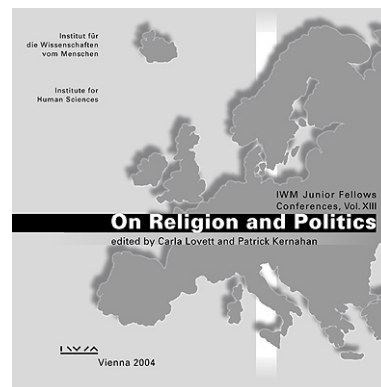


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Some Remarks on the Right to Democratic Governance

Dobrochna Bach-Golecka

Democracy has been said to represent the most suitable contemporary system of government. While there exists a vast literature exploring the benefits of a democratic form of government within political science, the debate on democracy in international law had been started only recently. This latter discussion began with the provocative article by Thomas Franck claiming the emergence of a right to democratic governance in international law.¹ Franck rooted the democratic entitlement in three related sets of emerging norms: self-determination, freedom of expression focusing at maintaining an open marketplace of ideas, and a right to free and open elections.

The idea of the emergence of a right to democratic governance proved to be a highly controversial topic within the theoretical perspective of international law² since it raises a number of questions and ambiguities concerning the foundations of the legal system. These include the relationship between the democratic governance

¹ See, T. Franck, „The Emerging Right to Democratic Governance”, *The American Journal of International Law* 86 (1992), p. 46.

² The review of different positions on this subject provides a volume by G.H.Fox and B.R. Roth (eds.), *Democratic Governance and International Law*, Cambridge 2000.

rule and other norms of international law, the legal validity and implementation methods of the norm, the notion of peoples as the subject of the right and a consequent threat to the rule of states as the main actors in the international forum, and various definition problems.

It seems that the main *raison d'être* of international law may be characterized as the promotion of stability in international relations. If the impact of these new legal norms would lead to the questioning of the core existence of states, then the result would be chaos and revolutionary force, the very opposite of the stability function.³ One may argue that democratic entitlement comprises such a potential for violent solutions in the possible consequences of popular sovereignty for the examination of the actions of the state apparatus and bureaucracy. It is crucial therefore to examine whether the right to democratic governance supports the use of force in internal and consequently international relations or if it is rather conducive to international peace and security.

The other analytical perspective concerns the impact of the national interest in the conduct of foreign policy. The traditional notion of state sovereignty in international law aimed at the harmonization of various conflicting interests and elaboration of the balance of power among the actors in the international forum. The stability function of the principle of sovereignty was reinforced by other legal norms such as the ban of the use of force in international relations and the rule of non-interference in matters which are essentially within the domestic jurisdiction of states. Therefore, the principle of the sovereign equality of states requires that the actions of a single state be taken within a legal sphere and be limited by the rights of co-existence of other sovereign states.⁴ The remaining relevant issue is linked to pragmatic requirements of the states' national interests: is popular sovereignty a favourable *milieu* for a proper conduct of foreign policy?

This paper will deal with only one aspect of the democratic proposal: the issue of its relationship with some of the principal norms of international law for the maintenance of peace and security. This analysis will be accompanied by the presentation of some relevant philosophical ideas: Kantian notion of pacifying effects of republican (democratic) governance and the impact of the reason of state (*raison d'état*) doctrine of Machiavelli, Meinecke and Morgenthau in international relations.

³ C. Tomuschat, „Self-Determination in a Post-Colonial World”, [in:] C. Tomuschat (ed.), *Modern Law of Self-Determination*, Dordrecht-Boston-London 1993, p. 4.

⁴ K. Dicke, „National Interest vs. The Interest of the International Community – A Critical Review of Recent UN Security Council Practice”, [in:] J. Delbrück (ed.), *New Trends in International Lawmaking – International 'Legislation' in the Public Interest*, Berlin 1997, p. 145.

