

# Immanuel Kant`s Essay *Zum Ewigen Frieden - Perpetual Peace* and Modern International Public Law

by

Dr. iur. Menno Aden <sup>1</sup>

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<sup>1</sup> www.dresaden.de

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## Introduction

### I. Scope

Immanuel Kant's *Zum ewigen Frieden - Towards perpetual Peace* (1795) has been influential to this day. It is modern to an amazing degree and a spring of hope, although humankind seems to be set on the way of self - denial of its better self. Wars and civil unrest , seemingly uncontrollable waves of migrants, military build - up of the big powers, endless warfare in the Near East, impending confrontation between USA and China in the Pacific, civil and international wars in Africa, long cherished values of democracy, legality and due process of law, transparency , freedom of expression – all this seems to put the world on slippery slope. And yet - there are grounds for hope and steady betterment. The very last paragraph in Kant's essay says:

*Wenn es Pflicht, wenn zugleich gegründete Hoffnung da ist, den Zustand eines öffentlichen Rechts, obgleich nur in einer ins Unendliche fortschreitenden Annäherung möglich zu machen, so ist der ewige Friede, der auf die bisher fälschlich so genannte Friedensschlüsse (eigentlich Waffenstillstände ) folgt, keine leere Idee, sondern eine Aufgabe, die nach und nach aufgelöst, ihre Ziele (weil die Zeiten, in denen gleiche Fortschritte geschehen, hoffentlich immer kürzer werden) beständig näher kommt. - It is our duty and well founded hope that the development of public international law will bring about perpetual peace. This will however be possible only through a steady and never ending process of approximation of the law to that ideal. Such peace will then be a real peace and not only one of the many peace treaties, which in fact are only armistices. Such peace is not a vane idea, but the duty and task of mankind. This duty will be solved step by step and will come ever nearer to be fully accomplished, while – hopefully - the periods of time during which such steps of progress are made, will become ever shorter. ( Trans. by M. A.)*<sup>2</sup>

In this article it will be shown, that this progress really took place since Kant's time and that it is – irrespective of many setbacks- is in fact underway through the development of modern *international public law*. It can even be said that Kant's second hope is being fulfilled: the periods of time in which mankind is developing its world public law to something what could be vaguely seen as perpetual peace seem to become shorter. The ways proposed and discussed by Kant for the attainment of

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<sup>2</sup> Texts of Immanuel Kant are difficult to read even for Germans, let alone to translate. The above translation tries to bring the sense in today's language.

eternal peace<sup>3</sup> are essentially identical with ways and issues discussed in today's International Public Law (*Völkerrecht*) and - what may be even as more astounding - have to a certain become reality. We are still far from the aim of perpetual peace, but it is the firm conviction of the author that we, men of all nations, are moving in the right direction.

## II. Kant's Essay <sup>4</sup>

### 1. Historical Context

Arguably the two German books on political questions internationally most widely known are Kant's *Zum ewigen Frieden - Towards perpetual Peace* and Clausewitz' *Vom Kriege - On War*. Kant's book was published in 1795, Clausewitz' book was posthumously published in 1832 ss. Kant's book was written just before the French and Napoleonic wars against the rest of Europe started, and Clausewitz' book was written when this period had ended in the battle of Waterloo 1815 and Europe was taking a new shape. Books should be understood in the historical and cultural context of their writer and the readers the writer wanted to address. Kant may have been under the impression, that the Peace of Bale could be a permanent peace settlement between German states and the unruly French; Clausewitz, however, must be credited with his hindsight on almost 30 years of war.

1795: France had just conquered the Netherlands and an ill-fated peace agreement Baseler Frieden –Peace of Bale between France and Prussia was concluded in the very year, when the 3rd Polish partition took place. <sup>5</sup> 1832: this was the year after the Polish November uprising of 1830 against Russia. So these two leading books on War and Peace comprise the 30 years of war between France and the rest of Europe, which resulted in a period of a shaky peace between the powers. Clausewitz is often cited with his saying *Der Krieg ist die Fortsetzung der Politik mit anderen Mitteln - War is continuation of politics with other means*. If we want to sum up, what Kant says in his philosophical essay on *Perpetual Peace* we may be prompted to say: *Peace is the continuation of war - or rather: human dissension - with other means*.

