The Reform of the UN and Cosmopolitan Democracy: A Critical Review

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With the end of the Cold War has come a new generation of proposals aiming to reform the existing international organizations and even to create some new ones. This article critically assesses these proposals, subdividing them into: (i) projects to institute a UN Second Assembly with members elected by 'world citizens' rather than nominated by national governments; (ii) prospective reforms of the International Court of Justice to extend its functions beyond the role of arbitration between states; and (iii) proposals to restrict the use of the veto power of the permanent members of the Security Council. These proposals are an attempt to upgrade international democracy and are here considered in the light of the systems of states theory. On the one hand, these proposals intend to go beyond the current confederal structure of the UN in aiming at direct participation of the peoples in world affairs. On the other hand, they reject the idea of developing a federal state on a world scale. They suggest a third and largely unexplored model of international organization which – to borrow a term employed by Immanuel Kant – is here named cosmopolitan democracy.

1. Introduction

Reform of the United Nations has been under discussion for decades. Although many reforms in the workings of the UN have been undertaken during the postwar period, really radical proposals, involving a substantial change in its functioning, have remained a dead letter.[1] The principal obstacle was the rivalry between the two superpowers, which paralysed any attempt to endow international organizations with enhanced powers. It is not therefore surprising that one effect of the end of the Cold War should be a relaunching of the debate on the reform of the international organizations, including the UN.

Revitalizing international organizations means placing a bet on the role of law as a constituent part of any future world order. Even if the norms of international law have until now been held in contempt by member states and overturned for political considerations, it is still to be hoped that such norms can constitute a more stable point of reference in post-Cold War international relations.

The fervour with which reform proposals had been advanced was quickly 'cooled' by the Gulf War. It became palpably clear that law could lend itself to ambiguous interpretations, and that international organizations, the UN included, could initiate actions clearly at odds with those intended by the proposed reforms. However, even if in the wake of the Gulf War the international climate has become less idyllic, the proposed reforms have not lost their value. Their declared aim is in fact that of eliminating, or at least reducing, those periodic oscillations in international relations which existing institutions have proven unable to contain. A commitment to these reforms is therefore necessary if at times of heightened international tension they are not to be ignored as unrealizable nor to be written off as useless in moments of comparative calm.

This paper undertakes a critical review of some of the reforms that have been proposed concerning the UN. While widely debated, they have as yet been granted little space on the agenda of international diplomacy. The reforms may be subdivided thus:

(i)   projects for creating an Assembly of the Peoples of the United Nations, which would directly represent citizens rather than their governments;

(ii) proposals for the reform of the International Court of Justice;

(iii) proposals to modify the Security Council, and, especially, the veto power of its permanent members.

These ambitious proposals have been widely supported by pragmatic argumentation, while less attention has been given to the underlying theoretical rationale. This article, therefore, will concern itself more with the latter. The proposals to be considered belong to a specific current of peace thinking: that which proposes to enhance global security by creating appropriate international legal institutions. First, however, we need to specify both the potential and the limits of what I shall call, following others, *legal pacifism*.

2. *Legal Pacifism: Underlying Rationale*

A commitment to the value of peace unites individuals with various motivations, instruments and objectives. Full and precise taxonomies of peace thinking have been developed (Bobbio, 1984; Ceadel, 1987; Harle, 1989; Scheler, 1931). Legal pacifism, as one possible means for confronting the problem of war and peace, shares the merits and limitations of every judicial approach to social problems, being essentially normative. It differs from other forms of peace thinking in that it concerns itself not so much with the causes of conflicts as with ways of preventing and resolving them.

The judicial approach encounters special problems in the international sphere, which is a system characterized by the absence of a central authority capable of imposing a sentence on those – mainly states – who are found guilty by the court. Consequently, an essential part of the work of legal pacifism involves attempts to create supra-national institutions with legislative, judicial and executive powers.[2] Not all advocates of legal pacifism, however, deem it necessary to create an international executive power. William Ladd (1840), for example, held the creation of a legislative power and an autonomous international judicial power essential, but considered that the executive power should be exercised solely by public

opinion, which he optimistically baptized 'the queen of the world'.

From one point of view, the importance of legal pacifism is enhanced by the absence of an international executive power: while the internal disputes within individual states may be resolved without recourse to force, since there exists an executive power with many instruments at its disposal to impose its will on the parties, in the international sphere there exist only two alternatives: either to submit to the decision of an arbitration which lacks the means for coercion or instead to accept that conflicts will be regulated according to considerations of political opportunism – not least the relative force at the disposal of the contenders.

From this perspective of wilful worldly wisdom the merit of the judicial approach lies not so much in its intrinsic ability to overcome problems that result from interstate rivalry, as in the absence of more efficacious solutions. It is not surprising therefore that the battles waged by legal pacifists have been at the same time both huge successes and total failures.

The success of legal pacifism cannot be denied when we recall that today's international institutions themselves and the norms of international law are indeed its fruits. Institutions such as the UN and the EC are much more highly developed than would have been imagined possible by those thinkers and philosophers who as early as the 17th and 18th centuries had envisaged international institutions with the responsibility for guaranteeing peace and cooperation between peoples (Archibugi, 1992). The same goes for today's international law, which is certainly much more highly developed than could have been imagined from any 17th or 18th treatise on the law of nations (Bull et al., 1990).