One of the main purposes of international law is to maintain peace and security and to promote respect for human rights. It seems that a democratic regime within a state may be a decisive factor in the achievement of these aims since recent studies suggest the existence of a link between democracy and peaceful international relations. Therefore, in order to elaborate on the proper role of international law vis-à-vis domestic regimes it will be helpful to present in the first place the detailed results of the peace research as well as a specific proposal linking the spread of democratic (republican) regimes with the existence of world peace, presented by Immanuel Kant⁵ and its influence on the further development of political ideas. Moreover, the influence of democracy on the conduct of foreign policy will be examined using the concept of the national interest (*raison d'état*). On these grounds some propositions concerning the role of international law in the process of democratization of states and the role of democracy in international relations will be presented.

The Peace Research which began in the middle of XXth century tried to find the answer to the question of whether democracies are more peaceful in their external relations than are countries with other internal regimes. It has been found that *primo*, democracies are as prone to conflicts and wars as other states are, *secundo*, that democracies do not wage wars against each other and *tertio*, that with the increase of the number of democratic countries there is no subsequent decrease in armed conflicts. The practical absence of war among democracies was being regarded as close as anything to an empirical law in international relations.⁶ The democratic "peace community" was particularly evident in the case of emerging conflicts of a global character when all democratic states were usually placed together on one side, even though they were motivated by different reasons.⁷

⁵ Following the example of the contemporary literature, for the purposes of this essay Kantian characteristics of a republican regime will be referred to democratic states, i.e. countries in which political power is transferred through the means of periodical, free and fair elections.

⁶ S. Chan, „In Search of Democratic Peace: Problems and Promise”, *Mershon International Studies Review* 41 (1997), p. 60. There is a vast literature within the subject, some of the exemplary papers are: R. Schweller, „Domestic Structure and Preventive War: Are Democracies More Pacific?”, *World Politics* 44 (1992), pp. 235-269; K. Gaubatz, „Democratic States and Commitment in International Relations”, *International Organization* 50 (1996), p. 123; M. Doyle, „The Voice of the People: Political Theorists on the International Implications of Democracy”, [in:] G. Lundestad (ed.), *The Fall of Great Powers: Peace, Stability and Legitimacy*, London 1994, pp. 283-310; D. Shin, „On the Third Wave of Democratization. A Synthesis and Evaluation of Recent Theory and Research”, *World Politics* 47 (1994), p. 167.

⁷ See M. Doyle (1994), „The Voice of the People: Political Theorists on the International Implications of Democracy”, [in:] G. Lundestad (ed.), *The Fall of Great Powers: Peace, Stability and Legitimacy*, London, p. 283-310.

Certain internal characteristics of democracies served as an explanation of their peaceful behaviour in the international forum: stability of political institutions, rule of law, transparency of politics and the importance of public opinion on the conduct of public affairs. These domestic factors lead to the emergence of a specific democratic behaviour on international forum: stability of foreign policy and a prolonged treaty duration among democratic states.

The above results of peace research seem to be in conformity with the proposal for abolishing war and guaranteeing peace in international relations presented by the Enlightenment philosopher Immanuel Kant. In 1795 he wrote an essay entitled *Toward Perpetual Peace: A Philosophical Sketch* which contains a proposal for conditions that would guarantee the establishment of a genuine and permanent state of peace among nations.⁸

The basic theme of the peace proposition is the pacifying effect of law (*Recht*). Kant maintains that peace can be attained through the spread of the institutional and legal structure of a peaceable federation among independent republican states, each of which respects the basic rights of its citizens and establishes a public sphere in which people can regard themselves and others as free and equal “citizens of the world”. Kant takes conflict among nations as given and relates his concept of peace to the unique role which just law plays in establishing peace. For him only law, the legitimacy of which is established by reason, provides a procedure for resolving the conflicts that continually erupt among people without resorting to violence.

