

DIAS-Kommentar

Nr. 65 • November 2005

Prof. Dr. R. Alexander Lorz

The Eternal Life of Eternal Peace

www.dias-online.org

Düsseldorfer Institut für Außen- und Sicherheitspolitik e.V.
c/o Juristische Fakultät der Heinrich-Heine-Universität
Universitätsstr. 1 D-40225 Düsseldorf

Herausgeber
Düsseldorfer Institut für Außen- und Sicherheitspolitik e.V.
c/o Juristische Fakultät der Heinrich-Heine-Universität
Universitätsstraße 1 D-40225 Düsseldorf

www.dias-online.org

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ISBN:

A. Kant “Reloaded”

I. Introduction

1. Visions of global peace orders abound in philosophy as well as in political theory. But only a few of them have been able to really draw public attention over a longer period of time. Kant’s vision of “Eternal Peace” is certainly one of those. How could it have such a thorough impact? And, even more important: Is it still viable today – from the viewpoint of a public international lawyer who must professionally care about legal rules and principles to achieve this goal?

The answer to that question is - not at all surprisingly, I guess -: Yes! And the main reason for it is to be found in Kant’s combination of two approaches which do not often fit together: on the one hand, as it is typical for his philosophy, he tries to come up with timeless principles and theoretically developed cornerstones of a universal peace order; on the other, he already translates these principles into the form of a treaty and devotes a lot of effort to showing that they could indeed be practically implemented.

2. Three leading questions may be identified which necessarily guide every attempt to devise a global peace order:

- first, to what extent politics and morals – justice and law – can be made congruent in this area?
- second, how the internal order of the main actors in international relations – namely, the states – and the international legal order interact?
- and finally, what concrete measures can be taken in international law to implement the desired peace?

II. Law and Politics

3. The potential discrepancy between the ethical, political and legal dimensions of a problem is rarely as visible as in the field of international relations. The advocates of “power politics” find their home here as well as the staunchest defenders of the rule of law. While one side argues that public international law is not really law at all (because it lacks an effective and comprehensive implementation mechanism), the others maintain that allegiance to certain morally founded rules is nowhere more desperately needed (since the potential consequences of any breach are more disastrous here than anywhere else). But the greatest danger arises when these two approaches meet: where political and – in the end – military power is applied to put through essentially moral convictions, the slippery slope to world despotism is not far away.

4. Kant’s philosophy in this regard – answering the first leading question – tries to steer a middle course between Scylla and Charybdis: On the one hand, Kant was one of the first thinkers to acknowledge that public international law must eventually ground in practical reason and therefore in essentially moral principles. On the other, though, Kant is also at the forefront in denying any material dependence of legal rules upon their ethical counterparts. His understanding of law does neither exclude nor compel the setting of material purposes. Virtuous behavior cannot be enforced. The moral obligations of a person go far beyond what can be demanded from her by law. Law is only supposed to delimitate the spheres of freedom –

between human beings as well as between states. Thus, Kant calls for a political culture which avoids ideological rigidity as well as an unscrupulous “Realpolitik”.

III. The Role of Republicanism

5. How can this be achieved in practice? Kant identifies a set of legal prerequisites which serve as guarantees for a corresponding connection between ethics and politics: certain fundamental rights, representation in government, separation of powers and – not at last – transparency. The set as a whole is dubbed a “Republican Constitution” and regarded by Kant as the first crucial element of universal peace: “The civic constitution in every State shall be republican” (Definitivartikel 1).

6. This answers the second leading question as well: The internal order of the states is inseparably connected with the maintenance of the international legal order. To be sure, there is no guarantee that “republics” in Kant’s terminology will not go to war or even develop imperialist tendencies. But they are at least much less likely to do so, especially when they would have to go against each other. The reason probably is that “republican” constitutions by definition provide mechanisms for a transparent resolution of conflicts through pre-determined rules and not through uncontrolled force. These mechanisms then also shape their behavior towards the outside world, which is perceived by other republics as symmetrical; and this symmetry in turn leads to reliability and trust in inter-republican relationships and makes it much more difficult to resort to force.

IV. The “Federalism of Free States”

7. Once all states have acquired “republican” constitutions of this kind, there is – for Kant – no further need to infringe upon their sovereignty. Their internal order itself provides the best possible protection against breaches of the global peace. Thus, they will almost automatically agree to a “world society” where they all freely work together. The only remaining task for public international law – and thereby the answer to the third leading question – will be to somehow organize this cooperation institutionally. “Public international law shall rest upon a federalism of free states” (Definitivartikel 2).

