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## **ABSTRACT**

Following the end of the Cold war, a period of „rule breaking and rule making” has emerged. Its nature is contradictory, exclusionary, based on the power division. The powerful are rule makers, determining the scope of their relevancy (self-exclusion) and the form of implementation. The justification, given for the „rule breaking and rule making” is the moral imperative and the vacuum created by limited relevance of the state-centric international law that can not address the problems that have come about as the result of the transformation of sovereignty, emergence of new non-state actors in the era of globalization. However, what is emerging is not a new normative order. The dramatic inequalities of states and their sovereign powers are perpetuated, the criteria of arbitrariness in the use of force is extended and the notion of protecting human rights is instrumentalized for geopolitical interests. In order for „moral dependency” to become a force of cosmopolitanism, coherent critical reflection is required, as well as systematic and unwavering efforts invested into the strengthening of democracy and rule of law at the global level, decisive affirmation of the spirit of cooperation and non-violent conflict resolution and the development of effective instruments of transcending the new exclusionary practices generated by the old/new world.

**Key words:** globalization, normative order, cosmopolitanism, human rights, humanitarian interventions, neoliberalism, democracy.

## **АПСТРАКТ**

Крајот на Студената војна беше проследен со период на „кршење на правилата и создавање нови правила“. Неговата природа е противречна, ексклузивистичка и заснована на поделба на моќта. Моќните се креатори на правилата, со што го детерминираат и опсегот на нивна примена (само-изземање) и начинот на нивна имплементација. Оправдувањето што се нуди за ваквото „кршење на правилата и создавањето нови правила“ се

состои во моралниот императив и во вакуумот создаден со ограничената релевантност на меѓународното право фокусирано на државите, а кое не може да одговори на проблемите кои произлегоа како резултат на трансформацијата на суверенитетот, појавата на новите недржавни актери во ерата на глобализација. Сепак, крајниот резултат не е појава на нов нормативен, вредносен поредок. Драматичната нееднаквост на државите и нивните суверени моќи се перпетуираат, критериумот на арбитрност во употребата на сила е проширен, а идејата за заштита на човековите права е инструментализира во полза на геополитичките интереси. За да може „моралната зависност“ да се претвори во сила на космополитизмот, нужна е кохерентна критичка рефлексивност, како и систематски и конзистентни напори кои ќе се вложат во јакнење на демократијата и владеењето на правото на глобално ниво, решителна афирмација на духот на соработка и ненасилно разрешување на конфликтите, како и развој на ефективни инструменти за надминување на новите исклучувачки практики генерирани од стариот-нов свет.

**Клучни зборови:** глобализација, нормативен поредок, космополитизам, човекови права, хуманитарни интервенции, неолиберализам, демократија.

### 1. Introduction

The abrupt, by and large, unforeseen end of Cold war coincided with the deepening and acceleration of the processes of globalization. With ideological barriers torn down, the capitalist mode of production was extended to new frontiers, the sovereignty of the state was being transformed, and democracy was gaining universal legitimacy: „For the first time in human history, there is a single clearly dominant state form, the modern constitutional representative democratic republic.”<sup>1</sup> The major restructuring of the world, the beginning of the seventies, seemed to be definitely reaching a new historical phase, in spite of the unevenness of the processes of integration and global incorporation, and the emergence of novel tensions. The world was released from the dangers of ideological confrontation between two superpowers, but new risks and enemies were soon „discovered”. The state was not only being transformed, but forceful non-state actors were shading the structures of power,

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<sup>1</sup> Eric Hobsbawm (2007), *Globalisation, Democracy and Terrorism*, London, Little Brown, p. 96.

and while democracy and the protection of human rights were becoming a civilizational axiom, authoritarian, tyrannical, the so called, rogue states were surviving in various parts of the world. The ambiguities of the restructuring become the basis for the emergence of the new normative project, the basis for launching new rules and redefining the obligations of the international community beyond the existing norms of the international law. It appeared under various headings - developing cosmopolitan law/global democracy, comprehensive human security, global governance, etc. The underlying assumption was that a transition from an order, based on the sovereignty norm to a cosmopolitan order was necessary, for the world was becoming interdependent not only economically and politically, but morally, as well. Therefore, the classical, Westphalian, principle of non-interference in internal matters was becoming ahistorical. In order to adequately respond to the new challenges and reach higher ethical standards, the advocates of the new normative order asserted that the relationship between territorial integrity and self-determination has to be reinterpreted, the right to military intervention in the internal affairs of sovereign states in the name of extending democracy and protecting human rights has to be recognized, while the concept of self-defence has to be redefined allowing for preventive and pre-emptive strikes, even transitional occupation, due to the aggressive nature of some of the regimes and new nonstate actors. New types of missions - spreading democracy, bringing tyrannical regimes down - have to be carried out, and new responsibilities assumed, above all, to protect citizens from massive violations of human rights. The argument was that the respect for the sovereignty norm<sup>2</sup> can not continue to be a rationalization for indifference, inaction, for the abandonment of countless individuals, citizens to the massive violation of their rights due to the violence of an authoritarian regime, or the incapacitated, weak state. In principle, the advocacy of the cosmopolitan order was voicing a legitimate concern for the development of global democracy, the wellbeing of citizens and their rights beyond the walls of the nation state at a historical moment when the state was undergoing fundamental transformations and global interdependence was reaching unprecedented levels. However, a closer look at the practice attempting to implement and legitimize a new emerging normative narrative, is pointing to a forceful, but uneven relativization of sovereignty - primarily of the small and weak states, and the creation of new foundations for the arbitrary use of violent means by the powerful states – extending democracy by non-democratic means, instrumentalizing the issue of human rights protection for domination.<sup>3</sup> Thus, the relevant