There are six Preliminary Articles formulating the conditions which Kant believed must be fulfilled if a true peace among the nations is to emerge. The Definitive Articles fulfill a different function: they outline the general philosophical principles of law upon which the entire Kantian conception of peace normatively rests. The first group of conditions Kant calls *leges strictae* (strict laws), they must be fulfilled immediately regardless of the circumstances of action and include: the ban on war, the prohibition of violent intervention by a state “in the constitution and government of another state”, the prohibition of certain ways of waging war (like wars of extermination or wars of subjugation). The second group of conditions comprises *leges latae* (wide laws), allowing for somewhat delayed implementation, de-

⁸ See H. Reiss (ed.), *Kant. Political Writings*, Cambridge 1970; M. Doyle, „Kant, Liberal Legacies and Foreign Affairs”, *Philosophy and Public Affairs* 12 (1983), p. 205-235, 323-353. The immediate occasion for Kant’s essay was the March 1795 signing of the Treaty of Basel of Prussia and revolutionary France, allowing Prussia to join Russia and Austria in partitioning Poland. It was just this sort of strategic treaty that Kant condemned as illegitimate, being only „the suspension of hostilities, not a *peace*.” See J. Bohman and M. Lutz-Bachmann (eds.), *Perpetual Peace. Essays on Kant’s Cosmopolitan Ideal*, Cambridge Massachusetts 1997, p. 1.

pending upon the situation, like the prohibition of the acquisition of states through inheritance, exchange, purchase, or gift-giving; the requirement that standing armies be disbanded over time; and the prohibition of incurring national debt to conduct war.

In a republican polity, constitutional principles become the standards by which policies must be publicly measured. Such governments do not dare to try to “justify their policies publicly through clever slights of hand alone,” even though they may need principles only to pay lip service to them. Therefore, criticism in the civic public sphere can prevent the execution of intentions that are not consistent with publicly defensible goals and may convince the public of all citizens of the validity of the basic principles of the public order.

The republican order of a democratic constitutional state, founded on human rights, demands more than a weak binding of states in their foreign affairs through international law. Rather, the legal order within each state is supposed to lead ultimately to a global order that unites all peoples and abolishes war. Abolishing the practice of war is not merely a moral “ought” for Kant, since, as he notoriously argued, the problem of leaving the state of nature and entering civil society can be solved even by a “nation of devils.” Rather than rely on the coercion of the external Hobbesian sovereign, however, Kant seeks to achieve peace by instituting new sort of public law. Compliance among states is not only a matter of survival and well-being (and thus of enlightened self-interest); it also requires a new sort of institutional setting for global political order in which the rights of the world citizens and the social conditions for peace are protected by both public law and world opinion.

Like the sphere of law of the republic, the new sphere of law of the “republic of states” must guarantee the original rights of freedom and self-determination of its members through fundamental rights and democratic procedural rules, that is, through well-ordered and equal rights of co-determination. Thus, the republic of states normatively and obligatorily receives constitutional rules for its internal structure.

Kant advocates reforming international law according to the principles of practical reason and postulates a peaceful global order that would place nations into legal relations with one another and ban military action from their external relations.⁹ Kant argues that positive and multidimensional conception of peace requires new institutions of cosmopolitan law (*Weltbürgerrecht*) above the level of nation state.

⁹ There is a good reason to see in Kant’s idea of a “peaceful law of peoples”, which anticipates a global legal community, an outline of the plan for establishing an organization of the United Nations.

Civil law alone does not end the violent state of nature, since it is possible for a state to be internally peaceful and externally bellicose.

According to Kant law must be understood as “the totality of conditions under which the will of the one can be united with the will of the other according to a universal law of freedom.” He describes three different types of constitution: first, based on the civil right of individuals within a nation (*ius civitatis*), second, based on the international right of states in their relationships with one another (*ius gentium*), and third, based on cosmopolitan right, in so far as individuals and states, coexisting in an external relationship of mutual influences, may be regarded as citizens of a universal state of mankind (*ius cosmopolitanicum*).

Just as peace among individuals requires a contract among them by which they constitute a republic, so this peace also requires a “contract among peoples”, which is supposed to found not a republic of peoples, that is, not a “world state unifying all peoples”, but only a “league” among them. A possible world state as a supreme political power would result in “the most terrible despotism”. In the federation of free states that forgo war in their external relations, the sovereignty of each member remains inviolable. The states associated with one another in this way preserve their sovereign powers and jurisdiction and do not dissolve into a world republic. Such a federation emerges through sovereign acts of will exercised in many different contracts under international law that bind its members to an alliance whose continued existence depends on an “enduring and voluntary association.”