B. The Situation in Public International Law

I. Starting Point

8. A short look into the modern realm of international relations already reveals that Kant’s vision is yet far from being realized; however, it must also be noted that - over the last 200 years since the “Eternal Peace” was published - we have indeed made some progress. The states with truly “republican” constitutions still amount to less than a half of the world community, but their number has considerably increased over the last decades. And the institutional connections on the international plane exceed everything Kant could have dreamt of, although it has to be admitted that they do not always conform to his ideal: For instance, the United Nations and its Security Council are in theory much more powerful than the “federalism” envisaged by Kant – Kant would indeed not have approved that because of the imminent danger of any such organization to slip into despotism – and simultaneously in practice often failing to perform their functions. Kant’s “federalism” idea is probably much better mirrored at the regional level where numerous international organizations - especially of the free states within the international community – closely knit together their members on the basis of their common interests without the use of any force.

9. Another relatively recent development could definitely not be foreseen by Kant: the appearance of many new actors in the arena of international relations and the increasing dissolution of states on this planet. Kant's vision is still based on the assumption of a "closed-shop" world of functioning states. His concern with world peace therefore centers on the question how to prevent these states from going to war. But today's threats to world peace are different and manifold, emanating from classic political conflict situations as well as from "rogue states" and – meanwhile perhaps most important – from "failed states" which international terrorist organizations and other non-state actors may use as a basis for operations disturbing global peace and international security. Is Kant's vision therefore becoming an outdated concept?

II. Human Rights and Democracy

10. It might almost come as a surprise that especially the latter observation – i.e. the development Kant could not take into account at all – now seems to drive forward the recollection of his ideas, in particular of the necessity to have regard to the internal constitutional order of states and to make them "republican" in Kant's sense. The times when internal matters of states were considered sacrosanct at the international level have already passed long ago. Human rights, one of the pivotal elements in Kant's "republican" constitution", have been recognized in numerous international legal instruments as binding upon all members of the international community. Some of them even count as "ius cogens" and thereby render any kind of derogation illegal. As a consequence, no state today can expect any more to receive international recognition for its constitutional order if this order does not provide for the protection of fundamental individual freedoms.

11. The same has even started to become true for a right to (representative) democratic structures of government, another cornerstone in Kant's concept of "republicanism". Apart from the numerous human rights treaties mentioned above, here the internal right to self-determination serves as an additional buttress of the demand for democracy everywhere in the world. Moreover, most international political organizations today expressly require new members to be internally organized in a democratic fashion. And a new tendency in the recognition of states and governments, in particular pursued by the European Union, is about to reformulate the traditional "effective government" criterion for recognition so as to mean "democratic government". Thus, it seems fair to say that the international community is increasingly inclined to accept only states with a "republican" constitutional order in Kant's sense as its members.

III. Peacekeeping and International "State-Building" Efforts

12. To be sure, in one respect modern public international law is definitely moving beyond Kant's vision: the international community less and less respects the sovereignty of its members which he still held high. The United Nations, acting through the Security Council, permanently produce new resolutions and actions on the internal situation in some of its members, a development in which Kant would have seen a potential "despotism" looming. But in Kant's vision, as stated above, an international organization of this kind is superfluous because it won't be needed in a world of "republics". Here the international legal order indeed has to pay tribute to the changed state of the world and to the fact that there are no "republican" structures in too many places: especially the challenge of "failed states" compels the international community to act and to assume responsibilities which under normal circumstances would be considered purely domestic in nature. This can be most clearly demonstrated by pointing to the development of UN peacekeeping operations: starting out as observers of truces and borders, they went on to support governments in reconstructing their countries, be-

came robust guarantors of humanitarian needs and eventually took complete control over the administration of certain territories in so-called “Peace Support and Governance Operations”.

13. However, it is important to note that all these intrusions into national sovereignty are always justified by and limited to the goal of “state-building”, i.e. restoring this sovereignty in the forms of what Kant would call a “republican” constitution. The UN missions in Kosovo (UNMIK) and especially in East Timor (UNTAET) provide the most recent and illustrative examples in this regard: In both cases, the Security Council has endowed the missions with comprehensive legislative, executive and judicial powers, basically entrusting the complete control over the respective territory to them and installing them as a kind of all-inclusive government. UNTAET, for instance, was supposed to re-establish order and security, to build up a functioning administration with civil and social services, to coordinate humanitarian assistance and to create the necessary framework for independence and sustainable development. But as soon as these prerequisites were existing, UNTAET was also expected to vanish and in fact did – today the UN mission in East Timor is reduced to a mere mission of support (UNMISSET) at the disposal of the meanwhile established democratic government of the new state.

14. In sum, Kant’s insight that the internal order of the states, namely, a “republican” structure of their constitutional system, is crucial for the achievement and maintenance of global peace, has probably never been so much valued as in modern times. Modern public international law has made it one of its pre-eminent goals, albeit the mechanisms for its implementation are admittedly non-Kantian: we bet on international institutional structures to secure the realization of this goal and are willing to accept more and more curbs on national sovereignty for that purpose. But once the Kantian ideal of a “republican” constitution everywhere were achieved, this would no longer be necessary: and then we would also be able to fall back upon his second pivotal idea of a “federalism of free states”. Thus, we may well regard ourselves as living in a kind of transitory situation – with Kant’s vision being at least closer than it was 200 years ago, and not less topical.

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