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<sup>2</sup> Susan L. Woodward, „Compromised Sovereignty to Create Sovereignty“, in: Stephan. D. Krasner, (ed) (2001), Problematic Sovereignty, New York, Columbia UP, pp. 252-300.

<sup>3</sup> See: Costas Douzinas (2009), Ljudska prava i imperija, politička filozofija kosmopolitizma (Human Rights and Empire, The political philosophy of cosmopolitanism), Belgrade, Službeni glasnik.

international institutions that are essential for the strengthening of the rule of law, accountability at the global level, are undermined by the self-exemption of the most powerful countries,<sup>4</sup> while the newly assumed responsibilities and concerns for the violation of human rights are selectively invoked, depending on the geostrategic interests of the dominating states and not on the magnitude of violations themselves. Often these newly assumed responsibilities are justified by either false or superficial diagnosis, stereotyped simplifications of the causes and actors of conflict (unexplainable Evil vs. unquestionable Good), resulting in a „rush to war”, in the implementation of disproportionate force, surpassing the magnitude of the (moral) provocation.<sup>5</sup>

On the other hand, the advocacy of the new normative project by all those who recognize the real need to prevent mass violations of human rights becomes a form of political irresponsibility

when the moralistic rethorics of the global political elite is taken at face value, disregarding the lack of credible evidence that the normative vacuum created by the end of Cold war and the dynamics of globalization, was in practice being transcended by a consistent series of steps toward establishing a new, cosmopolitan, order. Above all, that it was rooted in the profound and necessary changes of its main proponents – USA and its Western allies, in the transformation of the nature of the hegemonic aspirations of America.<sup>6</sup> For instance, when humanitarian motives were read into the military intervention against Serbia (1999), classical aggression was declared to be the „first ethical war carried out in the name of human rights” (V. Havel). This was done as if the paradigmes of the foreign policy of US and its allies, the self-interest that motivated interventions in the past, underwent fundamental changes. Either that, or the advocates of the new ethical war were implying that the Cold war was a plot involving only one „evil” actor – Soviet Union, whose disappearance automatically created the preconditions for a transition to a higher normative order, to a new level of international responsibility of the enlightened, non-self-serving

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<sup>4</sup> According to the privileged and rich, in spite of the unprecedented interconnectedness and interdependence, the world still consists of civilized and uncivilized parts, insiders and outsiders. The civilized (representatives of the universal) have the right to rule making and self-exemption, and the uncivilized „are included in humanity by being excluded from any kind of equal treatment.” Beate, Jahn, “One Step Forward, Two Steps Back: Critical Theory as the Latest Edition of Liberal Idealism”, Millennium, 1998, vol. 27, no. 3, p. 630

<sup>5</sup> ICISS, The Responsibility to Protect, Ottawa, 2001, pp.36-37.

<sup>6</sup> In order to avoid misunderstandings, let me underline that critical reflections concerning the US as an international, global actor should not be automatically perceived as „anti-americanism“, in the same way as critical reflections concerning internal policies of Israel should not be equated with „anti-semitism“. Such misperceptions hinder critical thinking, creative reforms, alternative strategies, dialogue.

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actors - the US and its allies-in the globalized world. How wrongly the representatives of global civil society misjudged the character of the „first ethical war“ and its implications, was proven by the interventions that followed, especially by the occupation of Iraq in 2003 (against which many of them raised their voices, without establishing the link between the two interventions).

However, the obstacles to the development of a cosmopolitan project are not only rooted in the inconsistencies produced by those aspiring to uncontested global power, by the vested interests of the new self-proclaimed rule makers, nor in the normative illusions nurtured by (some) representatives of the global civil society. On a more substantial level obstacles are to be found in the dominant economic – neoliberal-paradigme, and the tensions existing between the neoliberal and cosmopolitan project.

