

Towards a Global Rule of Law¹

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Developed countries presume that in their societies the rule of law which guarantees the separation of powers, respect for the law, human rights and private property which means security for foreign investors, among other things. All this is true, with the respective nuances, also for many developing countries, where equality before the law applies to all citizens - in theory at least.

The rule of law of a society is characterized by respect for a legal order emanating from the will of its citizens that has been expressed without obstacles, within the framework of a representative democratic system, where free, competitive elections under equal conditions exist.

The United Nations defines the rule of law as “a principle of governance in which all individuals, institutions and entities, public and private, including the State itself, are subject to laws that are publicly promulgated, enforced equally and applied independently, in addition to being compatible with international human rights standards and principles ¹.

No democratic country today doubts the importance of the rule of law - on the contrary, one seeks to extend it to those countries where it has not been fully developed. However, little is done to *aggiornarlo* within the international system, i.e. the United Nations, where agreements are negotiated for the benefit of humanity. This would make it possible to perfect the construction of a solid juridical framework of multilateralism to move towards a real global governance due to the complexity of the problems and threats that we face today, not as individual countries but as a human species. This obviously takes political will, because it would be a matter of subtracting national sovereignty and delivering it to a body that should be

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reformulated, including the powers of the Security Council and the Secretary General. A substantive reform would contribute to increase the legal security of the international community and protect the equality of the States.

We are talking about starting a democratization of the current international system that has an authoritarian enclave imposed by the winners of the Second World War in the San Francisco Conference in 1945, as is the veto power of the 5 big ones: United States, Russia, China, the United Kingdom and France. This responded to a moment in history that has been overcome and that does not adjust to current challenges. These five countries together with 10 non-permanent members that rotate by geographical regions every two years make up the Security Council in charge of ensuring peace and security in the world.

Real power is concentrated in the countries named above, which limits the exercise of multilateral democracy by transforming it into deeds, into a kind of “protected multilateral democracy”. Voting is useless in the framework of the General Assembly, where the principle of equality of States translates into “one country one vote”, if finally, that will is subject to the power of 5 States, where it is enough that one opposes to leave without effect what is approved by the majority ².

Between 1946 and 2016 the veto has been applied on 236 occasions, almost half of which correspond to the former Soviet Union / Russia and the other half to the United States, France and the United Kingdom. The Soviets did not consult anyone when their tanks entered the countries of their orbit or when they invaded Afghanistan in 1979. Nor did China when it invaded Vietnam in 1979. President Reagan did not inform even his most loyal allies when he occupied the small Caribbean island of Granada in 1983, neither did President Bush with Panama in 1989.

It is in the use of force that this anomaly is best appreciated - according to the Charter of the United Nations, this must be approved by the Security Council ³. This provision has been violated in 2018 with the joint bombing of Syria by the United States, France and the United Kingdom ⁴. After the Civil War in Yugoslavia (1991-1995), which left more than 100 thousand Yugoslavs dead and around 4 million displaced, there was the so-called Kosovo War (1998-1999), which was the continuation of the first and which included the bombing of the city of Belgrade for almost 3 months by NATO forces, leaving a frightening balance ⁵ that included the death of three Chinese diplomats in their own embassy ⁶.

In the opinion of organizations such as Amnesty International and under the rules of International Law, the use of force by the United States and its allies constituted a violation of the United Nations Charter and its acts constituted war crimes ⁷. Thus, it is paradoxical, to say the least, that the European Union, in its celebrations for the 60th anniversary of the signing of the Treaty of Rome, has defined it as “the longest peace period in the history of Europe” ⁸.

Although it cannot be said that the use of force without the approval of the Security Council is a habitual fact, it can be said that in practice, there are no consequences or sanctions if one of the 5 major powers “breaks the global rule of law” and skips the rules of what is the legal order or “the Constitution” of the international system that

governs us as it is the Charter of the United Nations. Regarding the use of the veto enshrined in the Charter, in 70 years it has been used on average 3.3 times per year.

Two Secretary General of the United Nations have tried to reform the Security Council, without success naturally: Kofi Annan and Ban Ki-Moon; being the cornerstone the reform of the right to veto or the inclusion of new members on an equal footing.

Numerous proposals have been made developing different models of composition of the organism driven by countries that would like to enter the exclusive club of the 5 permanent ones and that have enough resources, as in the case of Germany, Japan or India; the latter with atomic weapons and more than one billion inhabitants. To this list are added Brazil, Mexico, Italy or South Africa, among others. Currently the Security Council operates with 15 countries where each of them has one vote and decisions are made with a majority of 9, if there is no opposition from some of the 5 permanent members.

If the Rule of Law must reflect equality in a substantive way, where no one is above the law and where everyone is entitled to equal protection and benefits⁹, then the international community should advance in the same terms towards a State of Global Law, which guarantees a real governance in an increasingly insecure world, where the production of weapons does not diminish - on the contrary, it increases along with the permanent danger of the eventual use of nuclear bombs. We can add many threats that now threaten the survival of the human species and the planet, such as climate change caused by human beings, pollution of seas and cities, the irrationality of the liberalization of the international financial system and consumer capitalism that seems to have no end.

Uncertainties about the future are growing, which should lead us to a reformulation of our way of life, and this requires a true world governance, which ensures our survival. While today it is impossible to think that the 5 countries that maintain the monopoly of power in the United Nations are going to cede and democratize the organization, all that remains is to insist and mobilize civil society and the political movements concerned about the future, while other roads are not visible, before it's too late for everyone.

References

¹ ¿Qué es el Estado de Derecho?

² There are many examples; you can review the times in which each member country of the Security Council has exercised its right to veto.

³ Charter of the United Nations, chapter VII.

⁴ Flagrante violación del derecho internacional. Flagrant violation of international law. Vladimir Putin declared that if Washington takes new actions against Damascus there will be 'inevitably' a chaos in international relations.

⁵ 19 countries of the Western military alliance began their campaign from the ships in the Adriatic and four air bases in Italy. NATO launched 1,300 cruise missiles, more than 37,000 cluster bombs that killed some 200 people and left hundreds injured. According to the estimates of the Serbian government, at least 2,500 people, of which 89 children, died during the attacks (according to some sources, the total number of deaths was almost 4,000), while more than

12,500 people were injured and damages to the economy and infrastructure were estimated at 100 trillion dollars. During the aggression, NATO carried out a total of 2,300 air strikes in 995 installations throughout the country, while 1,150 fighter jets launched almost 420,000 missiles, see [Serbia marks anniversary of start of NATO bombing](#).

⁶ [La CIA asume su culpa en el bombardeo de la Embajada china](#).

⁷ Charter of the United Nations, chapter VII.

⁸ [European Union](#)

⁹ Louise Arbour, [Histórica Reunión de Alto Nivel sobre el estado de derecho celebrada en las Naciones Unidas](#).