Rule of Law – from local to global - v - Misrule of Force

Presentation by Edward Horgan to Mut zur Ethik (*Courage for Ethics)* Seminar in Will, Switzerland 3 Sept 2017

The hope that the decline of United States hegemonic military power over international affairs and its domination of the international economic system will give way to a multi-polar system that will facilitate a more peaceful and more prosperous world for all, may be too optimistic. The scale and seriousness of the problems facing humanity in this second decade of the twenty first century are such, that the arrival of a multi-polar international system may bring humanity to a confluence of crises similar to those that existed in 1914, with the added factor that the main protagonists will now be armed with nuclear weapons. The altruism and common sense that the majority of humanity possesses are always under threat from the significant minority of humanity who are driven by greed and personal interests at the expense of humanity. In the past the ethical basis of most religions provided a system of ethical regulation that eventually broke down when many religions themselves became corrupted by their elite leaders. The rule of law then became the primary system whereby humanity sought to curb the abuses of power, driven by greed and damaging self-interest by individuals and states. Marxism, for a while also sought to create a system of rule that took the power away from self-appointed elite groups and allow the vast majority of the people to have a say in ruling themselves. Unfortunately the theories of Marxism, some of which were beneficial, were almost immediately corrupted by Communism as practiced. With the possible exception of Cuba, there have been few if any examples of successful and just communist regimes. The rule of law, based on justice and fairness for all of humanity, has always been the best way forward for humanity, but so far, this has always been difficult to achieve.

In the past humanity could blunder along and make huge mistakes, but still survive into the long term. This all changed in 1945 when the first atomic bombs were dropped on Hiroshima and Nagasaki with horrific effects, not by a recognised evil dictatorial regime, but by one of the foremost democracies in the world at that time, the United States of America. The Cold War, with its Mutually Assured Destruction [M.A.D.] nuclear war strategy almost brought humanity to the brink of extension on a few occasions. The fact that we survived the Cold War led many people to relax and forget that not only has the possibility of nuclear war not gone away, but it has actually increased since the fall of the Soviet Union. For almost two decades the United States was almost all powerful, and during this period, it could have and should have reinforced the rule of international law, and enhanced the authority and effectiveness of international organisations such as the United Nations. For a variety of reasons, the opposite has occurred. Democracy, properly defined as:

**GOVERNMENT OF THE PEOPLE, BY THE PEOPLE AND FOR THE PEOPLE**

has never been to the forefront of politics as practiced in the United States, in spite of the great words written into the US Constitution, just as government of the people was never really allowed take root in the Soviet Union. The United States was founded by an elite group of people, mainly migrants from Europe. They were colonisers, using a combination of slavery of African people, and virtual genocide of the indigenous people of the continent that became known as America, as well as wars of aggression to achieve international and eventually global power. Like communism in the Soviet Union, in democratic United States, all people were meant to be equal, except that some were far more equal than others.

In Europe, we like to express our pride in our freedom and democracy and respect for the rule of law, and we even boast of European and Western civilisation. Mahatma Gandhi, when asked what he thought of Western civilization, is reported to have replied: “I think it would be a good idea.” That remark is even more valid today.

With the exception of a few countries including Switzerland, the Nordic Countries and the United Kingdom, democracy and the rule of law, have been only recent developments in most European Countries, and we are already seeing deterioration of democracy even in some European Union states. Greed, self-interest, and national self-interest are reasserting themselves. It is also a reality that many European states apply the rule of law and democracy within their own states, but are frequently in serious violation of the rules of international laws in their dealings with other states internationally. One example of this is that while capital punishment is outlawed in all European Union states, yet the vast majority of EU States are also members of NATO and many are actively engaged in bloody wars across the Middle East, in breach of the UN Charter and these wars have resulted in the deaths of well over two million people, many of them innocent civilians, especially children.