## 2. Normative paradoxes of the global era

From the mid-1970s neoliberalism emerged as an anti-Keynesian intellectual and political program/project. In the name of greater economic efficiency and growth, the neoliberal project vehemently argued against state interventionism (i.e. for a minimalist role of the state), placing its full trust in the „invisible hand“ of the market forces, celebrating deregulation, trade liberalization and privatization of state and social property. Neoliberalism gained a wide following in developed, developing, and after the fall of the Berlin wall, in exsocialist countries,<sup>7</sup> resulting in what, W. Robinson termed, “global neoliberal consensus”. Taking a look at the assumptions and practical achievements of the global neoliberal project one can explore whether it is compatible with the advocated cosmopolitan project. Comparing the two projects from the standpoint of responsibility, one will discover that they are rooted in two opposing logics. The neoliberal ideology/project presupposes avoidance of social responsibility. The combination of deregulation and locally unbound capital, i.e. free-floating capital circulating around the globe in search for maximum profits and minimum duties, ultimately creates the basis for shedding responsibilities for the social and

environmental consequences of the interventions of global capital in the local communities, for the daily life and needs of the citizens („the self-reproduction of the living conditions of all”, Z. Bauman). The unbridled („intoxicating”) freedom from territorial bounds, the possibility of the capital to move in and out of local communities at short notice, on the one hand, and the deconstruction of the consensus between state, capital and labour, on the other, replace (the principle of) solidarity and social justice (the mechanisms of redistribution) with indifference, uncertainty and social disempowerment of the majority. In con-

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<sup>7</sup> Ha-Joon Cheng (2003), *Globalisation, Economic Development and the Role of the State*, London, Zed Books, p. 37.

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trast, the advocacy of the cosmopolitan project, global democracy and protection of human rights is in principle premised on the extension of responsibilities, commitments and solidarities, transcending the classical sovereignty norm, on the responsibilities to be assumed by (enlightened parts of) the international community. Shedding responsibility within the economic realm and at the same time aspiring to greater levels of political/moral responsibility are incompatible processes and can not but result in incoherent practices. When the question of plurality, the legitimacy of alternatives is concerned the tension evolved from the attempts to promote neoliberal capitalism as the sole model of development („end of history”), to deny the possibility to devise alternatives, to exercise choices because the historical triumph of the ultimate option has occurred. The global neoliberal consensus was projected as if there was just one form of capitalism, just one, uncontested, right way of running the economy.<sup>8</sup> That in itself runs counter to the essence of democracy that presupposes first a recognition that there are different types of capitalism (plurality of economic options) and that the specific experiences, traditions, circumstances should define the choices of the particular societies. Second, the neoliberal consensus obscured, as J. Stiglitz points out, that different options benefit different groups, and that the current „neoliberal consensus” has its clear beneficiaries and a great number of losers. It has not evolved as result of a (global) democratic political process/procedures, as a choice of the majority. On the contrary, the attempts to implement a „pure market” system, have resorted to authoritarian means, various forms of shock therapies, radical exclusionary divides, disciplinary mechanisms that secure obedience<sup>9</sup> and uniformity in the global process of economic transformation. Efforts to transform the myth of pure market (K. Polanyi) into reality, subjugates the society to the market, creating a disbalance that provides for the „social protection of the strong”, and the social deprivation of the weak. To introduce and uphold such a system authoritarian means in some cases have been inevitable. In other

<sup>8</sup> Joseph Stiglitz, *Making Globalization Work*, London, Penguin Books, 2007, p.xv.

<sup>9</sup> Obedience is secured by the fragmentation of work, superfluosity created by new technologies, and the disappearance of unions and movements offering protection. Existential uncertainty, contributes to obedience, for disobedience means risking unemployment when jobs are becoming scarce goods. Obedience and uniformity are secured also by the growth of surveillance mechanisms utilized by states and private agencies. A plethora of information on citizens is gathered in the name of security, profit, giving ground for analysts to speak of the emergence of a surveillance society. For instance, in the UK there are more than 14 million video cameras operating, i.e. one camera per 14 citizens. On the other hand, US companies like Experian for example, boast that they have detailed economic and social data on 170 million American citizens. Compare: Stephen, Gill (2003), *Power and Resistance in the New World Order*, New York, Palgrave, Macmillan, p. 195.

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words, the development of the free market did not exclude coercive, even military, means of imposition.<sup>10</sup>

Accordingly, some analysts have, as N. Klein notes, recognized the direct link between economic shocks that impoverished a vast number of citizens, and an epidemic of torture that punished thousands because they believed, as she states, in an alternative form of society. For example, in the earlier stages of neoliberal expansion preceding the end of the Cold War, the implementation of the neoliberal model in Chile,<sup>11</sup> combined economic freedom and political terror.<sup>12</sup> In principle, shock therapy, as N. Klein points out, deprives the citizens of the power to understand what is happening, to act and counter act. They are reduced to powerlessness or resigned to apathy.

When outright coercive, military, measures were not the mode of implementing the neoliberal form of capitalism, the instruments still violated elementary democratic principles.