### 2. Overview

#### a. General

Kant calls this text *Ein philosophischer Entwurf - a philosophical essay or attempt*. This short book is not one of the great theoretical systems like *Kritik der reinen Vernunft* and others. This essay is - as Friedrich Schiller wrote - not a philosophical treatise in

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<sup>3</sup> The prevailing translation of *ewiger Friede* in English is *perpetual peace*. In German *ewig* has the connotation of transcendence, while *perpetual* would rather be the translation of *dauerhaft* and has more of the meaning of "durability". The title chosen by Kant implies a certain religious foundation of his ideas.

<sup>4</sup> English Version <https://www.mtholyoke.edu/acad/intrel/kant/kant6.htm>.

<sup>5</sup> The Peace of Bale was in fact the „trigger“ for Kant to write this essay.

the strict sense but but could be regarded as an almost poetical text – if it were not for its *gräulicher Kanzleistil* - terrible bureaucratic style.<sup>6</sup>

Kant divides his essay into two sections and two appendices. The first section (*Preliminary Articles For Perpetual Peace Among States*) deals with the conditions under which a lasting peace can be thought of at all. It therefore contains prohibitions under a supposed international law. *Ver-bote* (= negative prohibitive laws). The second section deals with the rules to be introduced into international law, which can lead to lasting peace in the sense of instructions for action (*Definitive Articles For A Perpetual Peace*). *Ge-bote* (=positive commanding laws; second section)

## b. First Section

1. *No Treaty of Peace Shall Be Held Valid in Which There Is Tacitly Reserved Matter for a Future War*
2. *No Independent States, Large or Small, Shall Come under the Dominion of Another State by Inheritance, Exchange, Purchase, or Donation*
3. *Standing Armies (miles perpetuus) Shall in Time Be Totally Abolished*
4. *National Debts Shall Not Be Contracted with a View to the External Friction of States*
5. *No State Shall by Force Interfere with the Constitution or Government of Another State*
6. *No State Shall, during War, Permit Such Acts of Hostility Which Would Make Mutual Confidence in the Subsequent Peace Impossible: Such Are the Employment of Assassins (percussores), Poisoners (venefici), Breach of Capitulation, and Incitement to Treason (perduellio) in the Opposing State"*

## c. Second Section

1. Article: *The Civil Constitution of Every State Should Be Republican*
2. Article: *The Law of Nations Shall be Founded on a Federation of Free States*
3. Article: *The Law of World Citizenship Shall Be Limited to Conditions of Universal Hospitality*

Appendix (Zusatz) These articles are followed by an Appendix *On the guarantee of perpetual peace* and an

Attachment (Anhang) on *Misunderstandings existing between Ethics and Politics with respect to Perpetual Peace*.

## First Section Preliminary Articles For Perpetual Peace Among States

### 1. Peace Treaty

*No Treaty of Peace Shall Be Held Valid in Which There Is Tacitly Reserved Matter for a Future War*

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<sup>6</sup> Cassirer, Ernst Kants Leben und Lehre, Nachdruck Darmstadt 1977, S. 437.

## a. Kant

Kant discusses the question of whether the state of peace is a natural state of the world / mankind, which is interrupted by wars, or whether war is the natural state to be interrupted by peace. Kant decides for the 1st alternative and postulates that the peace state must be *gestiftet* – i.e. instituted, implemented by certain acts. This can only be done by a Treaty of Peace. Kant seems to think of something similar to Montesquieu's social contract. While the latter is a more mythical theory, Kant seems to think of a very real international treaty to be concluded between the statesmen of the independent states. But such a treaty can only exist on the basis of good faith. If a party uses the word "peace" with a clandestine reservation *reservatio mentalis* to a war when the opportunity arises, again, then such a treaty is of no avail.