This article by Odd Arne Westad in the New York Times on August 28, 2017, while over sympathetic to the United States does explore some of the points I raise above. <https://www.nytimes.com/2017/08/28/opinion/cold-war-american-soviet-victory.html?emc=edit_th_20170828&nl=todaysheadlines&nlid=39932266>

“As America entered a new century, its main aim should have been to bring other nations into the fold of international norms and the rule of law ... Instead, the United States did what declining superpowers often do: engage in futile, needless wars”

Right now, humanity is facing not one, but multiple crises that combined amount to a real existential crisis, not only for all of humanity, but for all living creatures and life on Planet Earth. Even if we manage to avoid a nuclear war, our living environment is now threatened by global warning, which is just another way of saying that we are destroying our living environment at an unprecedented rate that is approaching a tipping point that may become a point of no return. The ice caps on the North and South Poles are melting rapidly, as are the vital glaciers in Greenland, the Himalayas and the Alps, all of which are vital towards controlling weather across the whole planet. This global warming is certainly caused by us humans. Firstly there are already too many of us, over 7 billion on a relatively small planet, so much so that we are destroying the planet’s resources at such a rate that they cannot be replaced. We have already destroyed or wiped out many of the other living creatures and many of the plants and other living organisms that are needed for a balanced global environment. As a result the resources of our planet are no longer adequate to meet the unduly greedy demands of our various societies, especially the societies in the most elite countries of the world, especially European countries and the USA.

Human intelligence, ingenuity and technology could and should be used to overcome each of these serious problems, but instead technology and science are being used by our powerful elites to produce ever more powerful weapons of destruction and far too much human intelligence is being used to ensure that nationally and internationally the elite individuals and groups maintain their undue share of the world’s resources.

We urgently need much better education and health services and finance to help protect our living environment and repair some of the damage that has already been done, yet these areas are being starved of finance due the huge amounts being spent on weapons and destructive militarism. Many of our elite countries are already engaged in hugely damaging resource wars. Of course we are not calling these resource wars, we are claiming that they are humanitarian wars, even wars to make people more free and more democratic. By ‘we’ I mean the people and governments of the elite countries of the world. We in Ireland and Switzerland, as neutral countries, consider ourselves to be among the more altruistic countries of the world, with some justification, but only some. Like all the other elite countries we are consuming a far greater proportion of the world’s limited resources than we are entitled to. We are part of the problem but could and should also be leading the way towards solutions. As small countries our impact is far less than the larger countries, and our non-aggressive military policies are at least not doing the level of damage that our NATO neighbours are doing. Most people do not realise the damage that the deliberate militarisation of Europe and the world is already doing, even before they launch an almost inevitable nuclear war. The wars across the Middle East have done massive environmental damage that has added significantly to the global environmental damage. Just one small, or not so small, example is the use and abuse of depleted uranium munitions, that have polluted significant parts of Bosnia, Serbia, Kuwait, Iraq, Libya, Syria and Yemen, causing terrible damage to babies who have been born with dreadful birth defects. The United States who have used the most of these depleted uranium munitions does not allow the US military to fire such depleted uranium ammunition on its practice ranges in the USA, because of the environmental dangers, but has no problem dumping tons of depleted uranium on the peoples of the Middle East.

We are dealing with the eternal struggle between good and evil, between altruism and greed, and right now, evil and greed are winning this struggle. This is not because the majority of humans are evil and greedy, I believe the opposite is the case, but because elite groups who have achieved the power in most elite countries are evil and greedy, looking after their own individual self-interests, and the national self-interests of their elite countries, at the expense of the vast majority of humanity.

Edmund Burke, an Irish political philosopher said: “The only thing necessary for the triumph of evil is for good men to do nothing”

In spite of all this, I am still an optimist, even though a worried optimist in recent years. Humanity can and must overcome these huge challenges because the alternative is the extinction of humanity, not to mention the gross human rights abuses and injustices being perpetrated on behalf of our elite abusers of power.

It’s difficult to prioritise the present threats to humanity, because future events are always unpredictable, so I will just list the most serious threats, without prioritising them.

* Destruction of our living environment
* The militarisation of Europe and the world
* Risk of nuclear war
* Reality of conventional wars
* Destructive neo-liberal capitalism
* Malign dictatorships and lack of genuine democracy
* Uncontrolled economic production of unnecessary goods
* Injustice, human rights abuses (and blowback results)
* Abuses of power – destroying the rule of law

The idealism of Emanuel Kant in his work on Perpetual Peace, believed that trade and economics should make war redundant, was valid until humanity began to put the planet’s finite resources under severe stress and now trade including access to resources are becoming a major, if not the major, cause of wars.

In 2008 I completed a PhD thesis entitled “The United Nations – Beyond Reform?

