

Hauke Brunkhorst

War in World Society

Towards a new order of global constitutionalism?

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In *world society* all wars are world wars, and so is the present war in Ukraine even if the use of violence is broadly restricted to the Ukrainian area. World society emerged between 1750 and 1850 together with the first *world wars* and *world revolutions* which were fought on all continents and oceans (1). There is no society beyond world society any longer. World society urges law and politics to *institutionalizations* in the form of world societal constitutional institutions, and to cultural and political *symbolizations* of solidarity (2). Yet, only a second wave of world revolutions and world wars between 1900 and 1950 caused the *rise of autonomous world law* that enabled a now interrupted but still lasting global process of fully inclusive democratization (3). However, the rise of world law 1945 was followed by its *fall after 1989*, and the present wars in Ukraine and beyond come close to a complete destruction of world law. There is only a small chance to an end of the use of violence in Ukraine that cannot and should not lead to sufficient victory of one of the warring parties but to a reconstruction and new foundation of world law and the constitutional order of the world. The alternative is not the national state but failed states and anomia (4).

(1) Emergence of World Society (1750-1850)

Following world historiography, I distinguish the *age of globalization* (1500-1750) from the *global age* (1850-today).¹ During the *age of globalization* only punctual connections between all continents and many still largely independent regional and national societies exist, whereas in the *global age* all continents are connected in ever denser networks of permanent

¹ Osterhammel/ Petersson 2007, Bright/ Geyer 2012.

communication, and only one single society is left: the *world society*. In the course of this development, the focus of social integration is inevitably shifting from the many national and regional societies to the one global society.

Early world society is emerging in the first *world wars* and *world revolutions* fought on all continents and oceans at the threshold to the global age between 1750 and 1850.

From day one, constitutional fever spreads like a pandemic, accelerated by the rapid development of ever cheaper dissemination media, which had already improved greatly in the 18th century. News, soldiers, slaves, weapons, goods of all kinds, constitutional blueprints and revolutionary manifestos are fed into the communications networks ever more rapidly, in ever larger print runs, along ever more densely interconnected transport routes (Colley 2021, 115-154; Osterhammel 2010). The highest profit rates are made in slave trade, intensify exploitation rates, accelerate the spread of modern cattle slavery.

However, constitutional progress was never a one-sided Western business but an *interregional* and *mutual* process of copy and paste, pick and mix, melt and combine (Colley, 136f, 412)

The first constitutional drafts and assemblies did not come from the white male bourgeois classes in Philadelphia and Paris, but from the European periphery in Corsica 1755, the *Costituzione* of Pasquale Paoli, a soldier and legislator, as many later revolutionaries a man of the gun and the pen. The next move of constitutional progress comes from Eurasian Russia 1767, the *Nakaz*, Catherine II's *Great Instruction*, drafted by a commission that was almost as socially, nationally, racially, and sexually diverse as the streets of Paris or Philadelphia are today. (Colley 2021, 16-25, 57-81)

Together with the productive forces of communication the destructive forces grow, in particular through the new hybrid warfare, the combination of land and sea operations, invented by the

British but copied, adapted and accommodated immediately all over the world (Colley 2021, 25-41; Sivasundaram 2020), due to the beginning of the age of world wars, penetrating all zones of the globe and transforming faster than ever living soldiers into dead bodies. The numbers of military and civil casualties increase exponentially. First the *Seven Years War* (1756-1763) with 550.000 military casualties, then the *Napoleonic Wars* (1798-1815) fought by revolutionary and counterrevolutionary forces on changing sides, with 3,5 Million military and civil casualties. The latter finally turns the three *Atlantic revolutions* (Caribbean, France, America) into the *first world revolutions*, spreading to the Pacific and South America at the same time through *mutual* copy and paste, pick and mix, melt and combine.

From now on, global arms trade flourishes. The media, newspapers, soldiers, revolutionaries, scientists, pirates and traders ensure the global spread of terror simultaneously with the global spread of moral resentment over belligerent and colonial violations of rights at ever shorter intervals, observed already by Kant in 1795: “The steadily increasing intercourse between the nations of the earth, has *now* extended so enormously that a violation of right in one part of the world is felt all over it.” (Kant 1977b, 216; Eberl/ Niesen 2011). Kant himself observes here that practical reason has a time-index.