In the name of market efficiency, external limitations on democratic decision-making process were implied and practiced by major international financial actors. Their „proposals imply or mandate the insulation of key aspects of the economy from the influence of politicians or the mass of citizens by imposing, internally and externally 'binding constraints' on the conduct of fiscal, monetary and trade and investment policies.”<sup>13</sup>

Although the measures of international financial institutions (primarily the IMF and WB) demanding downscaling of government, sharp cuts of public spending, rapid privatization, deregulation - were by and large unpopular among large segments of the population, their voices were not heard. The implementation of reforms and conditionalities were implemented

by a coalition made up of representatives of international financial institutions, state and private actors, and parts of the local political elite (together they constitute what Robinson calls the „transnational class”, and J. Wedell, „transactors”). In Russia, for instance this coalition of (trans)actors<sup>14</sup> carried out the transition in the nineties, resulting,

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<sup>10</sup> According to N. Klein, fundamentalist capitalism, i.e. deregulated capitalism, is continually preserved by most

brutal forms of coercion applied to the political collective body. Naomi Klein , Doktrina šoka, (The Shock

Doctrine) V.B.Z. Zagreb, 2008, p. 27

<sup>11</sup> „ Chicago Boys cooperated with the Chilean army before the coup and in the economic transformation

following the violent coup. Referring to the experiences after the coup, Friedman stated that the most

important achievement is that the free market did its part of the job in creating free societies”.

Op. cit. p.

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<sup>12</sup> N. Klein, op. cit. p. 15.

<sup>13</sup> S. Gill, op. cit. p. 132

<sup>14</sup> The main transactors were made up of a Harvard team representing the US and the Chubais clan

representing Russia. Janine R. Wedel, “Privatizing Foreign Policy: How Transactors Hijacked US Relations”,

[www.globality-gmu.net/archives/835](http://www.globality-gmu.net/archives/835)

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as Cohen enumerates, in the worst industrial depression, flight of capital abroad, hyperinflation and abrupt decontrol of prices, currency collapse and pyramid schemes that wiped out life savings of the citizens, massive corruption, impoverishment, deterioration of health. The results can be summarized in short as - economic freedom and benefits for the few, and regression, „demodernization” for the majority. This means that the neo-liberal project could not but have a „narrow social basis”. In order to transcend this lack of social support, the implementers of shock therapies implemented their reforms swiftly, treating societies as tabula rasa, radically erasing social achievements of the past, for nothing deserved to

survive, become part of the new historical chapter. The speed of the implemented reforms (shock therapies) caused confusion, apathy, deprived the citizens of the possibility to defend their interests (N. Klein). Moderation, was relinquished (S. Cohen) in the name of speedy reforms that would in fact, secure the overnight transfer of the state owned property into few private hands. For this reason, some economists have defined the transition from socialism to neoliberalism as the biggest historical plundering of state and social property. However, the new normative project based on the protection of human rights and extension of democracy was not problematized in relation to this form of transition and its dramatic social consequences; social rights/social deprivation never become an equally dramatic question as did political, civil rights. Nor were the external „binding constraints” perceived as serious challenges to the processes of democratization. Many have depicted the social consequences of the neoliberal project - leading to the widening gap between the rich and poor in and between countries, to the production of „too many losers” (J. Stiglitz) on the global stage. The common thread in the analysis of the social consequences of neoliberalism is captured by S. Gill: „Restructuring along marketdriven lines tends to generate a deepening of social inequality, a rise in rates and intensity of exploitation of labour, growth in social polarization, gender inequality, a widespread sense of social and economic insecurity, and, not least, pervasive disenchantment with conventional political practice. Such a situation may also open the door to the appeals of

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“In effect, the United States was to teach ex-communist Russia how to become a capitalist and democratic country and oversee the process of conversion know as a “transition”. Certainly, Russia was not to be trusted to find its own kinds of change, lest it wander off... ‘on a strange, ambivalent path of its own confused devising.’ The lessons to be taught were simple but stern. Economic reform meant “shock therapy” and tight-fisted monetarism, especially severe budgetary austerity and end to Soviet/era consumer subsidies, wholesale privatization of Russian state enterprises and other assets, opening the country’s markets to foreign producers, and a minimal role for the government... In that spirit, legions of American political missionaries and evangelists, usually called “advisers,” spread across Russia in the early and mid 1990s.” S. Cohen (2000), *Failed Crusade, America and the Tragedy of Post-Communist Russia*, New York, W.W. Norton & Company, p. 7

extremist political movements...".<sup>15</sup> The gap between neoliberal economic efficiency (although that is also becoming increasingly questionable)<sup>16</sup> and social deprivation has reached such a level that, as Boaventura Santos notes,<sup>17</sup> democracy in a number of countries is becoming irrelevant for the social well being of citizens. Thus, according to him the coexistence of „political liberalism and social fascism” has become a realistic possibility. This leads us to another paradox.

