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NATIONAL SOVEREIGNTY IN THE GROWING WORLD TURMOIL

"The Aftermaths of the Iraq War"

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Has the U.S. almighty armada finally been successful in accomplishing its so-called liberating mission of the people of Iraq? It seems very doubtful. Has it been able to bring about the desired field clearance for a serene U.S. new middle east diplomacy? Such perspectives appear to be extremely limited. Have the U.S. strategists been able to generate the much desired street mobilization of support of a unifying target? The answer is affirmative with no doubt whatsoever. But it is a unanimous union against U.S. interests.

What is it then that made this gigantic military effort, undertaken to topple up an evidently tyrant leadership, end up in such a political fiasco? Herds of massively discontent crowds expressed a universally generated anti-American anger. More numerous are those who, all over the world, and mostly in the Arab societies, bitterly lump the burden of their passive frustration. Even those Iraqi people who finally

breathed a sigh of relief after the departure of Saddam Hussein, are reluctantly observing the multiple breaches to their inner will.

Among other reasons of discontent, there is one that no mighty outside power can occult: that is the inner attribute of sovereignty. In their calculations, U.S. strategists seem to have voluntarily diminished its value and impact. Yet, it remains a deeply anchored and a major factor in policy determination. Millenniums and centuries of difficultly equated equilibriums cannot just be swamped overnight. Continuous trends of theoretical outputs, along with arduously hammered rules of international law can just not be so suddenly overruled.

That is why it has become sensitively worthwhile to analyze the notion of sovereignty as evidently endangered by the recent trends of bellicose attitudes of mighty superpowers. The twentieth century has been rich enough in such regrettable experiences which have repetitively endangered world peace and stability. The new millennium has also been very prodigal of such slippery trends. The U.S. mighty superpower happens to be the main protagonist of such a dangerous contemporary evolution. Such a risky evolution may, in the long run, prove to be extremely detrimental to the world stability which has progressively been built on mutual respect between all sovereign states.

I . The Concept of Sovereignty in Classical Political Thought

Preliminary indications of the presence of such a concept in political thought go as far back as Aristotle, who had stated in the fourth century B.C. that "*the city is a sovereign community*". But, it is Jean Bodin (1530 - 1596) who first defined this notion in 1576, in his "***Six Books of the Republic***": "*It is the absolute and perpetual power within a republic*". It consists in the legal capacity to oblige the members of a given community. No matter who detains the ultimate coercive power within the state, the mere existence of a unified power lays beneath the necessary elements of recognition and acceptance of sovereignty. Although assimilated to an absolutist approach, the input of Jean Bodin remains in line with a long trend of a historic evolution which led to the modern definition of the notion of sovereignty: within domestic law, and beyond state borders, sovereignty was initially based on divine modes of investiture. Egyptian Pharos and Roman Emperors were

themselves aspiring to such divine reverences. They passed to be living gods who were almighty sovereigns. In subsequent theocratic states, the sovereigns stepped down to human status, but enjoyed divine investiture in their persons. All through the Middle Ages, providential forms of investiture entrusted the state monarchs with divine power. Nevertheless, Middle Age thinkers such as Saint Thomas d'Acquin started formulating new concepts of sovereignty based on timid forms of popular power and premises of equality between human beings.

Political thinkers of the European Renaissance, such as Hugues Cornet, better known as Hugo Grotius (1583 – 1645) and Thomas Hobbes (1588 – 1679) further developed the scope of the "jus cogens". The then emerging principles of international law, within the context of sovereign state renewals, progressively supplied new solutions to new particular sets of problems rising from sovereignty confrontations: within this new context, Machiavelli favored the rule of force, Guichardin advocated a search for an equilibrium, while the need for justice was lauded by Vittoria. For his part, Grotius stood as a pioneer of international relations based on the rule of law as a universal set of obligations, applicable to all states. The contractual basis of sociability lays therefore beneath all public law developments and determines the foundations of sovereignty. In a similar perspective, Thomas Hobbes states in the "Leviathan" (1651) that the leadership, invested by the members of the community of their respective rights, will possess the power of sovereignty which he earlier described, in "De Cive" (1642) as a civilian pact in which obligations start where freedoms stop.