Wars trigger revolutions and revolutions trigger wars (Colley 2021; Osterhammel 2010). Above all, the French Revolution (1789-1814), in its Napoleonic period (1799-1814), made revolution and constitution – and, as Marx aptly adds, the state of siege – travel around the world. Constitutional and revolutionary fever took the route via Spain and its resistance to French imperialism, to South America and the Pacific region. The trigger was the first transnational, formally highly inclusive *Constitution of Cadiz* from 1813 which guaranteed equal rights to all inhabitants of the declining but still vast Spanish Empire, *and* the binding of the Empire to the “Catholic Apostolic Roman Religion” (Art. 173). The constitution was never ratified but highly

influential, probably the most influential constitutional text of the entire age, translated even in indigenous languages.

The *Constitution of Cadiz* was printed in London. By 1810 London was the first global city, harbor and printing house of the world, center of the global counterrevolution, *and* the global exile for revolutionaries, meeting in the British Library, shipping subversive manifestos, radical essays, constitutional text books and themselves all over the world.

The contagious fever was intensified by the defeat of Napoleon's revolutionary army at Waterloo. Thousands of militarily, politically and constitutionally experienced officers became unemployed, went overseas and found jobs in the many new armies and the administrations of rapidly emerging new constitutional regimes. Constitutional experimentalism made its way from the Global North to the Global South but then returned to the North with new Oriental, Asian, African, Ocean variants (Colley 2021, Sivasundaram 2020). The first universal female suffrage was established in the *Democratic Republic of Pitcairn*, a small island in the middle of the Pacific Ocean. It lasted from 1838 to 1930, with indigenous people as citizens and barely a handful of Europeans who had migrated from Britain (Colley 2021, 253-260). Female suffrage made its way from Pitcairn to New Zealand and from there to Europe and America. Not accidentally the age of constitutional world revolutions ended with the Japanese constitution of 1889 and the first liberation strike against Western colonialism, the Japanese-Russian War, in which Japan, to the applause of all of Asia, crushed a major European power for the first time. All this was well known to contemporaries but nationalist and imperialist historiography became hegemonial and repressed memory first in the North, then everywhere.

However, despite the successful globalization of the constitutional mindset – Kant's "revolutionäre Denkungsart" –, throughout the 19th century and the first half of the 20th century "the process of national-democratic institutionalization failed" (Thornhill 2011; Thornhill 2020, 202).

After the constitutional revolutions had made constitutionalism unavoidable – “an event that could not be forgotten” (Kant 1977a, 361) – the solution for both, revolutionary and counter-revolutionary regimes was *constitutionalization through militarization of society* by coupling universal male *suffrage* to universal *conscription*, filling this way the empty revolutionary signifiers of public and private law (subjective rights) with the until then *unfree male population*. By 5 to 10 years military service the white male population was transformed into disciplined, loyal, misogynic, homophobic, nationalistic and more than less racist citizens. This way universal conscription, born in the heroic revolutionary wars as the *soldat-citoyen*, with one stroke solves all problems the Ancient Regimes and its revolutionary heirs everywhere on earth had left for the post-revolutionary period: (1) the problem of *internal and external security* (civil wars etc.) through conscription armies, (2) the *legitimization-problem* through universal male suffrage, (3) the structural fiscal crises through universal taxes, (4) the problem of satisfying the ravenous appetite of free labor markets for well-disciplined free labor, and (5) the problem of modern states’ greed for an imperial reserve army (Arendt’s surplus-population) with colonial civil servants, soldiers, farmers, slave-holders and slave traders.

