PROF. HANS KÖCHLER

The Re-Establishment of International Law

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Mr. Lyndon LaRouche, Mrs. Zepp-LaRouche, ladies and gentleman. As time is short, I will not read out the prepared text; I have forwarded it to the interpreters.

I will proceed in four steps to meet this challenging task that the organizers have given me, namely to say something about the *re-establishment* of international law.

The facts, of course, are clear and obvious; we see almost regularly that countries that are powerful, act as states—they regularly invade other countries, they destroy political system—"regime change" is now one of the buzzwords, and these nations are not held accountable. These countries are not held accountable, and the leaders who are responsible for the decisions are not held accountable.

For me, the most shocking example is what has happened since 2003: The United States has never met its responsibilities; has never had to shoulder its responsibility concerning the destruction of Iraq, and the leader at that time has never been brought to justice.

So, this is a very frustrating situation and it is obvious that there is *no* "international rule of law," in spite of the solemn commitment to this noble principle in the United Nations Charter.

So, now I will try to meet that challenge put before me, in four steps.

Diagnosis: Antagonism Between Law and Realpolitik

First, we have to be clear about what "law" is; unless we know what the nature of law is, we cannot make any assessment about re-establishing it.

The second question I will address here is: Do these criteria of law, the basic elements of law, really exist in the field of international law? Yes or no?

The third question will be, If—in what is called "international law"—the criteria of law are not met, what are the reasons for this state of affairs? Why is it so that in this now vast domain of rules and regulations—for which we use the notion of international law—there is not this nature of law? Why is it so that in fact, it is power that rules, but not law?

And, finally, the fourth point, if we have been able to identify the reasons, we may think about what to do about it; how to change that system; how to re-establish international law. But, this can only be undertaken if first we know what law is, and we know why things went wrong. Otherwise, we will only be led by illusions, and we will always have wrong expectations, and blame this United Nations organization for something it is not able to do, or maybe it was not even meant to do. We'll see.

Law is a system of norms, which is *enforced* by the state, according to a clear framework of regulations, and checks and balances. And, that is also what distinguishes a legal norm from a moral norm … If I violate a *legal* norm, there will be a consequence, there will be a sanction, and this can mean the removal of my freedom. Of course, I do not say that the legal norms are independent or the legal system is independent of morality; a legal norm has consequences in the real world, a moral norm (if I violate it) would have consequences in the metaphysical world. A system of law—this is my position—must be based on the common good, and must be based on human rights, or what others would call certain "natural" norms which cannot be changed.

So, if law is as I have now described it, the question is: Do we have law in this sense, in the international field? In the relations between states, is it so that if a state or a leader of a state violates norms of interna-

tional law, there will be a sanction, and there will be action against the violator? Certainly not! This leads me to step two: We have enforcement of the law, at least on paper, namely in the United Nations Charter, and that is in just one particular field—that is about the use of force by one state against another state, including also the *threat* of the use of force.

Xinhua/Li Muzi

United Nations Security Council meeting at the UN headquarters in New York, March 14, 2018.

UN Charter Specifies Impunity for Some

To serve justice, all law must be enforced consistently and comprehensively. If selective enforcement is the "modus operandi" of a legal system, it does not deserve to be called a system where the rule of law prevails. Because, in law there must be no double standards; there must be equality. So, that is exactly *not* the case in regard to international relations.

Let me explain why this is so in the third step. As I said, the UN Charter has this basic provision that the use of force, and the threat of the use of force, are illegal under international law. The issue is, there is a body with almost absolute powers in the United Nations—that is the Security Council. If it adopts decisions under the famous Chapter VII of the UN Charter—these are decisions on collective security (related to the enforcement of the ban on the use of force)—the first problem is, these decisions will only take effect if there is no veto cast by the five permanent members. The five countries have the privilege in a body that consist of 15 member states—they have the privilege to prevent any decision from being adopted (for which they are not obliged to give any reasons); it is their sovereign right. Of course, this is absolutely in total contradiction to one of the basic principles of the UN Charter, named right at the beginning of the Charter, namely, sovereign equality of states.

The big issue here is that those five states (that were the most powerful in 1945) themselves do not need to pay attention to the norm on the non-use of force, for they can prevent any decision for its implementation if it is against their interests.

The general norm that a party to a dispute shall abstain from voting—a common-sense principle of justice, so to speak—does *not* apply to decisions of the Council under Chapter VII. This means that a permanent member can commit an act of aggression against another state with full impunity. According to Chapter VII, the Council has the power, and can pass resolutions that all have legally binding effect on all member states of the United Nations, and these measures include the imposition of economic sanctions, diplomatic sanctions and also the use of military force—it's all at the discretion of the Council. If one is aware of the almost absolute power of the Council, it makes a mockery of justice.

Re-Establishment of International Law

This brings me to the last point: How to do something about this situation, or what could be done to re-establish international law. The UN, in its present form, lacks even basic procedural provisions for the enforcement of international law in a *consistent* manner.

Instead of linking permanent membership, connected with the veto privilege, to the power constellation of a bygone era, the Charter should redefine the notion of permanent membership—it should not be related to a single country, but to a region or regional organizations such as the African Union, Latin America, the European Union, the Association of South-East Asian Nations (ASEAN), etc. Any binding decisions under Chapter VII of the Charter would, thus, require consensus among all regions. This would be more democratic, a more responsible and acceptable use of the veto right, and would provide additional protection to smaller and weaker states against abuses of power by the organization's major players.

But, what also would be necessary is that, first and foremost, the wording of Chapter VII that somehow obliquely allows aggressor states to use the veto to protect themselves must be abolished. A legal ban on the use of force is simply not credible if an aggressor can be a judge in his own cause.

It would be so easy, in terms of drafting—it would just be necessary to eliminate a few words in paragraph 3 of Article 27.

There should be no illusion: Under present conditions, statutory as well as political, this is still a dream—because the holders of power and privilege will not easily agree to give up their dominant position However, the emerging *multipolar power constellation* may gradually convince those who have benefited the most from the status quo in the UN that continuing to insist on their privilege may ultimately be detrimental to the pursuit of their national interests (including their vital economic interests).

There is hope for the re-establishment of international law . . . in view of the re-emergence of a new balance of power. We have seen the development of several regional groupings, such as the development of the BRICS grouping, and these new factors will become stronger in the near future.

That, in my view, means two things: First of all, the great powers that enjoy these privileges in the Charter will have to be more cautious in how they use this privilege. The other aspect is related to the large, global picture. Should the real international community at some point come to the conclusion that one cannot reform the Charter of the UN, the time may come that one has to think about a new beginning—and that means phasing out an organization that has been paralyzed, that cannot reform itself. Unconventional measures are possible; we have seen it also in the case of how the President of the United States acts, on issues that were considered almost intractable a short time ago. And as far as a world organization is concerned, it would be worth considering such a new statute, which would include the global regions as major players, and which would do justice to this principle of sovereign equality.