During the eighteenth and nineteenth centuries were developed the political ideas which were later due to influence the choices of the founding fathers of the modern states of Europe and North America. Jean Jacques Rousseau, Charles de Montesquieu, Benjamin Constant and Alexis de Tocqueville stand among the most influential thinkers of this period of ideological renewal. Thus, for example, the theory of "Social Pact" developed by Rousseau (1712 – 1778) entrusts the sovereign state with the power of implementation of the general will. The notion of sovereignty also stems out, at various

degrees, from the writings of numerous other major political writers in domestic law as well as in its international law applications. The developments of European colonial expansions were to increase multiple forms of justification of the thus resulting breaches in sovereignty appreciation.

II . Sovereignty in International Law.

In international law, sovereignty stands for meaning that a given state has no other superior state to its power; all relations between states are to be based on equality, mutual respect and non-interference. Within its territorial borders, the state exercises freely its own sovereign power, without any outside control whatsoever by other states. Thus, sovereignty has progressively grown to stand for the inalienable right of the multitude to independently chose, from within, the governing body that it entrusts with its national destiny.

In a classical definition elaborated in the 19th century by Louis LeFur, "*Sovereignty is the quality for a state to be bound only by its own will within the limits set forth by the principles of law and according to the collective objectives that it is called upon to achieve*" **[1].** This definition is based on two fundamental aspects of the notion of sovereignty: a sovereign state acts only upon its own will; its sovereignty can only be expressed within the rule of law.

But these principles have progressively suffered from numerous breaches and limitations in contemporary history. Colonialism, under its various forms, has for long decades, alienated the free will of multiple nations which later grew to form the main bulk of sovereignty activists. Expansionist wars in Europe, Asia and elsewhere, mostly based on nationalistic quests for vital spaces, generated a lot of suffering before the respectable legality of sovereign states was finally re-established. In the late forties, the then occupied state of Palestine was simply crossed out of the map after an unsuccessful partition attempt aiming at compensating the then victims of the Nazi holocaust and achieving what was even before then known as the Balfour promise. But realms of

resistance have in all circumstances just not permitted any other form of "fait accompli" so long as acceptable forms of legitimacy have not strengthened the seeming forms of fabricated legality.

International legality sets forth commonly acceptable principles. These are built on the sovereign equality of all states. All existing state entities have therefore equal rights and obligations as full members of the international community, despite their ethnic, religious, economic, social, political and cultural differences. Most particularly, sovereignty comprises six internationally recognized basic elements:

- All states are legally equal;
- Each state enjoys the full attributes of its proper sovereignty;
- Each state has the obligation to respect the moral personality of other states;
- The territorial integrity and the political independence of each state are inviolable;
- Each state has the right to freely chose and develop its political, social and economic system;
- Each state has the duty to fulfil its international obligations and to live in peace with other states.

It has, therefore, become commonly accepted that each sovereign state enjoys its full capacity as an international actor; that implies that he has :

a. The "*jus tractatuum*", implying the right to conclude treaties;
b. The "*jus legationis*", implying the right to accredit and receive diplomats;
c. The "*jus belli*", implying the right to declare war;
d. The right to refer to international justice for the settlement of disputes.

It is however worth mentioning that the "jus belli" has been made obsolete by the 1928 Briand-Kellogg Pact [2] which prohibits the use of force as a means of achieving objectives of national policy. Furthermore, the U.N. Charter, signed in San Francisco on June 26, 1945, has made offensive wars illegal [3]. Unilateral recourse to force has then been banned in international relations in the same way as had to be later banned the use of arms of mass destruction. Collective security has been set as one of the U.N.'s main objectives. No stipulation in the U.N. Charter authorizes one state to unilaterally put an other state "in the right path" by the use of force. Let's not forget here the situation once faced by the U.S. in the 1986 Nicaragua case, in which the International Court of Justice has ruled that "*the principle of non-intervention forbids all states and all groups of states to*