When, after the World War and the Russian Revolution of 1918 or later in a similar constellation after 1989, a wave of democratization does occur, the new constitution immediately comes under pressure from the fragmented and independent core elements of the old society: authoritarian administration, reactionary judiciary, private armies, corporately organized class interests, upstart oligarchs, breakaway regions, mafia-structures, free-floating militarism, machismo, racism and so on. No wonder that after the revolutionary turmoil of 1918 nearly everywhere democracy turned over into at best: constitutionalism with ever more authoritarian characteristics as in UK or Japan, or at worst: fascism as in Italy or Germany (Thornhill 2020, 135-153).

After 1918 and 1989, Nationalism is back in its most odious form of right-wing radicalism, and no working national state any longer available, to solve the growing problems, which *all* are now products and problems of a single world society. Already in 1918, not to talk about today, the problem-solving capacity of national states was dramatically shrinking due to the growth of functional differentiation and the pressure of functional imperatives. *Functional imperatives cannot wait*. They immediately start to swerve to other ways, searching for *functional equivalents* within and beyond the national boundaries, but in any case, beyond the reach of the national state. Already in response to the loss of agency in the age of finance-driven global capitalism with “market-embedded states” (Streeck 2014) in the 1920th as well as in early 21s century, the state itself has become a tightly interconnected organization within a global network of segmentally differentiated state *and* non-state political organizations, causing major problems for democracy (Pistor 2019; Mair 2011).

Nearly a year after the outbreak of the war between Russia and Ukraine and the full-bodied declarations of the imminent end of global supply chains in February 2022. If you drive from Flensburg on the Danish border to Hamburg between 3 and 4 a.m., you will pass a never ending continuous chain of trucks, one after the other on the right lane, stuck tightly together, all packed with the same size containers for Hamburg's, Bremen's and Bremerhaven's overseas ports – and by far the largest part of the cargo comes from tiny Denmark, which, like other countries, can only reproduce its wealth if it transforms itself into a globally operating conglomerate.

(2) Institutionalization and Symbolization in the Form of World Society – From Kant to Luhmann

We just live in a society – and this is the decisive point – whose “unity” can be established “only in the form of the world society.” (Luhmann 1975, 60) Because, there is only *one* society left, the geopolitical “territorial principle (*Raumprinzip*)” becomes “unfit (untauglich)” for the definition of “boundaries of society (*Gesellschaftsgrenzen*).” (Luhmann 1975, 61). Thus,

whether we like it or not, only the form of world society remains to “institutionalize” law and politics (Luhmann 1975, 61) – and that means to *constitutionalize* world law and world politics. But this can only happen together with a cultural push of inspiring “symbolizations” (Luhmann 1975, 62) of *solidarity*, defined as the “still cohesive differentiation and diversity” (Luhmann 1981, 25), which is necessary to increase the problem-solving capacity of all people (and peoples/ social groups) of the world, that is, everywhere in this world. Otherwise, the variety pool of world society would dry up.

Mankind no longer is an empty signifier. Contrary, Mankind is a real, unfinished and forward living *project of democracy* with

- (1) ever more *egalitarian inclusion* (Thornhill 2020) of
 - (a) all social strata or classes
 - (b) all sexes (genders) and sexual orientations,
 - (c) all nationalities, cultures, “races” and comprehensive world-views;
- (2) ever more *self-legislation* (Kant) or *self-representation* (Rousseau) by transformation of subjective into *rights of overcoming relations of domination* (Wihl 2019; Welsch 2021);
- (3) a *post-traditional* and *post-conventional mindset* or, as Kant has called it: *eine revolutionäre Denkungsart* (Kant 1977c).

As mentioned briefly above, Kant already observed, due to the revolutionary role of the new *dissemination media* end of the 18th century (fast frigates, newspapers, global mail traffic) “*only now* (1795) the idea of a *world civil law*: a *Weltbürgerrecht* no longer is a fantastic and extravagant conception of law” but a first kind of *global constitutional law*: the first step on the long track towards *institutionalization of law and politics* in the form of world society. The meaning of Kant’s “unwritten code, both of state law and of international law to the public human right in general (*öffentliche Menschenrechte überhaupt*)” (Kant 1977b, 216) in the legal

terminology of today clearly is that of an (already existing) *written* code of *global constitutional law* (UN-Charter etc.) that is implemented on both levels of *global political (governmental) organizations* (as the UN) and *the national law of all states* (as Art. 25 GG). Moreover, Kant also states that *only now* an injustice can cause and factually causes global moral outrage and resentment (Reichhold 2021). For Kant this moral resentment is a “disinterested (*uneigennützig*)” feeling: the “good in affect (*das Gute mit Affekt*)” (Kant 1977a, 359) or in Luhmann’s terms: *symbolization* of morality in the form of world society.