On the other hand, the role of legal pacifism appears of scant import if we consider whether it has succeeded in holding in check and regulating international conflicts. For nearly half a century UN actions have been repeatedly ignored or circumvented by member states. In all the conflicts both great and small, both explicit and latent, the rules dictated by the raison d'état have taken pre-

cedence over legal principles. Indeed, the actions of the international institutions have proven efficacious only in those cases where an accord, implicit or explicit, already existed between the more powerful states. Where such agreement was lacking, the effects have been insignificant. In other words, the role of international organizations has been most significant when least needed, and irrelevant when most needed.

Legal pacifism has thus achieved an excellent logical construction, but one with little impact in reality. The discrepancy between precept and reality is barely counterbalanced by the fact that the former has become an integral part of international politics. The invasions of Afghanistan, of Granada, of Panama, etc., have been condemned by the international community and public opinion on the grounds of principles of law: without these principles, any condemnation would have remained exclusively moral.

Legal principles, in other words, are in part constrained to be the precursors of reality by being declarations of good intent rather than of actual positive legal rights. These principles must therefore be assessed not on the grounds of their probable effective application in the world today, but on the grounds of their utility in an indeterminate future. The Universal Declaration of Human Rights was a declaration of good intentions 45 years ago and still is to a great extent today, but by following its outlines it has been possible on a daily basis to defend some fundamental and quite concrete principles.

3. *Proposed Reforms*
The reform proposals to be considered here are intentionally ahead of our time, at present not supported by any of the principal powers on the international stage. Yet they represent an attempt to create a world order based on consensus and the rule of law.

The following body of literature on the reform of the United Nations will be reviewed here:

(i)   The Conferences on a More Demo-

cratic United Nations (CAMDUN Conferences). To date, three have taken place, at the New York UN Headquarters (13–15 October 1990), at UNO-City, Vienna (17–19 September 1991), and the third in Accra (26–29 November 1992) (Barnaby, 1991; Segall & Lerner, 1992).
(ii)   The conference organized by the Lelio Basso International Foundation for the Rights and the Liberation of the Peoples (Rome, 15–16 April 1991) on the theme of 'The UN between War and Peace' (Falk, 1992, Ferrajoli & Senese, 1992).
(iii)   A study promoted by the Ford Foundation and the Dag Hammarskjold Foundation on the institutional reforms needed in the ambit of the UN (Childers, 1990; Urquhart & Childers, 1990).
(iv)   The new UN Charter proposed by Harold Stassen (1990), one of the original authors of the 1945 Charter.

The following sections present a critical analysis of reform proposals in the light of the most complex political theory of legal pacifism. They will be treated in three groups: those relating to the creation, in the ambit of the UN, of a peoples' Assembly; those concerned with the International Court of Justice; and finally those concerned with the Security Council.

4. *A UN Peoples' Assembly and its Political Theory Implications*
The most radical proposal from the CAMDUN Conferences concerned the institution of a UN Second Assembly, which, in accordance with the preamble of tne UN Charter ('We, the Peoples of the United Nations'), would represent the peoples rather than their governments. This is certainly not the first time that such an ambitious proposal has been put forward: a World Parliament is an idea that has been dear to philosophers for centuries. In recent years, however, a number of new proposals have been made to the extent that a review of these proposals has been found necessary (Newcombe, 1991).

Most present-day proposals have reached an impasse more on the possible procedures for 'electing' this second assembly than on the duties with which it is to be entrusted. Indeed, paradoxically, even the subdivisions of electoral colleges are being discussed before any specification of the powers of the assembly has been made. This is a considerable stumbling block, since there are robust theoretical arguments to justify and give credibility to such an ambitious institution which need to be emphasized. It must be explained why the governments, who represent the states in the General Assembly, should not be the sole institutions authorized to represent the citizens of the world.

An analysis of this sort requires us in the first instance to recognize the state as the central figure in international relations today. The very notion of thinking and acting politically presupposes the individual's citizenship in a state; there can be no politics without a *polis*. Notwithstanding that states may be imperfect institutions of the human communities, since linguistic, religious, ethnic and cultural homogeneity may be lacking, they will always constitute the first and chief institutional point of reference for the individual.

The function of states is not only that of allowing individuals the right to participate in the running of the *polis*, but also, importantly, that of representing their own citizens at an international level. Individuals have no role in the international community, except as citizens of a state. As Martin Wight (1966) has wittily noted, even the Pope, the individual who might be considered most inclined to set aside secular power, did not feel at ease in the sphere of international relations until he had become the first citizen of a state.

The recent collapse of some nation-states – most notably Yugoslavia and the Soviet Union – makes it clear how problematic it is for individuals devoid of a state to have voice in today's international arena. These cases lead to a search for other and more progressive models of organization of international society.

The deep identity crisis currently faced by several nation-states (far beyond the dissolution of the Soviet Union and Yugoslavia: I am here also thinking of the emergence of regional conflicts in countries as diverse as the United Kingdom, Italy and Spain) should not necessarily lead us to believe that we are experiencing the end of a form of political organization which has lasted, in one way or another, for several centuries. We must differentiate between the crisis of the nation-states to be credited to internal contradictions (such as the rise of ethnic conflicts) and those which are related to the difficulty of coping with international integration.

