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QUO VADIS MUNDE? – LACK OF SPACE FOR THE RULE OF LAW WITHIN INTERNATIONAL PUBLIC LAW

I. Introductory remarks

Since already few years in a row, the world is obviously facing unprecedented, complex and interconnected challenges. It actually goes without saying that increasing violence, particularly due to armed conflicts, terrorism, deepening socio-economic fragility, growing inequality, tremendous flows of refugees, deterrent climate change, and the resounding development of new technologies – such as cyber technologies and Artificial Intelligence – cause that the contemporary world order appears to be increasingly destabilised. This matter of fact is being gradually acknowledged by the actors of international legal order, including the United Nations, European Union, states and civil societies. Admittedly, considering the abovementioned complexities, they are progressively concluding that such instrumental challenges to global security, peace and development cannot be addressed singularly on the one hand and detached from the necessary legal developments, incidentally accompanying these world's events, on the other.

Having said this, one shall recall that international public law serves traditionally as a tool to achieve and implement global solutions. However, it also faces currently significant challenges in its application and enforcement, despite its aims to facilitate global cooperation and to maintain peace. Consequently, issues of public international law and international justice are nowadays at the forefront of public debates to a greater degree than ever before, not only impacting and shaping decisions by States, but also penetrating into the national legal order(s) [for further details see, *inter alia*, 2; 6; 8].

II. Point of departure

It goes without saying that the rule of law provides a critical underpinning for democracy, correlated with guarantees for individuals. Whereas, in general, democracy establishes, who exercises the power and decision making, the rule of law guides critical concerns about how that power is being exercised. Strong rule of law thereby ensures, *inter alia*, that the transition of governing power is subject to the law(s), public offices are not being used for private gain, and especially that individuals can know and understand the law, having an access to justice for

upholding their rights and resolving the disputes peacefully within the framework of effective judicial protection. Consequently, the rule of law guarantees fundamental rights and values, allows an efficient application of laws, constituting also one of the fundamental values upon which the “global players” such as United Nations and European Union are based on.

Against this backdrop, the rule of law is universally supported at the national and international level. One shall keep in mind, however, that this is so due to divergent views and differentiated opinions as to what the rule of law actually means in practical terms. It is well known that over time the relevant doctrine has developed a set of crucial features for a definition of the rule of law at international public law level. Summarized and simplified at the same time: Firstly, the power of the State shall not be exercised arbitrarily. Secondly, the law shall apply also to instruments of the State, with an independent institution such as a judiciary. Thirdly, the law must apply to all persons equally, offering equal protection without any prejudicial discrimination. Moreover, the law, capable to be obeyed, should therefore be of general application and consistent implementation.

Arguably, through treaties and international organizations, the rule of law has been actively promoted at the international level for all these functional reasons listed above: Human rights treaties have pleaded for the rule of law as the foundation of a State respecting the fundamental human rights of individuals, on the one hand, and on the other, more recently security actors, notably the U.N. Security Council, have promoted the rule of law as a form of and a tool for conflict resolution.

II.1. Rule of Law in United Nations

Within the UN system, the rule of law is understood as “*a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.*” [9; 10] Following such an approach and understanding, an application of the rule of law undoubtedly requires a number of measures to effectively ensure an adherence to the principles of supremacy of the law, legal certainty, equality before the law, as well as accountability to the law and fairness in the application of the law, finally also democratic separation of powers, participation in decision-making, avoidance of arbitrariness, as well as procedural and legal transparency.

Notably, within the international public law system, the rule of law is particularly fundamental within fields of international peace and security as well as – significantly decreasing in recent times – political stability in the world, as pleaded by the General Assembly and Security Council in the twin resolutions on the review of the peace-building architecture. Moreover, the United Nations put forward that rule of law at the international level becomes instrumental also to achieve economic and social progress as well as development. Last but not least, however, it should be pointed out in this context that respect for rule of law aims particularly at protection of people’s rights and their fundamental freedoms [7; 8]. Therefore, the rule of law lays in a nutshell of the humanitarian and human rights agendas, constituting doubtlessly the foundation of the humanitarian protection regime, also being instrumental to, *inter alia*, understanding and addressing the reasons for displacement and statelessness, as well as to avoid the violation of fundamental

human rights in the times of war(s).

Considering the foregoing, one would argue that significant strengthening the rule of law involves “*respect for the norms of international law, including on the use of force, and recognition of the primary responsibility of States to protect their populations.*” [9] This is, however, only a good sounding the theory.

