The Rise of the Neo-Hobbesian Age: Thirty Years Since the Fall of the Berlin Wall

Achilles Skordas

"Die Heimatlosigkeit wird ein Weltschicksal"
Martin Heidegger, Brief über den Humanismus

I. The Age

In the night of 9. November 1989, history was reset. But none of those who have kept these moments in their memory could have imagined how the 21st century would look like.

Thirty years later, the world is an unfamiliar and uncanny place. Unlike the Cold War, no global dividing line between States exists, but the prospect that major and bloody conflicts may occur is not a fantasy, but a real possibility; still, this is not the main feature of the time. The multitude of conflicts obscure the clarity of view towards the greatest political and social dilemmas of our Age, just as the visibility of distant parts of the Universe is distorted by the cosmic dust. It is worth making an effort to reconstruct this question.

When the "real socialism" was overwhelmed by the irresistible forces of functional differentiation,[1] the abrupt end of the *Hobbesian* "short 20th Century" created a temporary euphoria and elation that obscured the slow and silent rise of a darker reality. The liberation from the intellectual and psychological constraints of the Cold War obfuscated the clarity of observation and interpretation of events. Many initially mistook the new world order as an enlightened *Kantian* era of human rights, then as a global market *Lockean* style. In the 1990s, most did not notice the disturbing signs, even though the conflicts in Yugoslavia and Rwanda created a sense of foreboding for things to come.

The new millennium started in the shadows of the "war on terror", but the overall picture of the world is far more complex. The 21st century

1 See the excellent monograph by *N. Hayoz*, L' étreinte soviétique, 1997.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

is not a *Hobbesian* era dominated by the friend/foe distinction. The ideological, bifurcated, and totalizing character of the Cold War corresponded to that model. The confrontation between East and West constituted a state system defined by the struggle and enmity between the two incompatible models of world society, which is not the case in our time.[2]

The Neo-*Hobbesian* Age rose gradually from the backstage, before the public could see its broad contours. As to its character and code(s), it still eschews a precise definition and understanding. Instead, there is a plurality of deep and fragmentary antagonisms and enmities of geopolitical, geo-economic, geo-religious, racial, and sectarian order that keep the world in a constant state of irritation. Systemic forces and interests occupied the space creating an idiosyncratic mix of global order and global disorder. Existential risks and environmental anxieties add to the feelings of abandonment and alienation. Instead of the fear of total annihilation of the Cold War, angst and demand for human security are nowadays the new normal. Systems and bureaucracies, complexities and contingencies, add to the picture and make it even more unintelligible. But there are also normative projects, technological advancement, and multiple processes of deep integration and governance on a planetary scale that offer hope that things are not as bad as we think.

A final battle between good and evil is not on the agenda, even in our conflict-laden world society. What defines the Neo-*Hobbesian* Age is rather the uneasy and occasionally messy symbiosis between the two faces of a *Janus*-like reality. The first is about persons: perceptions, ideas, feelings, existential dilemmas, unpredictability, spontaneity, angst, as expressions of the cycle of life and destruction. The second is about systems and structures: cyberspace, social media, big data, Great Powers, global surveillance, algorithms; this is the contemporary Leviathan.

II. Conflicts and Normative Projects

The categorization of contemporary sites of tension or conflicts is necessarily fuzzy. We can distinguish at least six categories: (i) geopolitics in broad sense,[3] (ii) international and non-international armed conflicts,[4] terrorism,

2 See generally *O. A. Westad*, The Cold War – A World History, 2017.
3 See IISS, Strategic Survey 2018 – The Annual Assessment of Geopolitics, 2018.
4 See IISS, The Armed Conflict Survey 2019, 2019.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

and political Islam,[5] (iii) anti-globalization conflicts between winners and losers in the transition from Fordism to the New Economy",[6] taking the form of the so-called "populist movements",[7] (iv) identity clashes linked to gender and race,[8] and (v) controversies between Global North and Global South. A sixth set of conflicts are innate to social systems, whose rationalities deviate from, and collide with, each other.[9]

Resentment and *thymos*,[10] risk,[11] and angst are key components of the Neo-*Hobbesian* Age and, combined together, they foment conflict and maximize their scope. However, none of these forms of conflicts has been able to dominate and draw the others within its orbit, as it had happened during the Cold War. The rise of China and the formation of a new variation of capitalism "with Chinese characteristics" has led to harsh and intensified antagonism with the West, but so far has not been able to create a global model. A strong international followship is not on the horizon, at least for the time being.