The achievement of a cosmopolitan order of law and freedom solely by casual mechanisms or the intention of nature is impossible. Kant proposes certain positive means in order to realise the cosmopolitan order of law and peace: the peaceful nature of the republics; expectations connected with the “spirit of commerce” and the power of world trade to create communal ties, based on the hope that these would create a harmony of interests on a world scale, and the function of the political public sphere with the “publicity” of all the demands and claims connected with law.

It may be stated that it is due to Kant that the idea of *Rechtstaat* or the rule of law emerged and has been placed as a foundation of a modern theory of state.¹⁰ *Ius cosmopolitanicum* may be regarded as the contemporary law of human rights and fundamental freedoms.¹¹ Nevertheless, the contemporary influence of the Kantian theory should take into account the globalization phenomenon and the changes within the concept of sovereignty of states. The most conspicuous feature of the new interna-

¹⁰ See G. Liuma (1960), *La dottrina kantiana del diritto e dello stato*, Milano, p. 129.

¹¹ C.J. Friedrich (1962), „L'Essai sur la paix. Sa position centrale dans la philosophie morale de Kant”, *Annales de Philosophie Politique. La Philosophie politique de Kant*, Paris, p. 158.

tional situation is the emergence of issues that transcend national frontiers. Processes of economic internationalization, the environmental problems, and the protection of the rights of minorities are, increasingly, matters for the world community as a whole. Globalization produces a constellation of forces that make peace feasible, on condition that human rights achieve a legal status as rights over and against the nation states.

All the basic trends that Kant identified are two-sided: they have promoted the conditions of peace, but they have also made the task more difficult. This can be seen in the failure of liberal societies to be peaceful in all their relations to other states; in the way the networks of global markets have also produced inequalities and powerful transnational actors (such as multinational corporations and banks) that escape the regulatory control of nation states; and in the fact that the global public sphere has emerged at the same time as mass-media have undermined the kind of literary public sphere that Kant envisaged.¹²

The Kantian theory has been developed within the liberal theory of international relations and international law, based on the principle of normative individualism.¹³ The aim of a state is defined within the categories of the protection of individual's rights and interests. Therefore, state sovereignty depends upon the internal legitimacy of a state. Liberal states, defined as states with representative democracy, a free economy based on property rights, and respect for human rights, act within the "sphere of law" while non-liberal states act within the "sphere of politics". Liberal states complete among themselves specific types of agreements while the distinction between public and private law is being blurred.¹⁴ Moreover, historical investigation reveals that agreements completed among liberal states tend to last longer than those completed among other states.¹⁵ These differences of conduct among liberal and non-liberal states are caused by their internal characteristics.

¹² See J. Habermas (1997), „Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight”, [in:] J. Bohman, M. Lutz-Bachmann (eds.), *op. cit.*, s. 113-153.

¹³ Their representatives are such thinkers as: A. D'Amato, W. M. Resiman, A.M. Slaughter, F. Teson. See F. Teson (1992), „The Kantian Theory of International Law”, *Columbia Law Review* 92, p. 53-102 and A.M. Burley (1992), „Toward an Age of Liberal Nations”, *Harvard International Law Journal* 33, p. 403.

¹⁴ See A.M. Burley (1992), „Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine”, *Columbia Law Review* 92, s. 1907-1996.

¹⁵ The period under examination was settled as between 1815 and 1993. See K. Gaubatz (1996), „Democratic States and Commitment in International Relations”, *International Organization* 50, p. 123-137 and W. Reed (1997), „Alliance Duration and Democracy: An Extension and Cross-Validation of 'Democratic States and Commitment in International Relations'”, *American Journal of Political Science* 41, p. 1072-1078.