It is related to the fact that the protection of human and minority rights rose to the pennicle of the hierarchy of values, at the same time the neoliberal project was promoting a pessimistic anthropology, defining greed and fear as the main motivating forces of human beings. Apsolutizing individual egotism, delegitimizing the welfare state and the principle of solidarity, placing the blame on the poor for their plight, was occurring at the same time when the protection of the human rights above and beyond the sovereignty norm were celebrated as the axis of an emerging cosmopolitan order. In other words, moral interdependency as the basis for relativizing the sovereignty norm, was being proclaimed at the same time, when solidarity and common good, as a fundamental precondition of freedom (Z. Bauman), were being erased. The different moral and practical implications of a project based on greed and egotism, and a project based, at least in principle, on solidarity and empathy, tended to be overlooked. However, the defining principles of the two could not be implemented simultaneously without producing incoherent practices, turning the protection of human rights into an additional instrument of domination, among else, into a basis for selective, arbitrary, external interventionism. The power mechanisms operating and being reconstituted on the basis of the neoliberal agenda, did not produce prudent caution (at least among the idealists) in the advocacy of the legitimacy of the interventionist politics based on the new ethics of human rights. The advocacy of the new responsibilities was carried out as if coherent economic and political preconditions for a transition to a cosmopolitan order were laid down, as if the neoliberal and human rights agenda have together become a moral imperative. It was promoted as if safeguards against the possible abuse and „frightening arbitrariness” (Hanna Arendt) by the enlighte-

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<sup>15</sup> Gill, op. cit. p. 140

<sup>16</sup> As Ha-Joon Chang, points out, and the current economic crisis confirms, neoliberalism has failed to produce expected results, increasing income inequalities and economic instability, and above all, not generating the promised faster growth. Nevertheless, the neoliberal project is far from being dismantled. “The world’s per capita income was growing at 3.1% during the ‘bad old days’ of 1960-80, but it has been growing at only 2% during the neoliberal period of 1980-2000. Growth of per capita income in developing countries has decelerated from 3% to 1.5% between these two periods.” Ha-Joon Cheng, op. cit. p. 2.

<sup>17</sup> Santos, Boaventura de Sousa, „Beyond abyssal thinking“, [www.euorzine.com/articles/2007-06-29-santos.html](http://www.euorzine.com/articles/2007-06-29-santos.html)

ned states in implementing their cosmopolitan responsibilities were being erected. In fact, no such safeguards were constituted, as testified by, for example, the further weakening of the UN, self-exemption of US from the reach of the International Criminal Court, by the erosion of the democratic capacities of the nation-states (for instance, by measures like the Patriotic Act, or Guantanamo torture practices).

A consistent contemplation of a transition to a cosmopolitan order under present conditions, is further complicated by the fact that one of the consequence of the global neoliberal consensus is the weakening of the state and its capability to respond to the needs of its citizen. The implementation of the neoliberal paradigm promoting absolute economic deregulation, placing full trust in the mechanism of the market which will automatically resolve economic and (eventually) social problem, has incapacitated the state to perform some of its fundamental classical functions relevant for the welfare of the community, i.e. its citizens. When an order is based on the primacy of economy, while the state/society looses its protective capacity, being subjugated to the market this can, as K. Polany's analysis has demonstrated, lead to an impresive development of the means of production but also to the catastrophic „dislocation of the lives of common people”, that is, to the violation of their human (social) rights.

The weakening of the state is the result of two combined processes: privatization and transnationalization.

Within the framework of the dominating neoliberal project, the principle of privatization is extended not only to proprety but to the realms pertaining to classical functions of the state. Privatization of the state means that some of the key functions of governance are transfered to the private sector. This has included, for instance in the US, from the managment of energy, setting up private jails (in Texas, for example) to waging wars and fighting the terrorists. It should be particulary noted, that an impresive increase of the number of private companies that offer security, military services to governments and TNC have appeared. These companies offer a wide variety of services, from the maintenance of military bases, compiling intelligence information, scientific research, and training, to sending private armies to the war fronts. They operate by and large beyond democratic control and accountability, extending the space of abuse and corruption, and undermining one of the crucial dimensions of state power – its monopoly over the legitimate use of force.<sup>18</sup>

This hollowing of the state by the extension of the processes of privatization means that its cohesive capacities are diminished, while the needs of the citizens in the sphere of education, medicare, security, etc. are marginalized by the profit interests. The main task of the state transformed according to the neoliberal principles is internal restructuration and

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<sup>18</sup> R. Schwarz, „Post-Conflict Peacebuilding: The Challenges of Security, Welfare and Representation“, Security

Dialogue, Vol.36 (4): p.443, 2005.

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global integration of local economy. This presupposes the elimination of all barriers to the free flow of the capital, and such a harmonization of the internal economic policy with external demands that will secure macroeconomic stability. Besides macroeconomic stability the state has two more functions (W. Robinson) insuring the basic infrastructure necessary for global economic activity, securing social stability by coercive and ideological instruments (cheap labor, weak unions). In other words, the state is not bound by the needs of internal consensus, redistribution, social protection, but by the external demands of global capital and the interests of the transnational class.