What was unwritten, incomplete and nearly unknown by 1795 when Kant wrote about it, and anticipated it, latest since 1945 is written, to a considerable extend complete, and ever more wellknown: that nowadays all *armed conflicts* between subjects of international law and civil war parties are *world wars*.

This is true for the war fought in Ukraine after the Russian attack:

Whether the warring parties confronted with each other at gunpoint and those who support them directly, want it or not, this war in Ukraine *is* a world war and a proxy war between global actors and parties. Moreover, it is one of many at least equally cruel wars, whose careful observation and sometimes cautious, sometimes massive influencing by the few world powers is repressed (*verdrängt*) by the Western mass media which are bypassing their audience. The effect is massive manipulation sometimes with, sometimes without intention.

We all, the entire world society is involved in this war, if we are aware of it or not, if it is reported by global media (there are no others any longer) or not.

(3) Rise of World Law and Democracy (1945-1989).

World Law emerged for the first time in history after the end of the global civil war (WW II) in 1945, and it declined rapidly since 1989.

There was a sustainable stability of world society during the Cold War period which we now have lost, due to the development of the constitutional *institutionalization* of world society. The stability of the Cold War period was not just a result of *Realpolitik* (Spector 2022) but a result primarily of the “rise of *world law*” (Thornhill 2020, 181; Bogdandy 2017) after the revolutionary transformations of 1945.

The probably most horrible – on the German side genocidal, on the Japanese side demo-cidal (Cohen 2000) – war ever ended with the greatest defeat of the Global Right ever: unconditional surrender of Germany and Japan, and the simultaneous foundation of a completely new order of International Public Law (Bogdandy 2017).

From the *UN-Charter* to the London and Tokyo *Charters of the International Military Tribunals* (1945/ 46), from the *Human Rights Covenants* (1966) to the *Vienna Convention of the Law of the Treaties*, from the *Helsinki Final Act* (1975) to the *ASEAN Intergovernmental Commission on Human Rights* (2009), international public law emerged. It was established and concretized through the legal activity of national states, transnational governmental and non-governmental organization, regional and world organizations, international private and public courts, administrative acts etc. At the beginning in one blow an *autonomous world law* that never existed before, was founded and emerged quickly, constituting legally all national, regional (continental) and world public authority anew. Its power to enforce its decisions was not just weak but patchy and extremely uneven distributed, due to real political and social power relations (not so different from all, mostly national constitutional regimes in the beginning, meaning ca. during the first 20 to 150 years of their existence, not so seldom until now). However, the great effect of world law was much more communicative. World Law enabled states and other subjects of international public law to orient themselves in a highly complex world society, to compare themselves with one another in a world, in which all states suddenly have become neighbors, and to solve problems, to keep conflicts under considerable control, to

cooperate effectively by reciprocal copy and paste, pick and mix, melt and combine within the same, legally flexible *limits* of law which *enabled* everybody the same kind of actions.

Moreover, the new autonomous world law for the same reasons enabled (especially by orienting to and implementing human rights norms) the finalization of anticolonial national liberation, and for the first time in history the realization of democracy defined as full participative inclusion of (1) all social classes, (2) all genders and sexual orientations, and (3) all nationalities, colors, races etc. (potentially all addresses of legal norms) in ever more national states and regional organizations all over the globe, at least as law in the books. (Thornhill 2020, 153-202; Thornhill 2019; Thornhill 2021).

Not a single national state before 1945 was a fully inclusive representative democracy. Differently from 1918 (after WW I) the functioning of parliamentary democracy was no longer blocked by constitutionally legitimated corporatism, patriarchalism, militarism and imperialism (Thornhill 2011).