*reservatio mentalis* is an important problem of Moral Philosophy for Kant and others. The question is whether it can be morally permissible to lie when a higher goal can be achieved with it. This theory is attributed to the Jesuits: The end justifies the means. This reasoning has become important in the child abuse case of the catholic church, where telling the truth means doing harm to the reputation of the catholic church.

For protestants this doctrine was a mere circumscription of lie. Kant therefore holds: lying, or deception of any kind, is forbidden under any interpretation and in any circumstance. Kant denied the right to lie or deceive for any reason, regardless of context or anticipated consequences. However, it was permissible to remain silent or say no more than needed.

In the given context, this sentence means that a state which wishes to enter into a peace treaty with a secret reservation to begin a new war is depraving itself and insults the human race because it sets its egoistic goals over the destiny of man and man of humanity.

## b. Public International Law: Vienna Convention on the Law of Treaties 1969

In contract law a *reservatio mentalis* is not valid. The Vienna Convention is an instrument of public international law not of ethics or morals. It is quite clear a tacit or mental reservation can only have legal effect. It must be made open and it must be accepted by the contract partners. is made openly.

### *Article 19 Formulation of reservations*

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

- (a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

### *Article 21 Legal effects of reservations and of objections to reservations*

1. A reservation established with regard to another party in accordance with

articles 19, 20 and 23:

- (a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and
- (b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

## 2. States and Peoples

*No Independent States, Large or Small, Shall Come under the Dominion of Another State by Inheritance, Exchange, Purchase, or Donation*

### a. Kant

This sentence may have lost its essential importance today. At the time of Kant, in the 18<sup>th</sup> and in part still in the 19<sup>th</sup> century, it was possible for states to be brought together and also separated by heritage of ruling princes. The notion of the sovereignty of the princes, as well as of the peoples, which emerged in the Age of Enlightenment, led to the idea that states and their peoples were not identical. Kant may have thought of the Wars of Succession (Spanish, Austrian et al.) in Europe until the end of the 18<sup>th</sup> century. The underlying idea is that peoples are no chattels in the hand of their princes. Kant distinguishes between states and their peoples. He says:

*A state is ..a society of men whom no one else has any right to command or to dispose except the state itself. To incorporate it into another state, is to destroy its existence as a moral person, reducing it to a thing; such incorporation thus contradicts the idea of the original contract without which no right over a people can be conceived.*

### b. Public International Law

The origin and meaning of the concept of sovereignty cannot be deepened here. The meaning of sovereignty (originally the completely free and self-sufficient power to do all that the state / absolute ruler wanted) has changed. The essential elements, however, are the basis of today's international law. The concept of sovereignty is presupposed in the UN – Charter 1945.

Article 1

*The Purposes of the United Nations are:..... To develop friendly relations among nations based on respect for the principle of equal rights and **self-determination of peoples**, and to take other appropriate measures to strengthen universal peace;....*

## 3. Standing armies

*Standing Armies (miles perpetuus) Shall in Time Be Totally Abolished*

### a. Kant

Unlike the ancient great empires, especially the Roman Empire, there were no standing armies in the European Middle Ages. In the event of war, knights were summoned up and mercenaries were hired, who were released again after the end of the campaign. A

change was not made until 16<sup>th</sup> century, starting in France under her absolutist kings. This led to a military build-up in other states. Kant obviously had this in mind. The fact that an absolute ruler or a sovereign state disposes of a powerful army at all times is a strong incentive to use it and to start a war. Kant says:

*Standing armies threaten other states incessantly with war through the readiness to always appear ready; they tempt them to surpass each other in the quantity of the arms, which knows no boundaries; and, as the costs of peace are at last even more oppressive than a short war, they themselves are the cause of assault wars to get rid of this burden.*

#### **b. Public International Law**

The weapon technology was essentially the same around 1800 as it was around 1500. The 19th century brought with a lot of technical innovations in many areas, also an improvement of the weapon technique. New guns and machine guns were being developed, and by the end of the century, also ever better explosives (invention of dynamite by Nobel). It has often been felt that the permanent military build up as such, independent of political differences, entailed the threat of a general European war. Against strong political resistance of imperialistic powers, however, peace movements came up which led to early disarmament negotiations, e.g. Hague Peace Conferences in 1899 and 1907. After WWI war these were again initiated.