The Collective Insecurity of the International System and the Prospects for Sustainable Global Peace and Justice”

My reluctant conclusion was that the UN was beyond reform because the UN Charter was designed by its Permanent Members to give them undue power, and place them above and immune from international law. The UN is also just an “international” organisation of states, and critically, there is no organisation or no rule of law above the level of states. In effect, at global level, the rule of law is the rule of international anarchy.

That is not to say that the UN does not serve many useful functions, especially in the many functional subsidiary organisations of the UN, including the World Health Organisation etc. but the reality is that the primary and by far the most important function of the UN is to maintain international peace, and it has failed catastrophically to achieve this vital function ever since its foundation with a small few exceptions. If the UN is to be superseded by a more effective global organisation, then the UN itself could be left in place as a coordinating international body, supervising the various functional subsidiary organisations.

***The findings of this thesis are that the nature and scale of the UN’s failures to maintain international peace and security are of such a magnitude, occurred in diverse regions of the world, throughout the full existence of the UN so far, and that the prospects for the necessary reform of the UN are so poor due to its virtually immutable Charter, that the United Nations can be deemed to be beyond the level of reform needed, in the urgent timescale needed, to provide a satisfactory level of peace and security for humanity. The very existence of a failed UN, and its flawed Charter, is preventing the bringing into existence of more appropriate global human security systems that could and should achieve an acceptable level of peace and security for humanity. Furthermore, collective security and peacekeeping that were the UN’s assigned and fallback mechanisms towards the maintenance of international peace and security are inherently flawed. Conflict prevention should be the UN’s primary focus and method towards creating and maintaining international peace. An enhanced comprehensive system of global jurisprudence is urgently required to both underpin and oversee the international system, including the UN, in so far as it can be reformed.***

The European Union was or should have been a good idea as a regional multinational organisation of sovereign states promoting the very desirable objectives of international peace, economic development, democracy, equality, human rights and the rule of law. It should also have been an organisation promoting genuine cooperation and sustainable development with the rest of the world, but this aspect has never been genuinely developed, and the European Union has now reverted to exploitation of the majority world rather than cooperation in the wider interests of humanity. French neo-colonial exploitation in its former African colonies is the most obvious example of this.

It is imperative that we find an alternative way of managing our national and international affairs other than by the rule or misrule of force and violence. The rule of law is not only a way forward – it is the only sane and sustainable way forward. The rule of law, locally, nationally, internationally and globally will never be perfect and must always be in the process of amendment, improvement and updating as the needs of humanity require. After the devastation of World War 2, the United Nations Charter was supposed to be foundation stone of international law, or at least it was portrayed at such in its preamble. However, the chief founders of the UN and drafters of its Charter, the USA, USSR and UK (France and China were still occupied while the UN Charter was being drafted), decided to draft the UN Charter is such a way that its five UN Security Council permanent members would have an all encompassing veto over the UN which placed each of these five member states above the rules of the UN Charter, and in effect above the rules of international laws. Since the end of the Cold War especially, the three NATO members who are UN Security Council permanent members have abused their UN vetoes and acted in clear breach of the UN Charter on several occasions by waging wars of aggression without UN Security Council approval. In so doing they have rendered the United Nations powerless and ineffective towards the achievement of the UN’s primary objective of maintaining international peace. NATO and the US of course will claim that they have only bypassed the UN because the UN has been ineffective in maintaining international peace, and that they, NATO and the US, were therefore forced to step in to enforce international peace and wage so-called humanitarian wars. This is a lie for many reasons, including as stated above, the reality that these same countries set up the UN to fail, and that all the wars waged by them since the end of the Cold War were wars of resources and illegal regime change, and instead of protecting human rights involved multiple gross breaches of human rights and war crimes. These issues combined with the failures of the UN mean that the whole inadequate edifice of international law much be critically examined, reformed, and improved. The biggest obstacle to this is the United Nations itself, which gives enormous and undue powers to its five permanent members, because their powers of veto also apply to any reform of the UN, and there is no likelihood that each of these five powers will agree to vote themselves out of such a powerful position, which also applies in the case of the US to additional special economic powers over the World Bank and the IMF and therefore over the global world economic system. In addition to the inadequacies of international law, there is also an urgent need for an additional system or tier of global law, and global jurisprudence, which does not exist at all except with some minor exceptions such as the inadequate war crimes process, which once again does not apply in practice to the same five UN veto powers.