Once it has been accepted that states play the role of an oligarchy in the realm of international politics, limits must be set. If the state, as an institution based on the inhabitants of a particular territory, acts in its own specific interests, then it obviously cannot satisfy the needs of its own citizens if it is operating in an international community devoid of other institutions.

The first justification for the existence of the state is that of security: the *Leviathan* liberates the individual from the terrors of the natural state, and thus provides conditions sufficient for his/her acceptance of the role of subject. Following on this observation from Thomas Hobbes, an organic theory of the power of the state has been constructed, positing the impossibility of extending the social contract beyond the state's frontiers and leaving international relations in a condition of anarchy (Bull, 1977).

The weak point in the Hobbesian line of argument lies in the fact that individuals cannot be considered free from a condition of fear as long as they are still exposed to the threat of war. Until the state can make the threat of war disappear, its promise to liberate its subjects from the dangers of war cannot be considered fully realized, and consequently the subject has not the obligation to obedience.

In the nuclear age, the ability of *Leviathan* to 'wound' prospective aggressors can no longer be considered a method of fulfilling the above promise; as strategic studies have shown, the states least exposed to a nuclear threat are those who neither

possess them nor belong to alliances armed with nuclear weapons (Prins, 1983). This is the crucial contradiction for the state: on the one hand the full realization of *Leviathan* requires it to seal a pact of peace with other states, yet the state cannot undertake this without significantly changing its sovereign power.

Still more problematical is the situation for those states which are obliged by reason of their constitutions to fulfil the wishes of their own citizens, i.e. the democratic states. The absence of truly international institutions often presents them with dilemmas. Are they to defend their citizens' interests at the expense of other states, or are they to follow the rules of international democracy at the expense of their own citizens? They thus find themselves in a contradictory situation which can be solved only by entering into a contractual relationship with other states (this is a point emphasized by Held, 1991, 1992).

To find a way out of this contradiction, political theory indicates essentially two ways for arriving at an institutionalized system of states: the first is to set up a confederation of sovereign states, in which each member would renounce its sovereignty insofar as its relations with other states were concerned, while the second would be to enlarge the experiment already undertaken inside the individual states, and thus substitute the multitude of sovereign states with a worldwide *Leviathan*.[3] Neither solution appears to resolve the unsettled problems of the international community.

The confederal model, which took a global form first with the League of Nations and later with the United Nations, is based on the principles of equal sovereignty of states and non-interference. Countries are represented by their governments, which are recognized on the basis of their de facto existence rather than on any grounds of legitimacy. Without these preconditions it would not have been possible to secure the membership of governments and countries with such widely differing political systems and values. The defects of this model are closely connected with its advantages: on the one hand the principle of non-inter-

ference must be safeguarded to avoid 'the big fish eating the smaller' with interventions often dictated by pretexts; on the other hand, this principle sanctions the absolute autonomy of governments in their relations with their own subjects, and the total inseparability of the latter from the actions of their governments. Until a state breaks the rules of the international community, there exists no channel for censuring its activities.

It is not by chance that in the UN, itself blessed with a more advanced legal system, the traditional view of international law has prevailed, as was evident in the Gulf War: on the one hand, no sanctions for the internal abuse of power; on the other hand, sanctions inflicted on all the Iraqi population for a violation of international law committed by their government. In the confederal model, in fact, individuals are represented at the international level by their particular governments only.

The failings of the confederal model are linked to more than the fact that some members have not been democratic. In fact if they had been, the objective of the political struggle would not have been in the sphere of international relations, but rather would have been the achievement of democracy *inside* individual states. The fundamental reason why the confederal model does not of itself secure international democracy is because each institutional state, however democratic, is forced to act on, and represent, the interests of its citizens on the basis of its own raison d'état.

Democratic regimes do not necessarily follow the same principles at an international level: the USA and Israel have constitutions among the most democratic in the world, yet this has not impeded their violation of the most elementary norms of international law. Nor do dictatorial regimes necessarily behave in a like manner in their international relations: the former Soviet Union, for example, carried out not only interventions in open violation of international law – as in Hungary, Czechoslovakia and Afghanistan – but also interventions in support of national liberation movements, for example the Palestinian cause and the anti-apartheid movement.

These appear to be the ambiguities in the concept of international democracy: it may be understood as a *democratic* union of States, regardless of whether some or even all of them are *autocratic*, or as an *autocratic* union of democratic states.[4]

The confederal model has traditionally been opposed to the federal state model. The extension of the federal model to a world scale is based on radical hypotheses, since it implicitly assumes that the existence of a constellation of states is merely a particular inheritance of history (see Hutchins, 1970). The elements which unify individuals across states are seen as just as important as those which link citizens as subjects of a specific state. For a system of states to be founded on democratic principles, its supporters affirm, it is necessary that there be the direct participation of individuals, for example through the vote. The objections to this idea are twofold: the first concerns its feasibility, the second its desirability.