After WW II which evidenced again new techniques of mass destruction disarmament talks in a way have never ended and did result in many international conventions of that type, e.g. Treaty on the Non-Proliferation of Nuclear Weapons, commonly known as the Non-Proliferation Treaty or NPT. More countries have adhered to the NPT than any other arms limitation and disarmament agreement, a testament to the treaty's significance. As of August 2016, 191 states have adhered to the treaty.

#### **4. Debts for Wars**

*National Debts Shall Not Be Contracted with a View to the External Friction of States*

##### **a. Kant**

It is astonishing that Kant, perhaps as one of the first, points to this aspect of warfare. Although the development of the credit system was already known in ancient Rome there was already then the problem of how the standing armies should be financed. Constant wars that France under King Louis XIV and XV. together with the exaggerated luxury, had completely disrupted the state finances of France and are generally regarded as an essential element in the outbreak of the French Revolution. But it is also certain, that the maintenance of the standing armies today is a heavy burden for the states.

*Kant says: This ingenious invention (= Credit system) of a commercial people [England] in this century is dangerous because it is a war treasure which exceeds the treasures of all other states. ... This facility in making war, together with the inclination to do so on the part of rulers--an inclination which seems inborn in human nature--is thus a great hindrance to perpetual peace. Therefore, to forbid this credit system must be a preliminary article of perpetual peace all the more because it must eventually entangle many innocent states in the inevitable bankruptcy and openly harm them. They are therefore justified in allying themselves against such a state and its measures.*

Also today world peace would probably be much safer, if military aid to other countries would be forbidden restricted by International Law, or at least restricted to serious cases of imminent war, where a country has to defend itself against another. Given the enormous economic interests involved, this is not probable in the foreseeable future.

## **b. Public International Law**

### **aa. WWI**

So called *Liberty Bonds* were bonds sold in the United States by the government to the public to finance British and French victory over Germany. It is a widely held theory, that US – financial aid to allied belligerents in the years 1914 ss was an important motive for the USA to join in the war, in order to recover the costs.<sup>7</sup>

### **bb. WWII**

As in WWI USA pretended to be neutral. But they financed the British and allied efforts to defeat Germany. The Lend-Lease policy, formally titled "An Act to Promote the Defense of the United States" was a program under which the United States supplied to the enemies of Germany A total of \$50.1 billion (equivalent to \$667 billion today) worth of supplies was shipped, or 17% of the total war expenditures of the U.S. In all, \$31.4 billion (equivalent to \$418 billion today) went to Britain, \$11.3 billion (equivalent to \$150 billion today) to the Soviet Union, \$3.2 billion (equivalent to \$42.6 billion today) to France, \$1.6 billion (equivalent to \$21.3 billion today) to China, and the remaining \$2.6 billion to the other Allies. Reverse Lend-Lease policies comprised services such as rent on air bases that went to the U.S., and totalled \$7.8 billion; of this, \$6.8 billion came from the British Empire. This program effectively ended the United States' pretense of neutrality.

### **cc. Military Aid Today**

It is a safe guess, that there would be far less wars or military actions if the belligerent states had to pay for their military machinery in cash. The USA is not the only country to fund foreign military build-up, but by far the most important. United States Foreign Military Financing (FMF) FMF funds purchases of military equipment. FMF pays for SAO salaries and operational costs. FMF exists primarily to fund arms transfers.