Reluctantly, since the UN is being used very effectively as a blocking mechanism towards the improvement and implementation of international law, and towards the prevention of the introduction of a proper system of global jurisprudence, the UN itself may need to be abandoned or partly bypassed and a new global organisation set up to fulfil the urgent needs that the UN should have addressed. The off-repeated argument that the UN is all that we have and that the world would be in an even worse condition without the UN, is a flawed argument. The world is now in its present most dangerous and damaged condition partly because of the failures of the UN and its very flawed UN Charter. The issue of establishing a new and additional system of global jurisprudence is a vital one. The existing system of international laws exists only or primarily as a system of laws and regulations between states and reached by agreement between those states, especially the most powerful states, and often with very little input from citizens of those states, or even from majority of the world’s least powerful states.

The non-aligned movement in the 1950s did attempt to overcome some of these problems by setting up an alternative system of states that were not aligned to either of the then two superpowers, the USA and USSR. President Sukarno of Indonesia even went as far as withdrawing Indonesia from the United Nations as part of this process, and this may have been one of the reasons that the US engineered his overthrow and his replacement by the military regime of Suharto.

At European level, the majority of EU member states, at the behest of and in the interests of their citizens, must work to ensure that the EU does not succumb to the same malaise that has destroyed the United Nations, whereby a small cohort of EU states, place themselves in a position of absolute power over and above the EU at the expense of the majority of EU States, just as the five permanent members of the UN Security Council have done with the UN.

What can we, as tiny insignificant individuals, do to overcome these huge problems? Well firstly, we individuals are not as tiny and insignificant as our Governments would like us to believe. There are lots of things we individuals can and must do. Standing idly by and doing nothing hoping things will not get any worse is no longer an option. Things are getting worse progressively and daily, and will get catastrophically worse if allowed to continue. What we are doing here today meeting and discussing these issues is a start, but is not nearly enough. Passive resistance is also not enough. We need to work as individuals and network together nationally and internationally to achieve the necessary change. Because positive change needs to happen urgently and quickly, we need to be creative and take direct actions, including challenging bad laws by acts of civil disobedience if necessary. Small scale and even large scale peaceful protests are no longer enough. In March 2003 millions of people marched against the Iraq war, but when the war went ahead regardless of these protests, most of these people went home, and did nothing more. This was the point when military bases should have been occupied to prevent them being used for this and other illegal wars. While such actions will be described by governments as breaking the law, in my view, such actions are necessary to uphold and enhance the rule of law, and are therefore justified actions and any such peace activists should be acquitted in any subsequent trials on the basis of justifiable reasons for their actions.

While we must avoid the temptation of exacerbating the situation by resorting to violent revolution or violent actions, we must be prepared to take all necessary non-violent actions to protect humanity from militarisation and wars of resources.

We also need to envision humanity in a one world context, rather than divided up into invented nation states. While we need administrative sub-divisions of society for sensible regulation purposes, the very flawed concept of nation states, based largely on myths of historical pure ethnic races, that in reality do not stand up to historical scrutiny. Ireland is a good example, perceived by many Irish and others as a homogenous Celtic society on the western edge of Europe. The reality is that unlike much of mainland Europe, Ireland was covered with ice until about 8,000 years ago, and was uninhabited. Migrants arrived in Ireland from multiple directions not only from Europe but also from Africa. We Irish are a health mixture of ethnic origins that happened to adopt a Celtic culture. Countries and societies can no longer live in isolation from each other as many did over past millennia. Modern communications, travel, and especially the planets limited resources, mean that we must cooperate and closely and peacefully, if there is to be a future for our children and future generations.

*Mut zur Ethik* translates as *Courage for Ethics*. Among the definitions of ethics is this one. “Ethics is concerned with distinguishing between good and evil in the world, between right and wrong human actions, and between virtuous and non-virtuous characteristics of people. Now more than ever humanity needs to develop and utilise the courage to confront the very serious unethical behaviour that is threatening to destroy humanity. This means doing what we know is right because it is right, and doing it now, and continuing to do what is right into the future – otherwise there will be no future. Doing nothing is no longer an option in the face of the crises humanity is experiencing. Doing nothing in such circumstances is inherently unethical.