Social norms positively mark a possibility that should be realized.[12] This is why a normative project as a system of norms with a purpose emerges in connection with existing political and economic structures, and marks a path of action in a certain direction. The Cold War offers again the model for normative mega-projects: the choice between liberal democracy and communism has been the archetype of competing projects with global ambition.

In the Neo-*Hobbesian* Age, equivalent projects appear to be lacking. This is not only a matter of intellectual scope and construction, but equally an issue of social dynamic. The civil rights and human rights movements

---

5 See recently *S. Schröter*, Politischer Islam – Stresstest für Deutschland, 2019.

6 *T. Iversen/D. Soskice*, Democracy and Prosperity – Reinventing Capitalism through a Turbulent Century, 2019.

7 *C. Koppetsch*, Die Gesellschaft des Zorns – Rechtspopulismus im globalen Zeitalter, 2019.

8 *F. Fukuyama*, Identity – Contemporary Identity Politics and the Struggle for Recognition, 2018; see also *F. Fukuyama*, Against Identity Politics – The New Tribalism and the Crisis of Democracy, Foreign Affairs 97 (2018), 90 et seq., and the relevant discussion by *S. Y. Abrams/J. Sides/M. Tesler/L. Vavreck/J. A. Richeson/F. Fukuyama*, E Pluribus Unum? The Fight over Identity Politics, Foreign Affairs 98 No. 2 (2019), 160 et seq.

9 From the area of international law, see *A. Fischer-Lescano/G. Teubner*, Regime-Kollisionen – Zur Fragmentierung des globalen Rechts, 2006.

10 *P. Sloterdijk*, Zorn und Zeit, 4. Aufl. 2016.

11 *U. Beck*, World at Risk, 2009; *N. Luhmann*, Risk: A Sociological Theory, 1993.

12 *Möllers*, Die Möglichkeit der Normen – Über eine Praxis jenseits von Moralität und Kausalität, 2018, 13 et seq., 131 et seq., 155 et seq.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

flourished in the context of the Cold War, creating in the 1960s and 1970s the intellectual and social foundations for the democratization of West and the bankruptcy of the communist project. The peace movement, the free speech, the sexual revolution, and the civil rights movement subverted the foundations of deeply conservative societies and rocked the world.[13]

Prima facie, these movements have declined, if we judge them with the criteria of the Cold War. The human rights movement is less successful as a normative project for the democratization of contemporary autocracies, as long as such regimes enjoy a significant degree of popular support. Peoples and individuals continue to fight for human rights and democracy around the world, but it is a trench warfare rather than a social and political revolution.

However, the ideas of human rights and equality are far more successful, seen from a perspective more apposite to our era. In the shortest possible of historical times, they succeeded in revolutionizing the culture of mutual recognition of human beings and in redefining the social system of interpersonal relations and private life, including marriage. So perhaps it is not only about the classical idea of "revolution" and subversion, but also, and primarily, about the relationship of human beings among themselves and with the world. This turn shows the path towards the idea of destiny and the normative projects associated with it.

III. Destiny

Indeed, there is something bigger happening in our time, whose significance exceeds by far the developments and struggles in previous moments of modernity. As the question of climate progressively dominates the political agendas and the public discourse, a new generation of normative projects is emerging, and they are linked to the destiny of humankind.

The question of destiny was framed in a unique way by *Martin Heidegger* in his "Letter on Humanism", addressed originally to the French philosopher *Jean Beaufret* right after the War (1946).[14] This is not the place for a discussion of the complex concepts of *Heidegger's* philosophy, but some aspects of his thought can elucidate, even metaphorically, the questions dealt with here. In the Letter, *Heidegger* de- and reconstructed the idea

13 See, for instance, *P. Berman*, A Tale of Two Utopias, 1996. See also *S. Moyn*, The Last Utopia – Human Rights in History, 2012.