However, within the sphere of foreign policy all states must be guided by the exigencies of the national interest (reason of state), irrespectively of their regime or rulers. The concept of the 'reason of state' has been described by various terms, such as: *ratio status*, *ratio imperandi*, *arcana imperii*, *raison d'état*, *prudencia*, national or vital interests. All of them tend to point out tensions between politics and morality, between the common good and individual interests and to try to suggest a proper hierarchy of norms.¹⁶

A central theme in classical political philosophy was a reflection on the best form of government in order to create conditions for human fulfillment. Politics was defined as the art of ruling a republic according to justice and reason. The *Respublica* was an ideal city of all and for all, a community of individuals living together in justice. The ideal ruler was described as a Platonic king-philosopher and a Christian religious monarch. The former symbolised wisdom, his knowledge was to guarantee best decisions for the political community; the latter personified sanctity, and his rule according to the Christian virtues was to help the subjects achieve eternal salvation.

Machiavelli may be regarded as a father of the reason of state theory (even though he did not use the precise term).¹⁷ He rejected the scholastic and humanistic methods based on pursuit of the best type of state, ruled in conformity with the natural law. Machiavelli abandoned the question of the ideal state itself and investigated only the actual state. His ideas were rooted in reality, with historical events used as examples.

Machiavelli defined politics as the art and knowledge of the means of preserving and enlarging a state, in the sense of a person's or group's power and control over public institutions. Therefore, a crucial factor in politics is not justice but effectiveness and implementation of the reason of state. Machiavelli did not approve a brutal greed for power (*brutta cupidita di regnare*) and within internal relations he recommended a relatively conservative and considerate line of politics without using redundant force. Nevertheless, ruthless acts of violence were not thereby excluded. It was in the international plane -- especially when the existence of the state was in danger -- that the ruler should not hesitate to act in various, even immoral ways (*vulpinari cum vulpibus*) in order to protect state power against direct threats.

Meinecke distinguished two traditions of reflection on politics: a moralistic line, searching for the best state in conformity with the natural law, and a realistic trend

¹⁶ F. Meinecke, *Machiavellism. The Doctrine of Raison d'Etat and its Place in Modern History*, London 1957, M. Viroli, *From Politics to Reason of State*, Cambridge 1992.

¹⁷ P. Donaldson, *Machiavelli and the Mystery of State*, Cambridge 1988.

focused on the crucial problem of power. Machiavelli's theory represents the latter, starting an intellectual debate on the reason of state and the search for the limits of political action. The loosening up of dogmatic thought and the rise of free thinking was closely connected with political relativism. Since Machiavelli's time, the notion of the reason of state or political expediency has undermined belief in the absolute values of any particular confession or creed for it led to a tendency towards assessing all things according to their practical value for politics and their relative benefit to the state.

Political thinkers after Machiavelli almost always reject his amorality and, at some point in their discourse, accept the more traditional subordination of political theory to moral and religious principles. Thus, reason of state emerged as a doctrine that attempts to justify, in a way alien to Machiavelli, the necessities of rule that the Florentine thinker had merely attempted to point to as effective.

A moralistic line in the political tradition was represented by Hugo Grotius, the principal founder of modern international law. Grotius constructed his system of international law as if there did not exist any constraining force tending to push states over the frontiers of morality and law. Thus, the international legal system is in danger, from the outset, of becoming unreal, unpractical and doctrinaire as it tries to confine the behaviour of states to one another within moral and legal bounds.

Meinecke considered the rise of the notion of the individuality and variety of paths of development on the part of states – independent social organisms -- as the greatest break in the continuity of European thought since the Reformation. This break was a vast revolt against 'the generalising view': belief in scientific uniformities, natural law, utilitarianism, rationalism, and above all the great monistic conception of the Universe as a single, unvarying system, intelligible in the light of reason to all men. Meinecke was intensely anxious not to fall into the errors he castigates in the natural law – mechanistic, all-leveling, in the eighteenth-century Encyclopaedist tradition. He was fearful of oversimplifying, of concepts that cut the living flesh of social and individual factors which call for the most responsive 'individualising observation'; he warned against vivisectioning reality with the surgical knife of some dogmatic theory or ideology.