intervene directly or indirectly in domestic or international matters of an other state… That stands also for the choice of the political, economic, social and cultural system as well as for the formulation of the foreign policy" [4]. No moral or political legitimacy of foreign policy objectives can find any legal justification in any existing legal international instruments. Legally speaking, the invasion of Iraqi territory by coalition forces is contrary to international values and rules. It is in evident contradiction with the stipulations of article 2, §4 of the U.N. Charter which forbids to all member states to "*resort to the menace or to the use of force, either against the territorial integrity or the political independence of any state*". It is therefore a clear act of aggression no matter how justified its motives may prove to be. In other contexts and under other circumstances, it would have represented an evident mobile for international sanctions against its authors. Yet, a surprising silence has characterized the U.N. Security Council during all phases of the recent Iraq war, as it had as evidently done so during the first one. It hasn't even considered it worthwhile convening after march 20th, 2003, while the Charter stipulations of article 39 impart on it the responsibility to "*determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security*". The evident issue would have evidently been the opposition of a joint U.S. and British veto; but at least that would have paved the way for a new application of the Acheson Resolution [General Assembly, N° 377, November 3, 1950], also called "Union for the maintenance of peace" [5]. Even the U.N. Secretary general has rapidly given in to U.S. belligerent moves. He bluntly took initiatives for which he should have normally consulted the Security Council: Calling the experts back out of Iraq, withdrawing the U.N. blue helmets from the Kuwait border. These were all in the field in application of a mandate assigned to them by the Security Council, for which the right of renewal, extension or termination also belongs to the same authority of the Security Council. Or, the Secretary General has, under the present circumstances, strangely gone beyond his prerogatives. The least, the Secretary General could have done, is make a correct application of the stipulations of article 99 of the Charter which empowers him to "*bring*

to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security".

We are probably witnessing the emergence of new rules of international law. U.N. peacekeeping missions, due respect for international law, settling disputes through diplomatic means, as well as the respect of the right of people to self determination, have probably found their final way to a graveyard launched in Afghanistan and fully implemented in Iraq. The force of law is loosing ground on behalf of the law of force.

On the basis of the October 1998 Iraqi Liberation Act [H.R. 4664], the U.S. has voiced a "just and legitimate" reason to derogate to the principle of non-intervention, so long as the initiative is for a good cause: "*It should be the policy of the United States to seek to remove the Saddam Hussein regime from Iraq and replace it with a democratic government*" [6]. Lucky Luke's galloping horse is definitely within sight [7]. Following the path of "*humanitarian right of interference*", this new form of legitimacy may be called in the coming future a new form of "*democratic interference*" [8]. It may be called upon whenever foreign assistance is needed to eject a non democratic regime! Examples of such badly needed interventions are numerous! Will the U.S. government tend to make a general application of such a daring precedent?

We have already witnessed various forms of pacific deployments of such types of interferences. One commonly growing form consists in the control of electoral processes through missions of independent observers. A more recent form has consisted in linking foreign U.S. aid to the respect by the potential beneficiaries of newly defined democratic values [9]. Yet, the principle of sovereignty has always limited the impact of such initiatives; it will be more so, in contemporary contexts, that Florida types of modern democracy are not likely to generate any convinced emulation; nor will the target populations be willing to accept any "*democratically*" chosen Karzaï style democratic leaderships directly stemming from oil company payroll.

It therefore seems that the real Iraq war has not started yet. Through the battle of new Iraqi regime construction, new slippery paths are almost certainly awaiting the weapon supported growing U.S. diplomacy.