14 *M. Heidegger*, Über den Humanismus, 10. Aufl. 2000.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

of humanism, by reinterpreting his previous work, in particular "*Sein und Zeit*".[15] In his paradoxical rejection of metaphysics but acceptance of "transcendence", he recreates a new form of humanism in big format. In his understanding, destiny (*Geschick* or *Schicksal*) features the extraordinary moments of history, and is linked with the idea of *Sein* (Being).

Heidegger distinguishes between *Sein* and *Seiendes* (entities, including human beings). His main line of critique is that humanism has focused almost exclusively on the metaphysics of *Seiendes*, and ignored the big question of the meaning of *Sein. Sein* (or *Seyn*) is for *Heidegger* the great primeval and impersonal force, which awakens humans through the clearing of the view (*Lichtung*).[16] Thus, he makes a fundamental distinction by separating humans from nature – a point of major significance for environmental policies. *Heidegger* rejects the idea of a human being as an *animal rationale*, stating that humans exist in the world (*in-der-Welt-sein*) as *Dasein* (being-there), whilst animals are "tied up" (*verspannt*) to their surroundings (*Umgebung*).[17] By "being-in-the-world", *Heidegger* meant "a self-reflective consciousness even of a rather primitive awareness", which is enlarged as humans extend their horizon.[18] Humanity is "ek-statically" open to *Sein* and to the clearing by *Sein*.[19] *Sein* is "*transcendens* par excellence (*schlechthin*)", because it extends to, and enlightens humans.[20]

As humans are "thrown in the world" and *Sein* has been falling into oblivion, homelessness has become a world destiny.[21] Homelessness and alienation are features of modernity and post-modernity. *Heidegger* rejects the existing versions of humanism, because, in his perspective, none of them highlighted the real dignity of humanity.[22] Humanity is for *Heidegger* "the shepherd of Being"[23] and the language is "the House of Being".[24]

---

15 For an analysis of the Letter see *D. Mende*, Brief über den Humanismus. Zu den Metaphern der späten Seinsphilosophie, in: D. Thomä (Hrsg.), Heidegger Handbuch, 2nd ed. 2013, 216 et seq.

16 On the meaning of the bifurcation "Lichtung/Verbergung", see *A. Kern*, Der Ursprung des Kunstwerkes – Kunst und Wahrheit zwischen Stiftung und Streit, in: D. Thomä (note 15), 134 et seq.

17 *M. Heidegger* (note 14), 18.

18 *M. Gelven*, A Commentary on Heidegger's Being and Time, Rev. Edition, 1989, 57.

19 *M. Heidegger* (note 14), 42.

20 *M. Heidegger* (note 14), 29.

21 *M. Heidegger* (note 14), 31.

22 *M. Heidegger* (note 14), 22.

23 "Der Mensch ist der Hirt des Seins", *M. Heidegger* (note 14), 23.

24 "Die Sprache ist das Haus des Seins", *M. Heidegger* (note 14), 5.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

Humanity's ek-static ek-sistence[25] is open to *Sein* and is experienced as "care" (*Sorge*).[26] Instead of history as sequence of events and developments, destiny indicates the moments of epochal change and great decisions.[27]

Heidegger has been considered as a technology sceptic, but his standpoint is more nuanced. In his lecture "*Der Satz der Identität*" (1957) he described the momentous historical rupture (*Ereignis*), where technology (*Ge-Stell*) embodies the "belonging-together" (*Zusammengehören*) of humanity and *Sein*.[28] This is a core element of some of the thoughts to be further presented.