At the point when the state is undergoing transnationalization and privatization, losing fundamental aspects of its autonomy and becoming a „conveyer belt” for the demands of global capital, when unaccountable, predatory transactors are emerging with little concern for the welfare of the community, it is difficult to identify the real foundations for new cosmopolitan responsibilities. The transformation of the state according to the neoliberal paradigm is an illogical direction of change if an evolution toward a cosmopolitan order is to take place.

The coherent evolution toward cosmopolitan law would require a **social-democratic global paradigm**<sup>19</sup> which would affirm the rule of law, solidarity, accountability, participation, consensus building, retrieving some of the fundamental capacities of the state – its mediating role in the distribution of social wealth, maintaining a social compromise between different social strata, the power to correct the disbalance between the demand of the market and society, autonomy in formulating its own economic policy in accordance with the need of its citizens, specific historical experiences and cultural patterns.

### 3. Interventionism

The insufficiently problematized tensions between the dominant neoliberal paradigm and the emerging cosmopolitan principles resulted in the entrapment of the assumed „new moral responsibilities” in exercises extending domination and inequality. Placed in the hands of „global moral actors” whose existence was simulated, the legitimate need to protect human rights was misused. Thus, an emancipatory vision became, in a number of instances, a force of expansionism, redistribution of resources and property, of redefining borders by violent means. Lacking real conditions for the development of the cosmopolitan order, moral dependency became an additional principle of legitimation for rule making based on „frightful arbitrariness”. What shape strides toward the future cosmopolitan order may

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<sup>19</sup> David Held, (2004), *Global Covenant, the Social Democratic Alternative to the Washington Consensus*, Cambridge,

Polity Press.

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take in these circumstances is demonstrated by the military interventions carried out in its name.

### **3.1. The case of Kosovo and Metohija**

The NATO intervention against Serbia (1999) because of Milosevic's repression in the province of Kosovo and Metohija (Kosovo, for short) was hailed as a defining moment, a dividing

line between the era of sacrosanct sovereignty and the era of relative sovereignty. It was seen as an inauguration of the moral, cosmopolitan, project, subordinating sovereignty to the protection of human and minority rights. NATO intervention was interpreted as a sign that the international community was finally accepting its (moral) responsibilities. Although it was carried out without the mandate of the SC, and in violation of the Article 5 of the NATO Charter, the intervention was widely supported across the globe by representatives of the left and right, the establishment and civil society, all sharing a belief that allegedly new ethics, a new notion of justice was residing beyond the UN Charter. Therefore the intervention was proclaimed by a number of its advocates as „illegal but legitimate”. A complex, protracted conflict was seen, by and large, only as a brutal violation of the human rights of the Albanian minority by the repressive regime of S. Milosevic (undoubtedly a significant part of the story, but not its entirety). Black and white inscriptions were invoked, and the “game of numbers” concerning victims activated, reaching shocking - mobilizing - but unfounded heights. Each and every victim of violence is tragic, but the launching of arbitrary estimates (up to 100.000), the concern only for the victims of one side was in the function of justifying the intervention to the domestic public in spite of its illegality. The fact that the intervention ensued after a simulation of negotiations in Rambouillet and an ultimatum issued to the Serbian state, concerning the acceptance of Annex B (military part of an Agreement, otherwise accepted by the Serbian side), and only acquired a humanitarian label after the bombing started and the situation on the ground turned for the worse, was not the object of reflection for the advocates of the new ethics. During the „humanitarian intervention” the whole country was bombed, a third of the targets were civilian, including, hospitals, schools, bridges, cultural monuments and industrial complexes (the damage was estimated at thirty billion euros), and the weapons used included cluster bombs and depleted uranium. However, all of this did not distort the legitimacy of the intervention. The fact that the ideal of protecting human rights was by this new, modern notion of justice tied to military intervention, aggression, war, did not appear to collide with the general humanitarian interest. Legitimizing names for the illegal bombing were invented such as „politically correct militarism”, „liberal interventionism” (M.

Ignatieff). A philosopher like J. Habermas, considered that it was perfectly acceptable to

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intervene militarily in order to secure the full respect of human rights, particularly when the intervention is surgically precise (the civilian victims/collateral damage of the precise intervention were not taken into account) and so efficient as was the NATO intervention.<sup>20</sup> Because it is based on the universalistic content of human rights, he concludes, it should be perceived as a leap from international toward cosmopolitan law, a step in the direction of an inevitable transition. NATO simply did what was necessary, when no one else was there to fill the legal vacuum. The end result of the bombing was ethnic cleansing of the non-Albanian population (resulting in around 200.000 internally displaced citizens in Serbia), unilateral secession of Kosovo, in spite of the democratic changes that took place in Serbia, the creation of another weak, economically unviable, criminalized state. With this violent change of Serbian borders, a new chapter of state building opened involving external actors who were prepared in the name of moral principles to ignore the existing norms of international law, agreements, UN resolutions, as well as the violations of the rights of the non-Albanian population remaining in the Kosovo enclaves. The morality of the cosmopolitan advocates was not challenged by these incoherences.