III . <u>The Slippery Paths of the upcoming phase</u>

During the second half of the twentieth century, the general international trends have progressively been leading to a relative attenuation of the nation-state supremacy; in a few instances, they have also generated aspects of state devaluation. Thus the development of federalist doctrines has constantly been pressing for smaller group autonomy; as a result, modern trends of 'decentralization' have sensibly tempered the central might resulting from sovereignty attributes. City governments and regional assemblies have taken over in many instances what was once known as the areas of predilection of state power. From an other perspective, the development of international organizations as well as regional structures of policy coordination have generated new appreciations of the concept of sovereignty. Various treaties and agreements have therefore led, in some instances, at perceptible limitations of state sovereignty or have simply resulted in transfers of parts of its attributes to newly created collective entities as has recently been the case for Europe. On an other scale, the developing domination of the international scene by super powers has also generated a phenomenon of accepted domination in the late sixties and early seventies, based on the then so-called "*Brejnev Doctrine*" **[10]** (also called "*the doctrine of limited sovereignty*"): whenever legitimate interests were at stake, it became defendable to interfere within the inner borders of other states , as had been the case in Czechoslovakia in August 1968 after the "Spring of Prague". How far is the G.W. Bush interpretation of things from this communist style of policy justification ? The clue to such a wonder is probably only a few steps from the oval office. In fact, Condoleezza Rice's intellectual background may certainly have inserted some form of influence. It may so much be the case that within the present day context, built in the Perestroika aftermaths, there seems to be no resistance to the deployment of the all mighty power of the U.S. military and diplomatic machine. A new soft law, better adapted to the expectancies of globalisation has been progressively announcing an era of pure negation of binding international rules. This growing tendency to do without the commonly accepted grounds of international law is more and more prevailing. The U.S. seem therefore more lenient to foster an imperial unilateralism,

carefully taking advantage of the resulting choc of the attack against the innocent victims of the New York World Trade Center. And so dramatic as this might appear, this and other opportunities have deceitfully been exploited to start building the new international law of the twenty first century, mainly based on the negation of sovereignty and on the praise of force. With no other outside resistance than that of its own sovereign will, the U.S. may then be very likely, as Jay Leno once put it, to un-hesitantly foster a vision that, beyond the reality of Shiias, Kurds and other Arab Sunnis, will only perceive Iraq through the oil-related triple prism of "regular, premium and unleaded".

Casablanca, April 29, 2003.

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[1] – Louis LeFur, "Etat Fédéral et Confédération d'Etats", Paris, 1896, p. 443.

[2] – Named after its two promoters (the French statesman Aristide Briand and the U.S. senator Frank B. Kellogg) whose joint initiative led to the signature in Paris, on August 27th, 1928, of an international agreement by which 15 countries (among whom were the U.S., Great Britain and France) agreed to eliminate war as an instrument of national politics and to foster the pacific solution of conflicts. 57 countries were to later become parties to this Pact.

[3] – Cf. particularly articles 39 to 51 in chapter 7, related to the actions with respect to the threats to the peace, breaches of the peace and acts of aggression.

[4] – Recueil des arrêts de la Cour Internationale de Justice, 1986, p. 108, § 257.

[5] – Named after the then U.S. Secretary of State Dean Acheson.

[6] – The bill had been signed on October 31st, 1998 by President Clinton, who later stated that "*over the long term, the best way to address that threat to the peace in the region is through a government in Baghdad that is committed to represent and respect its people, not repress them and that is committed to peace in the region*" (November 15, 1998).

[7] – Cf. my paper "*The Incoherent Pax Americana: Beyond the Unproductive Approach to Conflict Solving in the Middle east*", UCLA Conference, London, May 4th to 7th, 2002, p. 4.

[8] – In a television broadcast addressed to the people of Iraq on April 10, 2003, President George W. Bush clearly stated that "*the goals of the coalition are clear and limited. We will end a brutal regime (..) Coalition forces will help maintain law and order, so that Iraqis can live in security (..) We will help you build a peaceful and representative government that protects the rights of all citizens. And then our military forces will leave*".

[9] – Cf. the analysis of Rick Hass' presentation to the 'Council on Foreign Relations' on December 4th, 2002: "*Reinforcing Democracy in the Islamic World*", in my paper "*Impregnating the Muslim M.E.N.A. with Universal Democratic values*", UCLA Conference, Athens, January 4th to 7th, 2003, p. 3.

[10] – Named after Leonid Brejnev (1906 – 1982) former secretary general of the Communist Party of the U.S.S.R.