On contrary, after 1945 the new, transnationally constituted national constitutional regimes *enabled* the successful public fight of social movements and parties for the transformation of subjective rights of possessive individualism (McPherson) into rights to overcome (*Aufhebungsrechte*) all relations of domination between social classes, sociobiological sexes, nationalities, skin colors etc. (Wihl 2019)

It is very important to see, that the founders of autonomous world law were not very democratic, neither the Stalinist USSR nor China represented by Chiang Kai-Shek, nor the less repressive USA and UK which at best were white male upper-class ‘democracies’, deeply embedded in the basic structure of modern capitalism and imperialism.

Yet, the *outcome* of this rhetorically democratic but in fact undemocratic alliance was democratic, and it was more democratic than anything ever before.

Why? – Because (as I just had indicated) after 1945 “national states were increasingly obliged to recognize human rights norms as inviolable sources of legitimacy for domestic law”, and defining “their legitimacy through reference to human rights law, they became increasingly porous to global norms.” (Thornhill 2020, 181f) This process *enabled* the rapid development of *social or socialist welfare states*, strengthened and then driven forward by the massive and global *expansion of the educational system* (Parsons/ Platt 1973; Meyer 1992).²

In both cases the UN-norms and programs played a decisive role. The UNESCO through shaped the development of copy and paste, pick and mix through a kind of **global action research** in which the results of empirical surveys are **fed back to the world of states in the form of globally received tables and soft-law recommendations**. The development of social welfare states indirectly was steered and shaped by the strongly **welfare-state oriented interpretation of human dignity and human rights in the legally non-binding Charter of 1948**.

The democratization of suffrage in UK 1948 is a paradigmatic case (and not at all a curious exception). British labor government urged Indian Brahmins during independence negotiations to accept Art. 21, III UDHR that prescribes universal and equal elections. This finally broke the Tories’ resistance to the abolition of “multiple voting and multiple suffrage” for academics (two votes for two constituencies = 7% of eligible voters) and wealthy constituencies (two MPs instead of one for the poor) in the *Representation of the People Act* of 1948 (Meisel 2011; Thornhill 2020, 165, 167, 194, 328f), which was the first big step to fully representative democracy in a country that until was able to sell itself as the oldest democracy of the world.

² The the rule is important that there is no democracy without a working *and expanding* welfare state or a kind of democratic socialism.

The first big step towards fully inclusive democracy in the United States followed nearly 20 years later with the Civil Rights Act of 1964. And so on (for Germany see: Dietrich Jesch, *Gesetz und Verwaltung*, Tübingen: Mohr 1961).

The post-war process of first-time successful democratization, enabled by the revolutionary advances of autonomous world law, enabled in turn the progress from *International Law* as a kind of coordinative private law between states to *International Public Law* as a kind of global constitutional rule of law (comparable with the still weak efficiency of all constitutions between 1750 and 1950).

Moreover, not the strategic balance of terror shaped the relations between the super powers of the Cold War but the *UN-Charter* and the *Declarations and Covenants of Human Rights* (1966) – from the doctrine of *peaceful coexistence* over the *détente politics* to the *Helsinki-Process*. Not the **“police” of the Security Council** that, acting united, can threaten the entire world with atomic nihilation, fortunately was blocked by antidemocratic, anti-peace and anti-human-rights veto-power. But the **“temple” of the General Assembly** formed an important focus of the global public sphere (Koskeniemi 2001) that became successively a legally working *normative constraint* of strategic particularism (Brunkhorst 2014). In comparison, imperial realists as well as anticommunist moralists were wrong describing the global situation either as normatively neutralized power politics or as endgame between democracy and totalitarianism (a category Arendt rightly restricted to the Stalin-era and Germany between 1937 and 1945). The sociologist Talcott Parsons (who opposed both the Atlantic Realists and reality-blind moralists) was right, when he already in 1961 described the legally organized political competition between USA and USSR as a kind of emerging global democracy in an alienated but existing representative form (Parsons 1961), enabled by the contradictory norms of the UN-Charter.³