### **3.2. The cases of Afghanistan and Iraq**

Following the 9/11 attack by the terrorist group Al Qaida on New York and Washington, the US responded after several months by launching a military intervention against Afghanistan, holding it responsible for harbouring a terrorist organization on its territory.

Prior to the intervention, Afghanistan demanded from the US unquestionable evidence that Al Qaida was responsible for the attack in which case they would agreed to extradite Bin Laden to a neutral country to stand trial. The US did not accept these demands and decided to respond by a military operation legitimizing it by an extended interpretation of the right to self-defence, the use of force. Self-defence according to the new interpretation, included the right to respond forcefully not just to aggression committed by states, but also by non-state actors (terrorists) as well. It seemed even to segments of the civil society an acceptable reinterpretation of the Article 51 of the UN Charter in novel circumstances – global interdependence and emergence of powerful non-state actors. Again an alleged void between the existing rules and the new circumstances was being resolved by the rulemaking power of the US. Setting aside, the fact that a military intervention against Afghanistan

was contemplated prior to 9/11, the unclear nature of the documented American intelligence blunders/oversights in relation to the terrorist attack, etc. the very legitimacy

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<sup>20</sup> J. Habermas (2002 ), Postnacionalna konstelacija, Politički eseji (Postnational Constellation,

Political Essays),  
Beograd, Otkovenje, pp.160-183.

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of extending the right of self-defence in relation to terrorist groups in the manner which the US did, is not as convincing as it seems.<sup>21</sup> First, Article 51 gives a state the right to repel an attack that is ongoing or imminent as a temporary measure until the SC can take steps necessary for international peace and security. The self-defence of the US has turned into a an unending military operation, i.e. occupation of Afghanistan, with a substantial number of civilian casualties. Second, as S. Hassan points out there is no disclosed evidence that the Afghan Government sent Al Qaida to the US with the instruction to commit terrorist attacks, and the ICJ rejected the notion that mere assistance to rebels was an 'armed attack'.<sup>22</sup> Hassan goes on to say, that self-defence as a valid use of force, required it be immediate, not a retaliation, proportionate (a full scale, invasion of Afghanistan cannot be considered proportionate) and necessary. Since the necessity long passed before the bombing of Afghanistan it was legitimized as a defence against an ongoing threat, and turned into a total war against global terrorism, a war that could last several decades. Therefore, the response to the terrorist attack turned essentially into new norm emerging out of US practice, which extended the notion of self-defence into a „perpetual” use of disproportionate force. Furthermore, this extension of the right to self-defence as part of the new normative order, involved the emergence of secret prisons round the world<sup>23</sup> and brutal torture of prisoners, in violation of the Geneva conventions. The practice of rendition - sending suspected terrorist to third countries where torture was not illegal, also emerged. To conclude, the legitimation of interventionary politics by the need to reinvent and redefine the normative assumptions of the emerging order in the case of Afghanistan contributed much more to a new phase of militarism, than cosmopolitanism.

The intervention against Iraq (2003) is explained in another chapter, in rule making and rule breaking. Again without a SC mandate, the US, supported above all by UK, carried out a pre-emptive intervention based on the several unfounded accusations: that Iraq, although it was a secular state, was harbouring terrorists, that Saddam Hussein was in possession of WMD, that he did not discontinue his nuclear program threatening world peace (although the intelligence agencies had knowledge that the program was abandoned ten years

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<sup>21</sup>Sulman, Hassan, “The legality of the United States intervention in Afghanistan”,  
[www.americansc.org.uk/Online/Forum/Afghanlegality.htm](http://www.americansc.org.uk/Online/Forum/Afghanlegality.htm)

<sup>22</sup> S. Hassan, *ibid.*

<sup>23</sup> Guantanamo in Cuba was too exposed to the public, therefore the CIA wanted „ secret places

where it could have full control over the interrogations .... far away from the inquiring eyes of the media and the monitoring of organizations for the protection of human rights, but above all, far away from the authority of the American legal system.“ James Risen, (2006), *Ratno stanje, Tajna istorija CIA-e i Bušove administracije* (The State of War, Secret history of CIA and Bush administration), Beograd, Samizdat B92, p. 36.