Heidegger's thinking can serve as the point of departure for reformulating the two great normative projects of the Neo-*Hobbesian* Age in terms of human destiny. First, human dignity is not limited to respect for the human person and his rights, but is also a reference to human destiny. Destiny is visible in the great historical turns, such as the Axial Time, postulated by *Karl Jaspers*,[29] the post-medieval Enlightenment and, in our Age, possibly of new Enlightenment whose message is yet to be felt. *Heidegger* calls us not to focus on the ephemeral, but to observe the marks and paths witnessing the presence of humanity in history. Therefore, normative projects defining our time cannot be based on legitimate, but fragmentary, issues, demands, or claims, but on themes affecting the humanity as a whole. Thinking only in terms of interstate conflicts, nationalisms of all kinds, Great Power antagonisms, or civil society entitlements, leads to forgetfulness and distraction from the even bigger themes of our time. The Neo-*Hobbesian* Age marks the irreversibility of homelessness as a world destiny. Humanity is separating itself painfully, but almost imperceptibly, from the familiarities and safe routines of fixed historical existentials.

Second, humans exist "in the world", where all meaning is articulated, without being necessarily constructed as rational thinking. According to *Luhmann*, the "world" draws the horizon of all meaning, and

25 "Ek-statische Ek-sistenz" is a neologism of *Heidegger*, indicating the links between ecstatic openness, existence, and clearing.

26 *M. Heidegger* (note 14), 23.

27 "Daher die Rede von Epochen des Seinsgeschicks. Epoche meint hier nicht einen Zeitabschnitt im Geschehen, sondern den Grundzug des Schickens": *M. Heidegger*, Zur Sache des Denkens, cited by *R. Lüfter*, Heidegger und die Frage nach der Geschichte, 2012, 194 et seq.

28 Cited by *S. Münker*, Die Postmoderne – Lyotard, Vattimo und die Idee der "Verwindung der Moderne", in: D. Thomä (note 15), 467. For the meaning of "Ereignis", see *G. Seubold/T. Schmaus*, Ereignis – Was immer schon geschehen ist, bevor wir etwas tun, in: D. Thomä (note 15), 335 et seq.

29 *K. Jaspers*, Von Ursprung und Ziel der Geschichte, Gesamtausgabe Bd. I/10, 2017.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

enables specific selections in view of other possibilities.[30] Or, for *Rossbach*, "world" is an almost "mystical" and unmarked space, representing the "one-ness", before any distinctions through social communication were made.[31] Notwithstanding the conceptual differentiations, there are two alternatives available: one based on the nature of humanity as an ultimately "earthly" being, growing in the "world", but always remaining within the bounds of territorial space, and another one where humans are defined by a "world" that opens an unlimited horizon within which they can evolve and deploy their communicative capacity, their ambition and ability to survive in artificial environments of any kind.

There are two corresponding normative mega-projects: For the first, we can use the term Mother Earth and for the second, Cosmos.

IV. Project 1: Mother Earth

"Mother Earth" is a term used already by *Michel Serres* in 1992,[32] but has become a major point of reference in the recent Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) Report on Biodiversity.[33] The Report develops a concept for the restoration and conservation of nature, along with transformative social changes, including issues of inequality and justice.[34] It links the core concept of Mother Earth with comparable concepts of indigenous peoples, by stating, for instance, that

> "Aymara and Quechua communities in the Andes, as groups elsewhere using this or other terms, conceptualize Mother Earth as a self-regulatory organism representing the totality of time and space and integrating the many relationships among all the living beings".[35]

Mother Earth is the opposite of perceptions linking territory with nationalism or resource exploitation. This is a project of global society and regional spaces, aiming to redefine freedom in asceticism.

---

30 *N. Luhmann*, Systemtheorie der Gesellschaft, 2017, 631 et seq.
31 *S. Rossbach*, "Corpus mysticum" – Niklas Luhmann's Evocation of World Society, in: M. Albert/L. Hilkermeier (eds.), Observing International Relations – Niklas Luhmann and World Politics, 2004, 44 et seq.
32 *M. Serres*, The Natural Contract, 1995, 122.
33 IPBES/7/10/Add. 1, 29.5.2019.
34 IPBES (note 33), Summary for Policymakers, para. D3.
35 IPBES (note 33), Chapter 2.1, 35.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

There are other related concepts in a variety of academic fields and policy discussions, including in law, such as Anthropocene,[36] Gaia,[37] Contract with Nature,[38] or Earth jurisprudence.[39] The underlying commonality of these views and constructions is an explicit critique of industrial society. These opinions are often supported by official reports of international organizations, demands of political parties, and governmental action. The activism of radical lifestyle changes propagates restrictions on free trade, consumption, travel, flying, or driving,[40] and the creation of a "green economy". For instance, in its latest report, the Intergovernmental Panel on Climate Change (IPCC) considered the positive effects of reducing the consumption of meat, dairy products and eggs in the European Union by 50 %.[41] These are parts and parcels of a comprehensive normative project for the radical transformation of contemporary society.