Federal states formed on the basis of a consensual accord of the parties – as with Switzerland, the Netherlands, Germany and, above all, the United States – have come about from the necessity of concentrating their forces for defence against an external foe. However diverse their motivations may have been, these states figure as experiments similar to that of the Hobbesian *Leviathan*. Could therefore the same system function in a dimension devoid of external agents, such as the entire world? There are obvious reasons for doubting that the parties, i.e. the states, would be consensually disposed to transfer their forces to a central power – at least as long as states possess the attributes which characterize them in the modern age. It is of course possible for a federal state to be formed by the imperial imposition of one party on others. However, if this state fails to conform to the rules of democracy at its inception, there is no reason to believe that it will do so once instituted.

As to the desirability of a world federal state, it is necessary to check how much it would be compatible with the effective operation of democracy. The concept of a state presupposes the existence of a unity of purposes in the norms applied by the several parties. For much of the world's population, these norms would seem alien to their particular historical and cultural traditions, and would be considered as authoritarian impositions. The creation of a world state, even in the remote future, can only imperfectly take into account the historical, cultural and, in the widest sense, anthropological peculiarities of the inhabitants of our planet (Thompson, 1992). The current crisis in multi-racial states probably constitutes the best indication of the difficulties inherent in administering large communities. Rousseau's empirical observation that democracy requires small communities in order to function should be constantly borne in mind.

Finally, the making of a world state with a monopoly on force, even if conceived and realized with the most perfect democratic constitutional engineering, would risk being transformed, as does any institution, into something at variance from the original intentions. There could be the qualification, however, that this world state would have such a concentration of force as to render any successful rebellion impossible – but then a world federal state becomes an aspiration which jeopardizes democracy (Berns, 1970).

Could there be a third model, uniting the positive elements of both the confederal and federal models? Is it possible to limit the state's monopoly of decision-making at the international level without ending with a world state? The attainment of democracy at the international level requires us to steer between the Scylla of a mass of independent autonomous states and the Charybdis of a planetary *Leviathan*. To achieve this goal, a new concept of world citizenship must be formulated.[5]

First, it is necessary to clarify that a theory of world citizenship is something completely different from a doctrine of natural rights. Any theory of natural rights is necessarily founded on a notion of the human being as outside an historical context and free of the baggage of social relationships to which the individual is constantly attached. Following the path traced by Rousseau and Kant, it is necessary to found

a theory of the Rights of the Citizen, where the citizen is seen as at the same time both a citizen of a state, with which he or she shares some historical and cultural values, and as an inhabitant of the whole planet.

The specific route which leads to world citizenship suggests that the *cosmopolis* could be an end of history and not an attainable phenomenon – a political aspiration which must come to terms with the everyday actual citizenship, exercised by individuals within the narrower bounds of their own *polis*.

To strengthen international democracy, and to overcome its ambiguities, cosmopolitan democracy aims to give voice to citizens in the international community. The development of institutional linkages between national civil societies would help to strengthen democratic procedures both in international society and within the single national components. But this does not imply that current states should be considered as a transitional form of political organization to be dissolved in a federal union which would have the same characteristics of national states but on a larger scale. On the contrary, several of the functions carried out by sovereign states should be integrated into the cosmopolitan model.

The theoretical credentials of every reform project of existing international organizations, and especially those for the formation of an Assembly of the Peoples, are based on recognition of the shortcomings of the confederal and federal models. These projects must be seen as attempts to give an institutional form to a cosmopolitan ideal.

The pragmatic reasons which prompt this institutional innovation may be summarized as follows:

(i) In the principal institution of the international community, the General Assembly of the UN, the electoral criterion of 'one state, one vote', is scarcely 'democratic': the vote of Luxemburg has the same weight as that of China, India or the USA. This means that governments which represent fewer than 10% of the world's population, or less than 5% of the world's gross product, may potentially cast the majority of votes in the General Assembly. As long as the General Assembly has little effective power (as has been the case up to now), one may easily put aside this problem by taking the point of view that the important decisions are taken by the Security Council – or, more realistically, by the superpowers. However, if we are to increase the real power of the United Nations, the problem of the differing sizes of states must be confronted one way or another.

If it is assumed that governments should be the only institution to represent their own citizens, the problem could be easily solved without creating a new institution, simply by giving weighted votes, according to population and/or other criteria, to the governments of each country in the General Assembly. For example, to strengthen the political role of the General Assembly, Stassen (1991) has proposed the weighting of states' votes according to a composite index which includes population, national income and productivity growth.

However, the problem of the differing sizes of states needs to be tackled more radically, leaving aside a confederal logic; in other words by creating a parallel body to serve as the expression of individuals and not of their governments. This means accepting of the principle of non-interference of one state in the affairs of others, as laid down in international law. This principle, however, can be maintained only if supported by an autonomous institution authorized to 'interfere' in the internal affairs of each state. On a limited scale, an experiment of this type has already been realized within the European Community. This is based on, first, a body endowed with effective power, the Council of Ministers, with the 'one country, one vote' criterion; and, second, on a body with limited powers, the European Parliament, elected by universal suffrage and with the number of members roughly in proportion to the populations of the member countries.

(ii) Countries are represented in the UN General Assembly on the criterion of their de facto control rather than that of their legitimacy; in other words, to gain a seat in the Palace of Glass a political force must hold de facto control over a given territory,

without necessarily representing all the citizens of that country. Within the confederal model framework, the problem may be solved by establishing that only those governments which democratically represent their citizens may be accredited to the UN. There have been judicial developments along these lines: the failure to recognize the government formed by the coup d'état in Haiti, the proposal to withdraw recognition of the de facto government of Burma and to accredit the duly elected one, etc.