II.2. Recent recession of the Rule of Law

Against this abovementioned backdrop, it should expressively be pointed out that the rule of law and democracy has each experienced indeed worrying global recessions. Admittedly, the year 2023 was already the sixth year in a row, in which more countries declined than improved in their rule of law respect. Since the global rule of law recession began in 2016, the rule of law has weakened in around 78% of countries, being driven by growing authoritarian trends, notably diminishing checks and balances, shrinking civic space, considerably reduced governmental accountability, and significantly eroded protection of fundamental rights of individuals. Meanwhile, according to the analyses published in *World Justice Report*, justice systems have weakened in over 70% of countries of the world, leaving an estimated 5.1 billion of people globally without access to justice, violating the minimum standard of right to a fair trial, to solve individuals’ legal problems [1]. Such recession of the underlying principle of functioning of State across the world certainly calls for more and more serious concerns.

With deepening sadness and increasing frustration becomes more and more obvious nowadays that, currently, one does not need any detailed sophisticated research and/or scientific analyses in that regard, as the daily news report regularly about violation of the rule of law in one way or another, along with serious breaches of fundamental human rights regimes in number of places in the world. On the one hand, armed conflicts spread out throughout the world contribute significantly to the breach of underlying principles of humanitarian law and fundamental rights regime: suffering civilians, particularly children, in Ukraine and Gaza Strip serve as a shameful but dramatic example. On the other hand, the increasing populism resulting from the elections held in recent years in several countries leads clearly to violation of the rule of law, not seldom, ironically by (mis)use of law. Arguably, such situation not so rarely calls the existence of United Nations in question.

II. 3. Responding to crises – “New Vision for the Rule of law”

Apparently taking into consideration the recent global challenges within the world’s legal international order, the United Nations are working since several years already on so called “*Our Common Agenda*”, calling for Summit of the Future, which will be eventually held in 2024. It is the Secretary-General's vision for the future of global cooperation, calling for *inclusive, networked, and effective multilateralism to better respond and deliver for the people and planet and to get the world back on track* and outlining “*possible solutions to address the gaps and risks that have emerged since 2015.*” [9] Admittedly, considering the efficiency, accountability and credibility of the United Nations, it suffices to point out without any further comments that the world is moving – and shaking – nearly a decade later today.

In the context of this contribution, it should, nonetheless, be put forward that one of the proposals in *Our Common Agenda* considers the development of a *New Vision for the Rule of Law*, which, according to the Secretary-General, “*would put*

people at the center of justice systems.” First and foremost, it is doubtlessly crucial to note that *The New Vision* acknowledges “*the interrelatedness of the rule of law with all human rights*”, repeating the UN’s commitment to the rule of law as a principle of governance. Thus, this *New Vision for the Rule of Law* does not redefine existing terms and/or concepts. On the contrary, it is firmly grounded in already agreed documents, including the landmark 2012 Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International levels. Furthermore, the *New Vision* addresses the connection between the rule of law and several key contemporary issues, including technology and its complexities, human rights, and access to justice. From the institutional perspective it should be mentioned that this *New Vision* will be implemented throughout the UN System by the Rule of Law Coordination and Resource Group.

Having said this, one may argue that basing new approach on old legal bodies would constitute a considerable weakness of this step taken by the UN, calling for number of questions regarding the implementation mechanisms and their efficiency within this New Vision for the Rule of Law. On the other hand, however, and leaving the skepticism aside, it definitely calls for praise that the UN at least firstly has seen the problem (i.e. lack of sufficient guarantees of the fundamentals, increasing violations of human – and humanitarian – rights’ regime) finally shows its willingness to move the things forward, instead of turning away.

IV. Instead of conclusions: speaking with one voice.

It clearly follows from the analyses at hand that current legal system as developed at the international public law level appears as not sufficiently providing for guarantees of fundamental principles, being instrumental for both accurate functioning of the State(s) and protection of human rights of individuals. However, also under these duly disappointing circumstances, international public law remains a crucial tool for diplomacy, dispute resolution, and the protection of justice and fundamental human rights.

Therefore the world needs to speak with one voice, when responding to the interconnected and complex global challenges, being currently faced. This voice must sound loudly and strong. Consequently, a well-founded collective response is more than needed, however, it must be certainly guided by the rule of law, as it is the foundation of friendly and equitable relations between states and the base of fairs societies. Thus, the New Vision within the UN is principally welcome, albeit subject to further commitments, to put it strengthened into practice.

Strengthening the rule of law clearly involves respect for the norms of international law, however, it should not be forgotten again – and over again – that this respect lies not in the number of rules, procedures, agendas and conventions one might draft and adopt at this institutional level or another. On the contrary, an action is inevitably needed: Strengthening the rule of law lays particularly in its effective application and efficient implementation by each and every actor of international – and therefore also national – legal order. Rights of individuals within the international legal order depend not on what(soever) is put on the paper, but on what is put into praxis.

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FULFILMENT OF CONSTITUTIONAL DUTIES IN THE EU AND UKRAINE

Currently, in analyzing the legal support for the fulfillment of various types of constitutional duties by individuals and citizens of the EU member states and Ukraine, the constitutional doctrine does not take into account the following main