exclude war (and even pre-emptive war)

as a means of resolving international conflicts, in addition to and perhaps in place of an unregulated globalised market economy monopolised by multinational private corporations. On the contrary a new model of international order could be envisaged as fundamentally characterised by the idea of limitations imposed on state sovereignty by supranational (federal) authorities acting for the protection primarily of human rights, having the power to regulate the use of an armed force for the function of worldwide policing through a permanent military apparatus, and having moreover international criminal jurisdiction supplementing such functions, as well as further competences to intervene for environmental protection in connection with sustainable development and related matters (including terms of trade), in the aim of achieving international security together with justice and solidarity. Democracy, cooperation, human rights, global governance, the growing international role of non governmental organisations and civil society at large (including educational and university bodies) aside of local government authorities, inter-cultural dialogue, local traditions and identities, all these are factors, subjects and conditions for the establishment of a new world order, rooted at the bottom in local communities and headed at the top by supranational (federal) authorities, along a multilevel system conceived of as a continuum of governing bodies and agencies, each responsible in its respective capacity and at its proper level, from borough council to UN council.

As much utopian as it might today appear, it is doubtless that the challenges hanging over the third millennium will be efficaciously coped with by only looking beyond traditional nation-state boundaries in an effort aimed at setting up institutional structures and mechanisms capable of implementing participation and democracy in the global governance of planetary issues such as collective security, human rights, social justice, environmental protection, and so forth. To this effect one may envisage a reform of the UN system whereby the General Assembly composition will include also peoples' representatives, including civil society and religious communities, sitting in the nature of a world parliament alongside of the Security Council. It is utopian indeed to imagine a world without conflicts or a world whose conflicts were to be managed and resolved unilaterally by only one (national, however super) power.

To avoid that the system of international relations will be trapped in the clash between two kinds of opposing (both political and legal) views, the one being too idealistic in its universal (dogmatic) approach and the other too realistic in its unilateral (pragmatic) approach,

but reminded also of the complex nature of international order in terms of both legally and politically biased attitudes affecting it, a reasonable option open for consideration of either law scholars or politicians, when looking out into the future of international legal system, seems to involve the EU model. This model, operating at a European (regional) level but extending its influence all over the world scene, where the EU as such is expected sooner or later to take a seat in a reformed UN Security Council, represents an example of international order headed by supranational (federal) institutions deriving their legitimacy from both member states and their citizens (as in the case of European Parliament), while acting for the accomplishment of common objectives such as peace, security, prosperity and solidarity. An example which breaks with the traditional view about an international system as completely dominated by the alternative between diplomatic and military means of action, and one which will hopefully give rise instead to a third way leading to democracy and legality through the participation of civil society, together with non governmental bodies and public opinion movements, as new actors playing a major role at the level of international relations. These being ultimately understood as relations among (not only the states, but the) peoples (living in their home-countries and having their own cultural and religious identities), within the institutional framework of an international law system regaining, for this aspect, its more ancient and proper nature and function of *ius gentium*.