However, to abolish entirely the principle of effective control in bodies such as the General Assembly and the Security Council risks being counter-productive because it could all too easily lead to a marked divergence between legal norms and reality. The consequences could be unpredictable: how many of the current members have the credentials to be members of the UN on the basis of a rigorous application of its own Charter and of the Universal Declaration of Human Rights? How should one treat governments which are de facto but not de jure? Should they be ignored by the 'democratic' international community, or be considered as enemies to be fought? In this last case, how else but by means afforded by other states? This certainly does not mean that the principle of effective control should always prevail over the principle of legality, but the former might be given greater weight in the international community in transient situations or in cases of extreme illegality.

A body representing citizens would have much greater flexibility: those countries which declined to nominate their own deputies according to democratic norms could be excluded, and in controversial cases the Assembly of the Peoples would have the authority to accredit the political forces deemed to be the proper representatives of the population. By means of its very existence the Assembly of the Peoples would constitute an instrument of censure towards autocratic governments, who would see their own citizens voicing opposing views to those that they were putting forward in the General Assembly.

(iii) However, the efficacy of an Assembly of Peoples would be limited to countries with autocratic governments. Even in democratic states there may be significant differences between the opinions expressed by governments and those expressed by the representatives of individuals. In the first place, the Assembly of Peoples would allow direct representation of national minorities and of the opposition. In the second place, it is likely that within the same political force differing tendencies will develop, with the national representatives in the General Assembly more inclined to sustain 'state-centred' policies, and the representatives of the Assembly of the Peoples having a greater propensity towards 'global' policies. Take the case of the European Community: the European Parliament shows a greater propensity towards 'European' or 'global' solutions than does the Council of Ministers.

The most elaborate and realistic proposal for instituting an Assembly of Peoples, and one which has gained the widest support was put forward back in 1982 by Jeffrey Segall and the International Network for a UN Second Assembly (INFUSA). No less than 94 nongovernmental organizations have already supported it, and INFUSA has actively promoted it with a view to getting the UN Secretariat to institute a Commission to study the conditions under which this proposal might be made to work (Segall, 1990, 1991).

Segall's proposal suggests that the 'Second Assembly' should be an exclusively consultative body of the General Assembly. In this case it could be set up without having to modify the existing UN Charter: Article 22 states in fact: 'The General Assembly may establish such subsidary organs as it deems necessary for the performance of its functions'. This means it could be instituted by the General Assembly alone, without requiring the approval of the Security Council (where it might be blocked by the veto of a permanent member).

The electoral system would not differ substantially from that pertaining for the European Parliament: a number of deputies for every country roughly proportionate to its population, even if 'corrected' to safeguard

the populations of the smallest countries. In one illustrative scheme of the proposal, out of a total assembly of 560 members, the most populous country (China) would have 31 seats, while countries with up to one million inhabitants would have one seat each.

The electoral criterion proposed by the INFUSA initiative is certainly not the only one. Many other electoral systems could be adopted which would safeguard minorities and allow the assembly to reflect, within certain limits, the real power of the various world regions. Some have hypothesized a weighting criterion which would take account of the income of the various countries, reasoning that this may be a suitable indicator of their relative international power and influence. However, an hypothesis of this type would violate a cardinal principle of democracy: decades ago, income ceased to be an electoral criterion within nations.

Other projects foresee a transitional device. In one of these it is suggested that the nongovernmental organizations recognized by the UN might constitute a Consultative Assembly. Another method proposed for permitting the direct participation of citizens is that of making elective at least one of the five members who make up a national delegation at the General Assembly. It has further been proposed that a national delegation should include members nominated by the opposition as well as by the government.

5. *The International Court of Justice*
The potential role of the Court was underlined in the course of the Fondazione Basso Conference, while it received less attention at the CAMDUN Conferences. This difference in perception, and also of the evaluation of the priorities to be pursued, demonstrates the urgent need for reaching a systematic and integrated view on projects for reforming international organizations.

As far as the proposed modifications to the Court go, one can only remark that there appears to be nothing new under the sun, in that they do not diverge significantly from those already suggested by Hans Kelsen (1944). Kelsen allocated a central role to international jurisdiction in achieving the non-violent resolution of conflicts. He was convinced that an international judiciary would be the first step towards a political world order: 'Until it is possible to remove from the interested states the prerogative of resolving questions of law and transfer this permanently and universally to an impartial authority, all further steps along the road to world peace are to be excluded'. At the same time Kelsen held that the formation of an international judiciary would be the line of least resistance, and would not encounter the same objections that states might pose to an executive power or a worldwide legislature.

Kelsen recalled that 'long before Parliaments became legislative bodies, Courts were instituted to apply the law to specific cases', and that 'we have good reason to hold that international law . . . will develop in the same way as the primitive law of communities from before the development of the state' (p. 58): in other words, that judicial power antedates legislative power. However, Kelsen may have undervalued the crucial difference between the national and the international situation, which, to repeat, consists of the want of executive power in the latter. In pre-state societies, in fact, the executive power was antecedent to the judicial power. This difference can only drastically reduce the role of international judicial power.