## **5. No Interference**

*No State Shall by Force Interfere with the Constitution or Government of Another State*

### **a. Kant**

The concept of sovereignty of states prohibits the external interference. One of the historical principles of Swiss neutrality is *Mische dich nicht in fremde Händel – do not to mix yourself into foreign quarrels*. Also in the bourgeois life it is a principle that one does

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<sup>7</sup> This was however not the only, maybe not even the decisive reason für USA to enter into the war 1917; see M. Aden, *Das Werden des Imperium Americanum*, Graz 2016



not mix oneself in other family affairs. If this principle were adhered to, a great many pretexts for armed conflicts would fall away. At the time of Kant, the partition of Poland had been justified with the pretext, that Poland was sunk in anarchy; the coalition wars early in the 19<sup>th</sup> century had begun under the pretext of the monarchies to restore order in France. Many examples could be cited, particularly in the time of colonial expansion or more recently in Irak, Afghanistan, Syria etc.

Kant says: *The evil into which a state has fallen because of its lawlessness should serve as a warning. Moreover, the bad example which one free person affords another as a scandalum acceptum is not an infringement of his rights. But it would be quite different if a state, by internal rebellion, should fall into two parts, each of which pretended to be a separate state making claim to the whole. To lend assistance to one of these cannot be considered an interference in the constitution of the other state (for it is then in a state of anarchy) . But so long as the internal dissension has not come to this critical point, such interference by foreign powers would infringe on the rights of an independent people struggling with its internal disease; hence it would itself be an offense and would render the autonomy of all states insecure.*

#### **b. Public International Law UN – Charter Article 2**

The UNO is based on the principle of the sovereign equality of all its Members. Therefore it is said in Art. 2 : *Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter.*

But this is only the principle. It can be overruled according to Chapter VII (Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression)

#### **6. In War prepare for Peace**

*No State Shall, during War, Permit Such Acts of Hostility Which Would Make Mutual Confidence in the Subsequent Peace Impossible: Such Are the Employment of Assassins (percussores), Poisoners (venefici), Breach of Capitulation, and Incitement to Treason (perduellio) in the Opposing State"*

#### **a. Kant**

In the time of Kant there was still no *Geneva Convention* and no clearly structured international law of war. The medieval rules of the knightly wars in which man fought against man, had come to an end with the invention of fire arms. The wars, on which Kant could look back, the religious wars and the Thirty Years War had been incredibly cruel also for today's standards. These may have prompted Kant to emphasize to be mindful the future peace already in the midst of war. In our lifetime we have seen the Algerian War of Independence in the 1960s and the Vietnam War 1970s. The atrocities committed by sides seem to have poisoned the relations of the belligerent parties for decades and thereby made peace almost impossible.

Kant says: *For some confidence in the character of the enemy must remain even in the midst of war, as otherwise no peace could be concluded and the hostilities would degenerate into a war of extermination (bellum internecinum). ....But that the means cited .. would not long be confined to the sphere of war. Take, for instance, the use of spies (uti*

*exploratoribus). In this, one employs the infamy of others (which can never be entirely eradicated) only to encourage its persistence even into the state of peace, to the undoing of the very spirit of peace.*

## **b. Clausewitz**

Clausewitz concurs: *War can never be separated from political intercourse, and when this happens somewhere ...*The war is nothing but a continuation of the political intercourse with the interference of other means. We say, with the interference of other means, in order to assert at the same time that political traffic does not discontinue through the war itself, but that it continues in its essence, as well as the means which it serves. War can never be separated from political intercourse.<sup>8</sup>

According to Clausewitz, the statesman, even before the end of the war, has to invest the last military operations in the sense of the expected or conceived peace regime, a piece of advice which was not followed by the victors of the two world wars as well as in Vietnam, Bosnia and Afghanistan. The consequences of this are felt in today's world situation.

## **c. Geneva Convention**

The First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, held in 1864, is the first of four conventions: 1906, 1929, 1949. Wars remained cruel and as long as there will be wars cruelties will occur. But the simple fact that there is which *should* be respected even in the heat of combat will often help the warring parties to contain themselves.