³ As correct as the functionalist constitutional sociology and history, which Chris Thornhill has created in a whole series of pioneering studies in the last 20 years, - as correct and plausible as this sociology has analyzed

(4) Fall of World Law and Democracy after 1989

But then the police came back. In 1989, the police officers of the Security Council lifted their self-blockade, occupied the temple, expelled the priests. The West, no longer the democratic avantgarde of the world but ever more neoliberal, celebrated the final victory of capitalism with ever less democratic features. François Furet and Francis Fukuyama were the intellectuals of the hour. Democracy as a global project that can cure its ailments (according to Dewey, Rorty or Habermas) only through more democracy was replaced in Germany by Angela Merkel's "market-conform democracy". German Greens and Social Democrats followed her when they replaced Willy Brandt's progressive: "*Mehr Demokratie wagen* (Dare more Democracy)" from 1969 in 2021 by copying it but changing the one word "democracy" through empty signifier "progress", and the outcome was the most depressing of all slogans of change ever: "*Mehr Fortschritt wagen* (Dare more progress)". Giving up democracy as an unfinished and utopian project, reducing it to the dense of the Status Quo means giving up democracy at all.

That's what we have, a democracy, embedded in a structure of capitalism that "is clearly not working for the many", an economy "of a powerful elite, insulated from hardship, poverty and ill fortune." (Sedley 2023, 33f) Recently the NYT reported that this year the number of U.S. centenarians exceeded one million people for the first time ever, whereas since a couple years the average life-expectation of the entire population is shrinking for the first time in decades.

and assessed the enormous civilizing role of the autonomous world legal system - the *gentle civilizer of nations*, it underestimates the role of "forward living" (Kierkegaard) "revolutionary practice" (Marx). Without the revolutionary will and the tremendous force of the constitutional revolutions of all continents, the entire democratic development since 1750 would have been impossible. Without the Russian and Chinese revolutions, without national liberation movements and liberation wars, without the conscious planning and implementation of not only material but also ideal interests, without utopian, even eschatological goals, the world civil war (WW II) would not have produced autonomous world law. Without the permanent transformation of subjective rights into rights of sublation or "*Aufhebungsrechte*" (Wihl 2019) and of heteronomous representation "*Fremdrepräsentation*" into autonomous "self-representation" (Welsch 2021) by the global movements and struggles of the working class, the women's movement, the sexual liberation movements, the emancipation struggles of People of Color and their globalization since the student rebellions of the 1960s, the *participatory full inclusion* made possible by world law *would not have been realized anywhere*. This revolutionary element is underestimated by functionalist constitutional sociology.

That's all you must know about the social structure of so-called "social market economies" (Ludwig Ehrhard) and the pseudo-democratic structure of market-embedded democracies.

Instead of taking in 1989 the chance of constitutionalizing the absolute power of the police, abolishing the veto, implementing mechanisms of legislative and legal control etc. – the *UN rules were openly violated*. Four of five permanent members of the police, USA, Russia, UK and France eight times broke the highest international norm: the prohibition of aggressive war. The only exception so far is China (see Milanovic 2022). International Public Law now is close to its end, and not a single visionary idea beyond the status quo in sight. The 1940s were full of them, intellectually, on the streets, at the battlefield, and in world politics (Brunkhorst 2014).

Moreover, the quickly declining United States lost their high prestige, moral authority and shaping power as an indispensable *mediator* of peace negotiations. To be an honest broker was central to America in particular after the Cold War: 1978 Camp David, 1993 Oslo Accords, 1998 Good Friday Agreement etc. Yet, over the years, America switched from *imperialism plus legal peace-making* at the price of some justice to *imperialism pure plus moral partisanship* in the cosmic battle between good and evil, democracy and dictatorship latest since 2000.