The UN Charter, adopted not long after Kelsen's work, largely disavowed not only his predictions but also his hopes. It sanctioned the existence of a core of world governance in a much more marked manner than could have been hoped. On the other hand, the Court became crystallized in an antiquated role and was ill-adapted to incorporate the more innovative elements of that same UN Charter. The Court's Statute poses precise limits on its jurisdiction: in the first place, its jurisdiction is limited solely to cases in which the interested parties decide to apply to the Court in terms of 'a model which is much more arbitrational than judicial' (Ferrajoli & Senese, 1992). In the second place, the Court's competence is

limited to relations between states, and it has no jurisdiction over cases which concern relations between individuals and their respective states.

The Court thus reflects a state-centred view of international law, owing more to the League of Nations than to the United Nations. The modifications interpolated into international law have rendered the Court completely baroque, and unable to carry out to the slightest degree the ambitious role that jurists had in prospect for it. Because the Court is an integral part of the present international order, three profound transformations are required, which may be summarized as follows:

(i) Returning to Kelsen's suggestion, the Court's jurisdiction should be made mandatory – as was recently restated in the Fondazione Basso Conference (Ferrajoli & Senese, 1992). It is evident that passing a verdict on matters between states is of little practical use unless this is not accompanied by measures against it (e.g. sanctions); these would have a judicial (and thus a political) merit, above all in cases where the Security Council is unable to approve a resolution owing to the veto of one of its permanent members.

(ii) The Court must furthermore extend its jurisdiction to cover cases which concern the relationship between individuals and their governments. It is absurd that, within the existing order of the UN, individuals must be safeguarded in their relations with their own governments by non-judicial bodies, such as for example the Commission for Human Rights. This means abandoning the human rights sanctioned by the Universal Declaration, and ratified by numerous conventions, to the exclusive sphere of interstate relations, and thus to the inflexible laws of raison d'état.

Rendering the Court a competent judicial body obviously has broad theoretical significance. It would indicate that relations between a state and its citizens also concern the world community, up to the point that this possesses a judicial body independent of both states and interstate organizations. The Court would thus be a body genuinely exercising cosmopolitan law.[6]

It may be objected that widening the competence of the Court to embrace individuals would lead to its becoming so overwhelmed with cases that it would be unable to function. However, once it has been accepted that individuals have the right to turn to international judicial bodies to safeguard themselves in respect of their governments, many expedients may be found to enable the Court to function. Ferrajoli & Senese (1992) have suggested that access might be granted to the Court to a selected number of designated nongovernmental organizations such as Amnesty International. Another criterion might allow individuals to have recourse to the Court after national legal channels had been exhausted, following the procedures already in use at the European Court. A third criterion might be to consider cases collectively rather than individually, and to give hearings to groups of persons against their governments (for example, the Argentinian 'desaparecidos'; banned political organizations; racial, political and religious minorities, etc.). In short, these proposals are not intended to make this body some sort of Planetary Court of Appeal. Its function would be much more effective if it concentrated on flagrant and recurrent cases of the violation of human rights.

(iii) Finally, it is necessary again to take up Kelsen's idea of governmental individual responsibility for war criminals and for the crime of war. Ferrajoli & Senese have proposed a significant extension of Kelsen's idea of enlarging individual responsibility in governments to all breaches of human rights. There are already significant cases where 'crusading judges' in some countries have, on the basis of radical interpretations of existing law, condemned those responsible for crimes against human rights in other countries (discussed in Cassese, 1988, 1990). These cases are significant because the criminals have been both condemned and sentenced in a country not their own. On the other hand, even though these cases may be important, since they appear to be a prelude to a new legal system, they are based on profoundly restrictive criteria and are unlikely to be substantially extended.

It is not by chance that the greater part of these 'crusading judges of international law' come from the more powerful countries, and especially the United States; the sentences they hand down place a great deal of faith in the existing balance of power between states. The judge of a stronger state may condemn the torturer of the weaker, but we can be sure that the reverse does not apply. Noriega is a case in point: there is certainly no shortage of good reasons for the Panamanian dictator to be tried by an international tribunal or even a US one, but there are at least equally good reasons for President Bush being tried before a Panamanian court.

Again, the Court would not have a possibility of directly applying a sentence: in other words, the Court would not have at its disposal the executive powers to imprison a guilty or aggressor dictator and his cohorts, but only the power to condemn him. However, even that condemnation would mark an important first step as a deterrent against committing crimes against human rights: following the condemnation, any legitimate authority could be authorized to implement it. Once the independence of the judicial authority had been established, then the function of the 'secular arm' could be delegated to the states in the absence of a world executive power.

Introducing the principle of individual responsibility would mean establishing correspondence at the international level between the rights of the individual citizen and the duties of other citizens, at least as far as these represent the non-violation of the rights laid down in the Universal Declaration. In practice this would apply to that restricted group of citizens who are able to escape national justice because they themselves hold executive power: that is to say those citizens who perform the function of governors.

6. Proposals for the Reform of the Security Council of the UN

The UN Security Council is, according to the existing Charter, the body with responsibility for taking executive decisions.

Decisions on non-procedural questions are taken on a vote of 9 out of 15, but must include a favourable vote by all the 5 permanent members. Aside from any judicial euphemisms, the permanent members hold the right to veto all the decisions of the Security Council. As a result of the existing procedures permanent members avoid the embarrassment of declaring the decision of the majority invalid since only one contrary vote will fulfil this function.