Religious, moral, and ethical points of view,[42] but also animist conceptions,[43] and the idea of "good life", play an important part in this project. Moral communication leads to strong disputes, because it brings respect and disrespect into expression, and can therefore augment the potential for strong polarization and perhaps violence. Moreover if this project ever takes a clear anti-modernist turn, which is by no means unavoidable, and acquires the necessary legitimacy to implement the relevant policies, then moral communication may probably assume a strengthened position in society. This may lead to increased tensions with other social systems, which are defined by their own codes and not by the code of morality.[44]

---

36 *L. J. Kotzé*, Global Environmental Constitutionalism in the Anthropocene, 2016; *J. Kersten*, Das Anthropozän-Konzept, 2014.

37 *B. Latour*, Facing Gaia – Eight Lectures on the New Climatic Regime, 2017; *B. Latour*, An Attempt at a "Compositionist Manifesto", New Literary History 41 (2010), 471 et seq.

38 *M. Serres* (note 32).

39 *J. Koons*, What Is Earth Jurisprudence?, Key Principles to Transform Law for the Health of the Planet, Penn State Environment Law Review 18 (2009), 47 et seq.

40 See the critical comments by *R. Hank*, Du musst Dein Leben ändern, FAZ, 18.8.2019, 18.

41 IPCC Report on "Climate Change and Land", 7.8.2019, chap. 5, 89, at: <www.ipcc.ch>.

42 See *R. J. Berry*, Environment Stewardship – Critical Perspectives – Past and Present, 2006.

43 For the last point, see *J. Kersten* (note 36), 60 (relating to *Latour*).

44 *N. Luhmann*, Paradigm Lost: Über die ethische Reflexion der Moral, in: N. Luhmann, Die Moral der Gesellschaft, 2008, 259 et seq.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - CC BY-NC-ND

V. Project 2: Cosmos

The competing normative project (Project 2) can be called "Cosmos" and is symmetrically antithetical to Mother Earth. Cosmos attempts to offer answers to the great questions of our time and has also utopian elements. The theoretical foundation of this project is less elaborate than Project 1, but is far stronger in terms of systemic power. For Cosmos, individuals can be freed from the constraints of everydayness through the expansion of systems, in particular of economy, science, and technology. Its normative basis is not the morality or ethics – these are its moving limits –, but rather the general idea of freedom, human creativity, and uninhibited communication. Instead of religion, this normative project is inspired by a pagan, *Promethean* ethos.

Cosmos is a project in progress. The cyberspace and the social media have already transformed the way people behave, and have changed the forms they communicate, by channeling, for instance, their feelings and very personal thoughts in the global marketplace via the Machine. Furthermore, there are ongoing plans for the commercial exploitation in outer space, including the Moon and Mars.[45] The United Nations General Assembly has acknowledged the interest of governments, industry, and the private sector to engage in activities in the outer space and called for the development of global governance regimes for these activities.[46] Social communication and business activities extend beyond the range of Earth towards the planetary system. Technology promises solutions to the environmental problems via geoengineering and innovation, conducted within the related legal framework,[47] but without painful lifestyle changes.[48]

---

45 See NASA, National Space Exploration Campaign Report (Pursuant to Section 432(b) of the NASA Transition Authorization Act of 2017 [P.L. 115-10]), September 2018, <www.nasa.gov>.

46 See, for instance, UNGA Res. of 26.10.2018 on "space as a driver of sustainable development", A/RES/73/6, 31.10.2018.

47 *H. Du*, An International Legal Framework for Geoengineering – Managing the Risks of an Emerging Technology, 2018. See also *N. E. Vaughan/T. M. Lenton*, A Review of Climate Geoengineering Proposals, Climatic Change 109 (2011), 745 et seq., *D. Keith*, Geoengineering the Climate: History and Prospect, Annual Review of Energy and the Environment 25 (2000), 245 et seq.