## **d. International Law of International War**

The Hague Conventions of 1899 and 1907 on disarmament represent a major effort to restrain atrocities in wars. This convention contains the laws to be used in all wars on land between signatories. It specifies the treatment of prisoners of war, as are partly already included in the Geneva Convention.

## **Second Section Definitive Articles For Perpetual Peace Among States**

Under the assumption that the “negative” laws ( i.e. prohibitive laws = Verbotsgesetze) as outlined in the First Section are respected and obeyed by the states, Kant now proceeds to establish “positive” laws ( i.e. commandments = Gebotsgesetze) which he thinks can produce and maintain perpetual peace on an international scale. It may not be too far fetched to say that the three Articles expounded in Second Section are the basis or nucleus of every conceivable World Peace System ,

### **1. Article : The Civil Constitution of Every State Should Be Republican**

#### **1. Kant**

In Kant`s time there were – as far as the author of this can see: worldwide ! - only (2 )

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<sup>8</sup> Vom Kriege, Nikol –Verlag 7. Aufl. 2014, S. 476

two real democracies / republics in place: Switzerland and the United States.<sup>9</sup> France, which could also be named was already on the verge of becoming an absolute monarchy again under Napoleon Bonaparte. The German – Imperial Cities (Freie Reichsstädte, e.g. Hamburg, Bremen, Lübeck, Frankfurt etc. ) in fact were free republics, but they politically too unimportant to be accounted for in this context. The time honoured system of hereditary monarchy seemed to be the God given system of government.<sup>10</sup> So it is quite conspicuous, maybe even courageous, that Kant advocates a political system, which essentially is already that of our times.

Kant says: *The only constitution which derives from the idea of the original compact, and on which all juridical legislation of a people must be based, is the republican. This constitution is established, firstly, by principles of the freedom of the members of a society (as men);<sup>11</sup> secondly, by principles of dependence of all upon a single common legislation (as subjects); and, thirdly, by the law of their equality (as citizens). The republican constitution, therefore, is, with respect to law, the one which is the original basis of every form of civil constitution. The only question now is: Is it also the one which can lead to perpetual peace? The republican constitution, .. gives a favorable prospect for the desired consequence, i.e., perpetual peace. The reason is this: if the consent of the citizens is required in order to decide that war should be declared (and in this constitution it cannot but be the case), nothing is more natural than that they would be very cautious in commencing such a poor game, decreeing for themselves all the calamities of war.*

This is unfortunately not quite true. The big wars of the 19<sup>th</sup> and 20<sup>th</sup> century were fought by radicalized peoples of republics., eg. the American Civil War ( 1860 ies) was one of the bloodiest in human memory. The Polish- Russian war ( 1923) the Korean, Vietnam and Algerian war etc were waged by republics.

## 2. Democracy and Human Rights

The doctrine of *separation of powers* had been practised in early Roman republic and Greek cities, before it was superseded by absolute power of emperors and was given a theoretical basis only as a consequence of reformation. Montesquieu (1689 – 1755) is generally credited with being the founder of this theory. Under this the executive power is in vested the King , a representative body was seen as law - maker of the law, which was to be applied by the independent judiciary. Although a change to more democracy and representation had taken place on the eve of WW I the system in Europe had not much changed. With the exception of Switzerland and France all states were governed by kings. In Kant's time the idea of separation of power was not the reality in Prussia ( Kant lived in Königsberg/ East Prussia) nor in any European state, but this was

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<sup>9</sup> The Netherlands were in fact governed by a hereditary stathouder, who only lacked the name of a king.

<sup>10</sup> see: Aden, Menno *Deutsche Fürsten auf fremden Thronen*, Gilching, 2013

<sup>11</sup> Cassirer aaO, S. 424: Kantische Staatsauffassung ruht auf seiner Auffassung der Freiheitsidee – Kant's concept of a state is based on his concept of freedom.

obviously the system of his choice.