The victors of World War II have arrogated to themselves crucial power over this body of their own creation (Köchler, 1991). Here we are confronted with something with no democratic justification: in no other constitution or organization founded on democratic principles is it accepted that some few members alone may invalidate the decisions of the majority. To understand the legal absurdity of this it is sufficient to imagine what would happen if the power of veto existed within a national political system: it would not be easy to imagine a national government where the ministers of some regions could exercise veto power.

Not only this, but the way in which the superpowers have exercised the veto within the Security Council has far exceeded the intentions of the 1945 Charter. This laid down that: (1) decisions on procedural matters should be taken on a majority vote of 9 out of 15, without requiring an affirmative vote by permanent members (Art. 27, par. 2); (2) parties to a dispute must abstain from voting (Art. 27, par. 3), as every legal logic dictates. In practice, the permanent members arrogated to themselves the right of deciding both which matters were procedural and which were substantive, and whether or not to vote in cases where they were directly involved, thus blocking all resolutions against themselves.

The existence of the veto power also contravenes one of the supposed principles of the UN Charter, which stipulates the equal sovereignty of states (Art. 2, par. 1). It is not therefore surprising that ever since 1945 both smaller states and jurists have been opposed to it. The prominent name is once again Hans Kelsen (1946), who, furthermore, has exercised a crucial role as an

ideologue of the United Nations. Of course, it may be argued that a legalistic critique of the veto power is not relevant since it concerns relations which are political rather than strictly legalistic.

At the end of World War II the power of veto could be interpreted as a legal codification of the agreed status quo, with the victorious powers not wishing to oppose each others' freedom of action. If this legal abuse of power has succeeded in halting conflicts, it may have some justification. It would certainly not have been better to have had a Security Council founded securely on democratic principles, but which had also helped to bring about a war between the superpowers: the motto *Fiat iustitia, pereat mundus* constantly reminds us to temper the desirable with the practicable.

However, even if we should judge the power of veto on grounds of its practicality rather than its rationality, it can only be considered today as a sterile inheritance of the past rather than an element of international stability. The world picture has changed profoundly since the end of World War II, and the decline of some powers has seen the rise of others. The most emblematic case has been the relative decline of the UK and France and the rise, above all economically, of Japan and Germany.

Outside the Western World the role of Third World countries has increased enormously in terms of population, wealth and military power. But the most significant and recent change has been the dissolution of one of the superpowers: the Soviet Union. Apart from the entry of the People's Republic of China into the Security Council, no other single change on the world scene has so affected the composition of the Security Council since it was established.

In this new international political situation, the present structure of the Security Council represents the principle obstacle to the smooth functioning of the UN. We need to ask how long it will remain acceptable to preserve the political balance of power resulting from the end of World War II, and whether it is not now time to make the abolition of the veto a principal political objective of the peace movement.

Various proposals for modifying the Security Council have accumulated over the years. Not surprisingly they have remained a dead letter, given that every modification to the UN Charter requires a vote in favour by all the Permanent Members of the Security Council (Arts. 108 and 109, par. 2). This being so, under the terms of the Charter, the General Assembly itself has no sovereign powers over the UN constitution. In this situation, every proposal must take account of the power at the disposal of the permanent members. Obviously, proposals for modifying the Security Council voting procedures are those which stand the least chance of being approved. Nevertheless, the dissolution of one of the permanent members, the former Soviet Union, may constitute an occasion for modifying the Charter – and not only formally. This might be achievable if certain states as well as world public opinion could exercise pressure in this direction.

Let us now consider the proposals advanced during the CAMDUN Conferences, ranging from the 'maximalist' to the 'minimalist'. The latter may be legally less satisfying, but they at least have a greater chance of being accepted.

(i) The most radical is, obviously, that of abolishing the veto *sic et simpliciter*, leaving Security Council decisions subject to a qualified majority vote. Proposals to make the Council completely elective, thus denying the 'Five' not only of their veto power but also the right to serve as permanent members, have received scant attention. Such a model would not only stop the Council from reflecting the existing international balance of power, but would also fail to enhance it democratically: we could imagine a Security Council dominated by the smallest states who had been notably advantaged by the 'one state, one vote' system in the General Assembly. Unavoidably, in a body such as the Security Council, which is entrusted with 'primary responsibility for the maintenance of international peace and security' (Art. 24), there must be countries represented with the necessary force at their disposal.

(ii) A subordinate proposal foresees a

situation where the veto of a permanent member might be invalidated by the unanimous vote of the other members. Thus, one contrary vote would no longer be enough to invalidate a Council decision.

(iii) In other proposals it is suggested that the Security Council should be opened up to the existing regional organizations. A prime candidate for permanent membership would obviously be the European Community. There is no valid reason why France and the UK should be permanent members while other EC countries, Germany to begin with, should have a much subordinate role in the UN. In principle, the Security Council could become a point of contact between existing regional organizations such as the Organization of American States, the European Community, the Organization of African States or the Arab League (Köchler, 1991).

(iv) Stassen (1990) has proposed broadening the Security Council to 18 members, including two new permanent members drawn from among the most populous countries of the 'South' (probably India and Brazil).