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rs earlier), that he was a dictator who had regional ambitions and therefore presented a security threat to the region and the USA, as well. Accordingly, the aim of the intervention was to disarm Iraq, to end Saddam's support for terrorism and to free the Iraqi people (Tony Blair). All of the justifications for the intervention were eventually revealed as blatant lies, constructions. In 2005, the Central Intelligence Agency released a report saying that no weapons of mass destruction had been found in Iraq. There was also no evidence to corroborate that S. Hussein was supporting the terrorists,<sup>24</sup> nor that he was in the position to cause any serious regional turmoil, exhausted/contained by the devastating defeats in two Gulf wars and by the ensuing comprehensive sanctions. As for bringing liberation to the Iraqi people, the American led invasion toppled Saddam's regime, and turned the democratization of Iraq into a prolonged occupation that profited American commercial and security companies, created the conditions for the breakout of a ravaging civil war, which according to some analysts, took, the lives of 600.000 civilians. These episodes of „moral dependency”, demonstrated not only a profound disregard for existing norms of international law, for facts, which were either ignored or intentionally covered up, but also for the rights of the American citizens as well. In the name of the war against terrorism in the case of Afghanistan and Iraq, secret intelligence activities were approved on the American territory, violating the civil rights of its own citizens.<sup>25</sup> The three interventionist chapters have a number of serious consequences, none of them paving the way to a cosmopolitan order. First, the consensus of long standing, that borders can not be changed by force was dismantled on the territory of Europe. This opened the doors to further arbitrary „attacks” on the sovereignty norm – expanding the space for new rounds of violence. Accordingly, voices have already appeared advocating that borders should not be treated as sacrosanct in Africa, because in a number of African states the governments do not control the entirety of their territory. Others have

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<sup>24</sup>In September 2006, a Report of the Senate Intelligence Committee concluded that Saddam

Hussein regarded

Al Qaida „as a threat rather than a possible ally, contradicting assertions President Bush has used to build support for the war in Iraq“. In their remarks to the Senate document, Democrats contended that former

CIA Director George Tenet had modified his position on the terrorist link at the request of administration

policymakers. Furthermore, according to the Report there was no evidence that Hussain had the capacity

to produce WMD (nor did he possess the alleged mobile laboratories for the production of biological

weapons). These accusations were based either on serious errors of judgment by the CIA, on the disregard

of assessments made by other intelligence agencies, as well as of reports of agents on the ground. On the

whole the Report accuses the administration that it did everything to justify the war. See: Jim Abrams,

"Senate: Saddam Saw al-Qaida as Threat", The Associated Press, 08 September, 2006, [www.truthout.org/](http://www.truthout.org/docs_2006/)

[docs\\_2006/](http://www.truthout.org/docs_2006/)

<sup>25</sup> J. Risen, op. cit. pp. 50-54.

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suggested that excercises of dismanteling classical sovereignty should also be applied in cases (for instance in Russia), where the mangament of vast resources, defined as the „the common good“ is concerned.

Violent change of borders is supplemented by the project of extending democracy, toppling authoritarian regimes, and restructuring economies by violent means. The criteria for selecting targets for external implementation of democracy are, by and large, linked to „expansive

economic and strategic impulses“ (G. Kolko). But not only that, the celebration of democracy goes hand in hand with the attempts to reinvent legal foundations for torture and limiting civil rights in the great democracies themselves. Finally, the extension of the right to self-defence has led to a perpetual war on terrorism, to the suspension of legal rules regulating the use of force and protection of human rights. Disregarding the logic of illegal violence and human rights violations common to all the interventions, the sincere promotores of cosmopolitan order, unfortunately contributed to the delegitimation of law and legitimation of the arbitrary use of force in shaping the post Cold War world.

The bitter conclusion of de Sousa Santos seems a realistic reflection of the present normative

paradoxes. Human rights are violated in order to be defended, democracy is destroyed in order to safeguard democracy, life is eliminated to preserve life.

### **4. Conclusion**

Following the end of the Cold war a period of „rule breaking and rule making” has emerged. Its nature is contradictory, exclusionary, based on the power divide. The powerful are rule makers, determining the scope of their relevancy (self-exclusion) and the form of implementation.

The justification given for the „rule breaking and rule making” is the moral imperative and the vacuum created by limited relevance of the the state-centric international law that can not address the problems, threats, developments that have come about as the result of the transformation of sovereignty, emergence of new non-state actors in the era of globalization. Although one may agree that a new normative order is necessary, what is emerging is not an order of a cosmopolitan nature. On the contrary, it perpetuates the division between the strong and the weak, the dramatic inequalities of states and their sovereign powers, it extends the criteria of arbitrariness in the use of force and instrumentalizes

the notion of protecting human rights for geopolitical interests. Not only are fundamental preconditions for a transition to a new cosmopolitan normative order absent, but they are „preemptively” deconstructed. In order for „moral dependency” to become a force of cosmopolitanism, coherent critical reflection is required, as well as systematic and unwavering efforts invested into the strengthening of democracy and rule of law at the global level, decisive affirmation of the spirit of cooperation and nonviolent conflict resolution and the development of effective instruments of transcending the dramatic social divides, new exclusionary practices generated by the old/new world.

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