The State was being dealt with as an isolated unit. It was a fundamental proposition in Meinecke's thought that both history and political theory must avoid abstractions and focus on concrete individuals and institutions in order to gain insight into the meaning of human affairs. Thus he could not accept a natural law theory which equated social order with rationality and disorder with irrationality. At every

step in the political process he saw fortuity and unreason intimately joined to reason, with the result that irrational and nonrational forces were inherent components of every human society.

The theoretical concepts Meinecke worked on were the synthesis of the claims of individual liberty and morality with the needs and values of public life in the historical march of the great organic whole, the national state. It was the state that represented the central educative, spiritualising agency which shaped men and made possible the development of all they lived for – moral goals, personal relations, conquest of brute nature, art.

In the light of Meinecke's theory, reasons of state must be considered in connection to the state as the basic actor on the political scene which has a monopoly over the use of force. The state is presented as a historical institution – a form of organisation of human groups that emerged by the end of the Middle Ages. The state is an organic structure whose full power can only be maintained by allowing it to continue growing; "reasons of state" indicates both the path and goal for such a growth. No state is safe in its existence in the international forum, no state has a solid and valid place within the family of states. Therefore, there is a need for the implementation of the reason of state that would safeguard state's self-preservation and growth by the use of force (*Machtpolitik, Gewaltethik*). Furthermore, power belongs to the essence of the state since without it the state could not carry out its task of upholding justice and protecting the community. Power is the most essential attribute of all for a state as it secured the ability to maintain itself against other states.

Morality in politics means often only hypocrisy and a doctrinal, utopian conception. It is the task of politicians to discover and specify a particular reason of state, and to lead politics according to it. Power is considered as an instrument of state politics and international politics that has a neutral value. It is used as the instrument to achieve higher aims. If the well-being of the state and its population is held to be the ultimate value in politics, then power – its maintenance and extension - is the indispensable means that has to be procured. Reason of state may therefore be defined as the consideration of what is expedient, useful and beneficial for the state, what should be done in order for the state to reach its highest point of existence. It lies between *Kratos* and *Ethos*, between behavior inspired by power and moral responsibility.

The modern concept of the state is based on three concepts: sovereignty, social contract and reason of state. It is regarded as an autonomous organism with an independent government and its own ethics. The state is a quasi-immortal phenomenon, longer in its existence than any human being. The primacy of the political in-

stitutions in relations of the citizens towards the state was explained by the thesis that man has only such rights and laws as the state can guarantee him.

Meinecke links reasons of state with international relations and in his theory, foreign policy is far more important than inner relations. Good politics has to take into account the situation of the state itself as well as its environment; it should be guided by the principles that are at the same time individual and general, both constant and changeable. An individual factor indicates a particular state, general elements point out what is lasting in the structure of states and permanent laws governing the life of all states. From these precautions there emerges a need for the statesman to act in accordance with the reason of state because for each state at each particular moment there exists only one ideal course of action. Therefore it is possible to define this reason of state as a national necessity.

Meinecke warns that in order to discover the ideal path of action in politics, there is a need for a real statesman. Reason of state demands first and foremost a high degree of rationality and expediency in political conduct. Politicians should lose themselves in the task of securing a common good, they should be educated, rule themselves strictly and suppress their emotions, aversions and personal inclinations. The ruler should be transformed into the servant of his own power. Thus, the modern statesman must exert his dual sense of responsibility towards the state and the moral law. In the words of Meinecke himself, the executive statesman should always carry state and God together in his heart if he is not to be overpowered by the devil, which he is still not quite capable of shaking off completely. According to Meinecke humanitarianism and liberalism are possible only when states are well-governed and lead by great politicians that guarantee for their nations peace, predictability, development of culture. He warns against the dangers of mass-politics when at the base of political actions are not rational calculations of politicians but emotions of masses.