Today the system of *separation of powers* is, albeit to differing degrees, worldwide accepted, at least in theory and also in the remaining monarchies. With one egregious exception: The Holy See and Vatican. The pope is still an absolute ruler of the church - no representation, no parliament, no transparency. Today Democracy is generally seen as a core human right. ( Attachment 2 )

## Art. 2 The Law of Nations Shall be Founded on a Federation of Free States

### 1. Kant

The idea of a “Federation of free states “ (Föderalismus freier Staaten) is arguably the most important concept ever in order to attain peaceful co-existence of humankind.<sup>12</sup>

*Kants says: Peoples, as states, like individuals, may be judged to injure one another merely by their coexistence in the state of nature (i.e., while independent of external laws). Each of them, may and should for the sake of its own security demand that the others enter with it into a constitution similar to the civil constitution, for under such a constitution each can be secure in his right. This would be a league of nations (= Völkerbund) , but it would not have to be a state consisting of nations. ....But the homage which each state pays (at least in words) to the concept of law proves that there is slumbering in man an even greater moral disposition to become master of the evil principle in himself (which he cannot disclaim) and to hope for the same from others....For these reasons there must be a league of a particular kind, which can be called a league of peace (foedus pacificum), and which would be distinguished from a treaty of peace (pactum pacis) by the fact that the latter terminates only one war, while the former seeks to make an end of all wars forever.*

*This league does not tend to any dominion over the power of the state but only to the maintenance and security of the freedom of the state itself and of other states in league with it, without there being any need for them to submit to civil laws and their compulsion, as men in a state of nature must submit.*

*For states in their relation to each other, there cannot be any reasonable way out of the lawless condition which entails only war except that they, like individual men, should give up their savage (lawless) freedom, adjust themselves to the constraints of public law, and thus establish a continuously growing state consisting of various nations (civitas gentium), which will ultimately include all the nations of the world.*

Kant goes on: If a world republic cannot be achieved, a league of nations which administers public law would be a surrogate - an alliance of nations which holds back hostile passions by the fear of legal consequences.

### 2. League of Nations

The League of Nations was founded on 10 January 1920 as a result of WW I. Its principal mission was to maintain world peace. At its greatest extent from 28 September

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<sup>12</sup> see: Cassirer, S. 414

1934 to 23 February 1935, it had 58 members.

The diplomatic philosophy behind the League represented a fundamental shift from the preceding hundred years. The League lacked its own armed force and depended on the Great Powers to enforce its resolutions, keep to its economic sanctions, or provide an army when needed. However, the Great Powers did not stick to their own vows. When Italy conquered Abyssinia – they turned a blind eye to the Negus and let it happen.<sup>13</sup>

The League lasted for 26 years; the United replaced it after the end of the Second World War on 20 April 1946 and inherited a number of agencies and organisations founded by the League.

### 3. United Nations

The United Nations (UN) is an organization to promote international co-operation. At its founding, the UN had 51 member states. The organization is financed by assessed and voluntary contributions from its member states. Its objectives include maintaining international peace and security, promoting human rights, fostering social and economic development, protecting the environment, and providing humanitarian aid in cases of famine, natural disaster, and armed conflict. The UN – Charter was drafted between April–June 1945 and was signed on 26 June 1945 at the conclusion of the conference. The UN's mission to preserve world peace was complicated in its early decades by the Cold War between the US and Soviet Union and their respective allies. The organization participated in the Korea War and the creation of the state of Israel in 1947. After the end of the Cold War, the UN took on major military and peacekeeping missions across the world with varying degrees of success.

Whatever the shortcomings of the UNO may be – this organization is the one of the decisive steps, if any, to attain perpetual peace.