48 For a spirited response to eco-pessimism, see *S. Pinker*, Enlightenment Now – The Case for Reason, Science, Humanism, and Progress, 2019, 142 et seq.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

The meaning of governance is changing through artificial intelligence, and this has serious repercussions on geopolitics.[49] Furthermore, human beings are "under further construction" through bioengineering and genome editing (Clustered Regularly Interspaced Short Palindromic Repeats [CRISPR] project),[50] reshaping of the mind,[51] redesigning of human body,[52] or adapting humans to the Cosmos through artificial intelligence.[53] Still, there is an apparent disjunction between capabilities and expectations, on the one hand, and possible time frames, on the other.

Twenty years ago, when *Peter Sloterdijk* proposed "rules for the human park" in a response to *Heidegger's* Letter on Humanism,[54] he was derided as devising the "*Zarathustra* project".[55] Even if this discussion has meanwhile lost its pointe, it offers an excellent example of "Big Thinking". Ultimately, the Cosmos project aims at the acceleration of systemic operations and at the transformation of the technological capacities of our civilization *ad infinitum*, with minimal regulation and external control. This normative project still needs a solid foundation on how it distinguishes itself from domination by technocracy devoid of telos.

VI. The New Tale of Two Utopias

Thirty years since the fall of the Berlin Wall, world society has formed itself and has framed its existential themes. The Neo-*Hobbesian* Age is defined by a plurality of conflicts with strong background in global social forces. There is no end in sight for these conflicts, which bear high levels of risk for the security of humankind. Nonetheless, they are carried out within the bigger context of the centennial struggle between Earth and Cosmos, as the two competing normative mega-projects that are attempting to reshape the course of history. The aporia, whether humans are destined to orient themselves to "Earth" as world and horizon, or whether

---

49 *H. Kissinger*, How the Enlightenment Ends, The Atlantic, June 2018 issue, at: <www.theatlantic.com>.

50 *J. Doudna/S. Sternberg*, A Crack in Creation – The New Power to Control Evolution, 2017.

51 *R. Kurzweil*, How to Create a Mind – The Secret of Human Thought Revealed, 2017.

52 *R. Kurzweil*, The Singularity Is Near, 2005.

53 *M. Tegmark*, Life 3.0 – Being Human in the Age of Artificial Intelligence, 2017.

54 *P. Sloterdijk*, Regeln für den Menschenpark – Ein Antwortschreiben zu Heideggers Brief über den Humanismus, 1999.

55 *T. Assheuer*, Das Zarathustra-Projekt, Die Zeit, 2.9.1999, at: <www.zeit.de>.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

the technological era will irreversibly convert humanity by reserving for them a privileged dwelling in Cosmos, can be met only with silence. "Care" as responsibility of the "shepherd" is another philosophical concept in need of understanding: Caring *for* Mother Earth is not identical with caring *in* Cosmos.

The battle between the two Utopias will be long, with many twists and turns, and will be fought on many fronts: on the preferable way of life, on the geopolitical arena, including the North-South relations, within the social systems that will have to decide on future policies and on the distribution of resources, on the cyberspace, on climate policies, on the construction of identities and beliefs, on the meaning of prosperity and property, on human rights, on equality in terms of class, race, and gender, and on the fight against poverty.

Domestic and international courts and tribunals constitute a major theater of operations of the struggles for semantic authority over the interpretation and further development of law related to the two projects. Law and the courts will play a major role in steering this process, by creating the framework for the conduct of the respective activities, integrating international practice in a system of fundamental rules, rights, and limits, by responding to the multitude of disputes that will arise, and by creating dispute settlement institutions. The notions of democracy, rule of law, global governance and international public authority will have to be repositioned within the rationalities of the century.

The normative mega-projects of Mother Earth and Cosmos are putting into question the fundamentals of history and power, and they hold the promise of a New Beginning. Whether this is Enlightenment 3.0 or Dark Ages 2.0, is a question that cannot be answered yet.