A desire for power (*libido dominandi*) is a valid instinct that should be directed towards public good and not to anarchy. Therefore, Meinecke considers the politics of the balance of power as very beneficial. It is within the family-like community of states that the individual state can prosper in the long run; and so its own power politics must be based on the recognition that even enemy states possess an essential right to live. Therefore, properly understood interests bind states together rather than separate them.

These views were shared by the so-called realist school in political theory who put on the state the responsibility for safety of its citizens and its position in the world.¹⁸

¹⁸ H. Morgenthau, *Politics Among Nations. The Struggle for Power and Peace*, New York 1956.

Foreign policy has a crucial importance for the state because of the anarchical structure of international community and inter-state relations. Therefore, the aim of politics is the power and safety of the state. Foreign policy must be a good foreign policy – rational actions that take into account and comply both with the moral precept of prudence and the political requirement of success. At the base of political action is national interest and this may result in ethical minimalism. For Morgenthau, politics should be regarded as art – not science and not morality. Within the political and moral sphere there is no possibility for universal values – there is a constant need for exceptions and modifications.

Good motives in politics give assurance against deliberately bad policies, but they do not guarantee that the action will in fact be morally good and politically successful. While ethics in the abstract judges the moral qualities of motives, political theory must judge the political qualities of intellect, will and action. From this, there does not follow any indifference to political ideals and moral principles, but only the need for a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place.

Reasons of state may be defined as a conscious necessity that describes the aims and limits of state activities towards its self-preservation and development. According to it, the state is subject to no rule of conduct but the one which is dictated by its own self-interest. *Salus publica suprema lex*. When the statesman is confronted with a choice between two actions, the one ethical, the other not, of which the latter has a better chance of bringing about the desired result, he must choose the latter. Morgenthau states that while political action is free from ethical limitations, private action is subject to them; the individual as such is moral by nature, political society is amoral, also by nature. On the other hand, the actors on the political scene, however they may be guided by considerations of expediency, must justify their actions in ethical terms.

The individual may say for himself *fiat iustitia, pereat mundus* but the statesman has no right to say so in the name of those who are in his care. Both individual and state must judge political action by universal moral principles, such as that of liberty. Yet while the individual has a moral right to sacrifice himself in defence of such a moral principle, state has no right to let its moral disapprobation get in the way of successful political action. Ethics in the abstract judges action by its conformity with the moral law; political ethics judges action by its political consequences. A man who was nothing but ‘political man’ would be a beast, for he would be com-

pletely lacking in moral restraints. A man who was nothing but 'moral man' would be a fool, for he would be completely lacking in prudence.

According to Morgenthau the only possible *modus vivendi* for politicians is an uneasy, precarious and even paradoxical one. It is the combination of political wisdom that determines how to act successfully, that is in conformity with the rules of political art; moral courage that allows one to perform evil political acts; and moral judgement that decides to choose among several expedient actions the least evil one. In this way man reconciles his political nature with his moral destiny.

As far as contemporary political practice is concerned the delicate issue of 'dirty hands' is dealt with under two concepts: reasons of state and public (national) interest. The practical difference between reasons of state and public interest may generally be that reasons of state are not matters for public discussion, whereas the public interest is more amorphous, more open, more debatable, and doubts about it may be resolved by democratic procedures. Reasons of state imply the existence of those who are responsible for national security, and they must be the sole judges of what national security requires.

Even though the purpose of national government is one and the same for any state, namely to secure citizens against foreign incursion, there are two perspectives at the core of debate on the questions of foreign policy and international affairs.¹⁹ From one viewpoint, foreign policy goals grow out of the political leadership's interest in advancing the welfare of the state within the international community, unencumbered by considerations of domestic affairs. The other outlook indicates that foreign policy goals grow out of the give and take of domestic politics, with all its prospects for generating problems of coherence in the aggregation of individual preferences.

In the first perspective, foreign policy goals are selected within the foreign policy context, with little or no regard for how this or that goal might advance one or another decision maker's domestic political agenda. Goals are selected to advance power and security considerations and are constrained by the structural characteristics of the international system. Therefore, the quest for national security takes precedence over all lesser domestic considerations and the specific policies a state pursues are structurally constrained by the nation's endowments of power, geography, alignments and the like.