### Art. 3 The Law of World Citizenship Shall Be Limited to Conditions of Universal Hospitality

#### 1. Kant

In the lifetime of Kant the build-up of the great colonial empires (Great Britain conquered India and Canada 1759). In East Asia colonies and trading branches were established. The transatlantic slave trade was at its height. The world was treated by the colonial powers as *res nullius*, no man's land, to be taken at will. Today, in the 21st century, the direction of the foreign "visits" has changed. It is no longer the Europeans who are attacking foreign countries, but the peoples of the underdeveloped countries are reaching out for us through ever greater waves of migration. The question, raised by Kant, remained however basically the same.

Kant says: *Let us look now, for the sake of comparison, at the inhospitable behaviour of the civilised nations, especially the commercial states of our continent. The injustice which*

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<sup>13</sup> Greenfield, Richard Ethiopia – A New Political History ( 1965) , Reprint Addis Abab 2013,. Esp. Chapter IV: HaileSELLASIE Conscience of the World

*they exhibit on visiting foreign lands and races—this being equivalent in their eyes to conquest—is such as to fill us with horror. America, the negro countries, the Spice Islands, the Cape etc. were, on being discovered, looked upon as countries which belonged to nobody; for the native inhabitants were reckoned as nothing. In Hindustan, under the pretext of intending to establish merely commercial depots, the Europeans introduced foreign troops; and, as a result, the different states of Hindustan were stirred up to far-spreading wars. Oppression of the natives followed, famine, insurrection, perfidy and all the rest of the litany of evils which can afflict mankind.*

*And this has been done by nations who make a great ado about their piety, and who, while they are quite ready to commit injustice, would like, in their orthodoxy, to be considered among the elect.*

*The intercourse, more or less close, which has been everywhere steadily increasing between the nations of the earth, has now extended so enormously that a violation of right in one part of the world is felt all over it. Hence the idea of a cosmopolitan right is no fantastical, high-flown notion of right, but a complement of the unwritten code of law—constitutional as well as international law—necessary for the public rights of mankind in general and thus for the realisation of perpetual peace. For only by endeavouring to fulfil the conditions laid down by this cosmopolitan law can we flatter ourselves that we are gradually approaching that ideal.*

## **2. Geneva Convention on Refugees**

The Geneva Convention on Refugees entered into force on 22 April 1954. Originally it was only for Europe, especially for refugees from the sphere of communism. The variously supplemented Convention have acceded to 147 States.

Prior to the entry into force of the convention, there had been no binding international regulation on dealing with refugees. Only in intergovernmental treaties or in unilateral declarations of intent of individual states had it been determined how many refugees a state wanted to include in each individual case.

## **3. Humankind as a Juristic Person - *Völkerrechtssubjektivität der Menschheit***

Improved traffic connections and communications have brought mankind to more and more realize, that they are One. More and more areas have been identified, in which mankind as such, not only individual states, have common interests, such as the protection of the oceans and the climate, combating crime, etc. For this reason mankind as such, that is to say, not only the States, should be granted the status of a juristic person under international law, so that certain humanitarian goods and interests ( e.g. the oceans, climate, historical documents etc) can be treated and further developed as a common heritage of mankind and not as the property of a single nation. The author 's essay according is to this effect.<sup>14</sup>

## **Summary**

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<sup>14</sup> Aden, *Völkerrechtssubjektivität der Menschheit*, *ZVglRWiss Zeitschrift für vergleichende Rechtswissenschaft* 2006, 55 f; ders. *Nationale Rechte an Menschheitsgütern* *Zeitschrift für Rechtspolitik* 09, 171 ff

It has been shown, that Kant's ideas of establishing a universal system of lasting peace among nations, far from being a mere theoretical exercise, is of high practical importance. Selected examples taken from today's International Public Law give evidence, that Kant anticipated many thoughts and issues, which in the course of the 19th and 20th century became important issues in international law. The greatest and farthest reaching achievement of the Prussian philosopher was his proposal of a world-wide community of nations, an idea which came to reality after WW I as *League of Nations* (Völkerbund) and after WW II as the *United Nations*. Based thereon the author of this proposes a new concept for the juristic qualification of mankind, as outlined in his article cited in footnote 14.

M. A.

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