(v) Another minimalist proposal, which would not require the approval of the Security Council but only that of the General Assembly, foresees the formation of a Committee of the Assembly composed of 15 members elected in rotation, who would be geographically representative and at the same time not members of the Council. This Committee would assume responsibility for reporting to the Assembly on the initiatives undertaken by the Council for resolving disputes and armed conflicts by peaceful means. This would mean, in other words, creating an entirely elected 'shadow' Security Council, tasked with evaluating the work of the actual Council.

There are many reasons for doubting whether most of these proposals will ever be accepted on a consensual basis – not least because their usefulness, in the end, lies in restricting those members who have most power and who can use fully legal means to block any modifications to the Security Council. However, this does not diminish their merit. It is scandalous that the only state continually to protest against the veto

power of the permanent members should be Libya. Instead it should be principally the Western democracies and the states of smaller size who should be the spokesmen for a progressive transformation in international judicial relations.

7. *Final Considerations*

This paper has considered three concrete proposals concerning the United Nations: those relative to the formation in the heart of the UN of an Assembly of the Peoples; the proposals for the reform of the International Court of Justice; and those on the modifications to be undertaken to the Security Council. The aim was to undertake an analysis of what legal pacifism, and in its ambit what I have defined as the cosmopolitan model, offer to the theory and praxis of international relations.

These proposals inevitably lead in a wider sense to the efforts of those aiming to establish democracy in international society. Democracy does not seem attainable by simply adding together individual democratic states, nor achieving democratic communities of states without questioning their internal constitution. This justifies the proposal of an alternative model of international organization: the cosmopolitan one, which differs considerably from both the confederal and the federal models (Held, 1992, provides additional arguments for cosmopolitan democracy). Proceeding towards the realization of the cosmopolitan model necessarily implies that states will have to allow, on a consensual basis, the world community to interfere in their internal affairs. In the long term, this process cannot but undermine the nature of the modern state, founded as it is on dominion over a given territory and population.

The perspective offered belongs to the tradition that, in an historical dimension, queries how to overcome the state as an institution. It also includes, however, a decisive qualification, in assuming that the persistence of the role of the modern state, as well as its difficulty in fully realizing its promise of democracy, depends largely on its failure to integrate itself internationally

with other states (Kaldor, 1990). It suggests that a democratic state is an imperfect political entity as long as there exist no institutions able to link democratically its citizens to the citizens of other states. This is because a large share of the political problems in government agenda, including security and environment, are only partially addressable by intergovernmental organizations, since the interests of one part will often contradict those of the global community.

The debate on the proposals here considered is pervaded by two questions: can they be realized? And, if so, in what measure could they lead to a real transformation in international relations?

With respect to the first question, there is a good possibility that at least some of the proposals will, in the long term, come about. On the one hand, problems typical of our age – such as those concerning the environment and sources of energy or those connected with growing economic integration – indicate that intergovernmental action needs to be strengthened by other organizations, less formal and more dynamic. On the other hand, there is a perceptible tendency towards widening the international community, which implies an irreversible shift towards a progressive reduction de facto of the sovereignty of individual states.

History teaches that the emergence of new institutions is possible only if there are specific interests working in that direction. The transformations occurring in international relations – the end of East/West bipolarism, the emergence of Third World countries as the subjects of international politics, the difficulties experienced by Western democracies in fully realizing themselves within the confines of their own state systems – lend weight to those political and social forces which have an interest in extending the influence and functions of supranational institutions. It is increasingly evident that decision-making is no longer the exclusive province of the *polis*. Any attempt to realize a model of political democracy within a single country must take account of the emergence of a global community: what the cosmopolitan model proposes is, in the end, simply the creation of the appropriate institutions where citizens of the planet may discuss the problems and take the decisions that shape their destiny.

This does not necessarily mean that there must be a substantial transfer of power from the states to the new institutions. Not only would it be unrealistic to expect this, it would not be desirable either. The challenge of the cosmopolitan model is not that of substituting one power with another, but in reducing the role of power in the political process while increasing the influence of procedures. If we view the proposed reforms not as a panacea to cure the ills of the world, but only as an additional way of confronting them, we may better understand their usefulness.

NOTES

1. For a review of the 'realistic' proposals, see Müller (1992). More radical proposals were made as early as in the 1960s by Clark & Sohn (1966) and by Falk & Black (1969). See also Falk (1981).
2. The separation of the executive, judicial, and legislative powers in the international sphere dates back to such now-forgotten peace thinkers as Justus Sincerus Veridicus (1796) and William Ladd (1840).
3. On the classical opposition between a confederation and a federal state, see Friedrich (1968). Middle stations, such as common security communities, not involving the direct participation of citizens in international affairs, can be treated as confederations.
4. International democracy has been the subject of a significant debate among Italian scholars; see the essays by Norberto Bobbio, Luigi Bonanate and Luigi Cortesi in Cortesi (1988).
5. I have indicated the Kantian roots of this attempt in Archibugi (1993).
6. To separate the functions of the Court as an interstate tribunal from its functions as a tribunal for individuals in relation to their own states, it could be divided into two separate sections, the first dealing with international law and the second with cosmopolitan law. A similar model has already successfully been adopted by the European Court.

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