The second perspective is at the heart of arguments favouring a bureaucratic politics or interest group point of view. Domestic constituencies – whether in a democ-

¹⁹ B. Bueno de Mesquita and D. Lalman, *War and Reason. Domestic and International Imperatives*, New Haven-London 1992.

matic or an authoritarian society – express preferences. The political leadership is dependent on those constituencies for its continuation in office and so wishes to meet their desires to the greatest extent possible. This dependency is the key problem of the domestically constrained foreign policy.

It is crucial for the political leaders to be conscious of the costs they will bear if their responsiveness to domestic pressures leads to foreign policy disasters. The other serious problem for them is that the foreign policy goals of competing domestic groups may themselves be incompatible and irreconcilable.

The rule of the peaceful nature of democratic states is of special interest within the sphere of public international law, one of whose main concerns has been the promotion of international peace and security. The greater the number of democratic states within the international forum, the greater are the chances for preserving international peace. This raises the question of the proper scope of involvement of the international community in the democratization process.

One of the obstacles for the international involvement in the promotion of democracy has been the domestic nature of the democratization process. This internal aspect underlines the need for the popular support of the people for the change of regime and for guaranteeing the permanent character of the political changes. Moreover, there is scarcely a role for international law within this internal process as political changes are being regarded as matters lying essentially within the domestic jurisdiction of states.

Once accomplished, the existence of republican (democratic) governance of a state seems to be a necessary though not sufficient condition for preserving peace. The external conditions seem to be of equal importance. This latter thesis was confirmed in the writings of the Kantian contemporary thinker, Stanislaw Staszic, who a few years before *The Perpetual Peace* essay published a book *The Warning for Poland*,²⁰ indicating a threat to the preservation of freedom of a republican state surrounded by absolutist states. Therefore, the question of internal constitution of a state should be subordinated to the question of establishing the proper external relations as otherwise the internal structure remain unstable.²¹

The above-mentioned condition indicating the need of democracy for peaceful surroundings is valid also in the ethnic perspective. Political leaders tend to use the

²⁰ S. Staszic (1790, ed.1926), *The Warning for Poland Resulting from the Contemporary Political Links in Europe and Natural Laws* (Przestrogi dla Polski z terazniejszych politycznych Europy związków i praw natury wypadające), Cracow, p. 52.

²¹ This condition is particularly relevant within the realist school of thought in international relations. See B. Russett (1993), *Grasping the Democratic Peace: Principles for a Post-Cold War World*, Princeton, p. 24.

factor of ethnic and national differences to gain popular support and preserve their power. Thus, one may argue that in multiethnic society democracy may not be conducive to preserving internal peace unless the ethnic differences are resolved within the political and legal decentralization scheme within the state.

The idea of creating a single world state through the abolishment of states was regarded by Kant as proper in theory but not practical. It is not probable that one state would conquer the world in a permanent manner since the global territory is not arranged in an orderly manner so as to allow it. The existence of many ethnic nations within the single state unit would result in conflicts and it would seem necessary to grant them sovereignty in order to allow for their peaceful co-existence.²²

Another obstacle to the involvement of the international community in the democratization process seems to be the existence of factors of a non-legal character, which are crucial to the accomplishment of the process of political change. These include the economic conditions, ranging from the need of certain level of economic development for the commencing of democratic process to the existence of stable economic growth throughout the whole period of transition. There is also a need for democratic political culture and respect for human rights and fundamental freedoms. There are the factors of a cultural character, being questioned mainly within the Asian societies. That critique underlines the Western origin of the idea of democracy, arguing for its non-universal character.

One may conclude that the present normative status of the right to democratic governance is not yet a legal one. It may be characterized as a political principle of international relations, not international law. Its subsequent evolution may lead to development of a legal character, just as has happened with regard to the principle of self-determination.²³

²² L. Mulholland (1990), *Kant's System of Rights*, New York, p. 368.

²³ H. Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems*, New York 1951, p. 76.