Achilles Skordas

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

My iCourts experience

The Elephant in the Room

Professor Achilles Skordas, Senior Research Fellow, Max Planck Institute for Comparative Public Law and International Law, Heidelberg

I am one of those who had heard of the iCourts before its actual 'birth-in-law', in the early 2010s, as I was asked by the funding institution to write an assessment of the project. From the very first moment, I found the idea exciting, because such a project would offer the possibility of a holistic exploration of international courts and tribunals (ICs) and their contribution to dispute settlement and peace. Indeed, the iCourts would become a truly global institution, attracting researchers and scholars from all over the world. Its success demonstrates the capacity of countries that have successfully shielded their academic institutions from iconomachies to become leaders in science and research.

I have stayed for two years at the iCourts (2016-2018) through a Marie-Curie Fellowship, to work on my larger project on the International Court of Justice (ICJ) and its contribution to the preservation of international peace and security in the 21st century. My choice of the iCourts was the correct one, for several reasons.

First, because I could see the qualitative differences between the ICJ and the other ICs. In this sense, the fact that the iCourts had been only marginally involved with that court was a research advantage, as there were no ICJ biases (pro or contra) in the system. Second, the analytical categories of the iCourts research can serve as useful starting points for the analysis of the ICJ: so for instance the approach of the iCourts to the de facto authority of ICs (see infra). Third, the discussion culture at the iCourts is a core strength of the institution. The pressures of teaching and administration in academia have narrowed the space for regular research-related meetings. However, the iCourts succeeded in maintaining its focus on the exchange of ideas, discussion, and critique.

One of my vivid memories shows the benefits from being in a place where new ideas and perspectives are tested and debated. Stimulations that can help one's own research may arise from unexpected corners and from academics with little direct contact to legal research. I recall an event, in which the historian Marco Duranti presented his book on The Conserva-

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

tive Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention (OUP 2017). I was impressed by the author and by his extraordinary book challenging stereotypical preconceptions on the European human rights system. It should be read by everybody working on human rights courts and on international law.

Since 2018, I have been Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. Until 2020, I was also the holder of the Chair of International Law at the University of Bristol, but I retired in order to concentrate on my Heidelberg research and expand the project I had started at the iCourts.

I will not end this brief paper before going back to research and, more specifically, to the iCourts approach on the authority of ICs (Alter/Helfer/Madsen, International Court Authority, OUP 2018). The authors distinguish among various categories of that kind of authority (narrow, intermediate, extensive, popular), which are useful as points of departure for an empirical analysis of the ICs, including the ICJ.

Nonetheless, these categories establish in principle a unidirectional approach between courts and actors, but do not consider the two-way relationship between legal interpretation and identity construction of actors and systems. Jurisprudential critique does not play a role in the iCourts world. However, here lies, in my view, the real authority of the ICJ: how to interpret international law in view of shaping the order of the time. This authority does not depend only on the successful judicial settlement of disputes between the parties and the response of the Court's constituencies, but also on how the Court conceptualizes the acts of other organs in the UN system, on how it contributes to their identity and mutual recognition, on its willingness and capacity to translate geopolitical and geo-economic issues into legal categories, on its handling of the relationship between diplomacy and international law, and on the internalization of its jurisprudence by international and domestic courts.

The ICJ as the Omphalos of the international legal system has authority only if its jurisprudence is characterized by complex rationality that keeps the requisite distance from the narratives and anger of zeitgeist, demonstrates the capacity to support the 'health of the systems', and facilitates crisis management and preservation of peace and security by States and other world societal actors. Seen from the outside of the legal system, the ICJ is a cautious normative actor with the power to frame and convince.

The Court's authority depends on how it navigates the spheres of international law, geopolitics, and world order. This is the systemic authority of the ICJ that overcomes the idea of de facto authority by complementing

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND

it. From this vantage point, the iCourts' concept needs to be re-viewed through the perspective of the Elephant in the Room.

https://doi.org/10.5771/9783748927884-211 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-NC-ND