Ever less peace by compromise was substituted by peace "out of total victory." America in the Ukraine crisis was immensely effective in mobilizing the *past of democracy*: the global North-West, "but hopelessly clueless in inspiring the global south" that embodies the *future of democracy* (if democracy has any) because the South "was looking for leadership to bring peace to Ukraine" (Parsi 2023) – and the US did this in a situation very different from 1941 (when America joined the Allies. Back then unconditional surrender of Germany and Japan was foreseeable, whereas today anything close to unconditional surrender of Russia is completely illusionary. When Beijing, who had brokered successfully peace between Iran and the Saudis, offered earlier to mediate between Ukraine and Russia, Washington quickly dismissed the offer

“even though Zelensky welcomed the condition that Russian troops would withdraw from Ukrainian territory.” (Parsi 2023)

However, this chance is over. We are back to 1918 when democratization failed not only in Germany and Italy but everywhere (Thornhill 2011). The longer the Russian war of aggression and crimes against humanity in Ukraine lasts, the more nationalism, imperialism, militarism will trump, and not only in Russia but also in Ukraine, and the result will be a global disaster. Then the *Ukrainian Defense Council* will push aside the liberal president, and do everything to realize its plan (complementary to Putin’s ethno-fascism) to make Russia disappear as a state: “The real victory of Ukraine is a disintegration of russia, its disappearance as a coherent subject of history and politics” – reads one of the 12 points of the *Ukrainian Defense Council’s* plan for the reconquest of Crimea, written by the the Secretary of the *Council*, Olexi Danilov (who writes ‘*russia*’ deliberately with a lower case ‘r’).

The writer Eugen Ruge in the *Frankfurter Allgemeine Zeitung* on November 3, 2022 rightly warned on the danger, to reciprocate the hatred of nations that resounds against Ukraine from the Russian mass media, which have been brought into line by brute force (Ruge 2023). In the future, if at all, the paths to peace are more likely to lead via Beijing, New Delhi and Brazil than via Washington and Europe – unless Europe corrects the two mistakes of 1989 – first, the Eastward Enlargement of the EU without a state, and the creation of a Central Bank without a state, ruling 19 states without a Central Bank.

The UN-System with a pseudo-democratic Assembly and an almighty Security Council beyond any parliamentary or legal control unintentionally has been copied by the European Union with a semi-democratic but real parliament and an almighty executive body of the technocrats the ECB. Taking this as indicating a tendency of powerful transnational organizations towards a

new kind of transnational authoritarian and/ or technocratic regimes, two steps are at stake to reconstruct and improve the deeply demolished order of world law.

First at all, the distinction in International Law between *wars* and *armed conflicts* is par excellence *constitutive* of the international public law that emerged after 1945, created already in the course of the war that began in China 1935 and ended in Japan 1945. Before any question of *criminal justice that is legal* according the UN Charter, Chap. VII and the law of the International Criminal Court can be posed and strived for, an *end of the armed conflict* is politically needed *and* (even more important) legally mandatory according to the law of the *Additional Protocol of the Geneva Convention* of 12 August 1949.⁴ An important implication is: To end an armed conflict does neither need a *morally just peace* (Annalena Baerbock) nor a fair compromise (that is impossible after all the Russian atrocities). It only needs a *modus vivendi* that guarantees both sides sufficient security – philosophically speaking ‘self-preservation’ – but not the restoration of pre-war borders.

Only because the Allies were able to enforce unconditional surrender in 1945, they were able to arrest and charge the war criminals immediately. This unprecedented act was legitimized by the simultaneous, almost complete, i.e. revolutionary reestablishment of the international legal order, which made the rise of world law possible. The regulatory law, the law of public order, aimed at the *future* peace of law, must precede the criminal law oriented at the healing of *past* violations, because criminal law without regulatory law is arbitrary justice. Only the regulatory termination of armed conflicts (which is neutral to the question of guilt and atonement) can guarantee and enable that later the right of retrospective avenging violence can come into its own, and bind all avenging violence within the limits of law (which, by the way, was the original biblical meaning of the principle of *talion*).

⁴ For this argument and the following deliberation I have to thank Ulrich Preuss for the insight into an unpublished manuscript.

If this is reached, *second*, a total reform of the quasi-absolutist structure of transnational executive bodies such as the ECB, the SC and so on, hence a *new foundation of world law* that equals not less than a constitutional world revolution.

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