

## **СУЧАСНА СИСТЕМА МІЖНАРОДНОГО ПРАВА**

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### **THE PERPETUAL PEACE PROJECTS AS A TREND IN THE SCHOLARLY THOUGHT OF INTERNATIONAL LAW**

### **ПРОЕКТИ ВІЧНОГО МИРУ ЯК НАПРЯМ НАУКОВОЇ МІЖНАРОДНО-ПРАВОВОЇ ДУМКИ**

### **ПРОЭКТЫ ВЕЧНОГО МИРА КАК НАПРАВЛЕНИЕ НАУЧНОЙ МЕЖДУНАРОДНО-ПРАВОВОЙ МЫСЛИ**

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**Abstract.** The article investigates how the so-called perpetual peace projects contributed to the scholarly thought of international law. Such projects have been proposed for centuries and came to constitute a rather remarkable trend in human thought, many of them being created by people, prominent of history and representing various fields of activity. Although such projects may be considered an interdisciplinary invention, their contribution to the development of the concepts and ideas of international law can be esteemed as especially significant. The meaning of some famous examples of such projects is summarized. The conclusion is made that among the traces of the influence that the perpetual peace projects had upon the scholarly thought of international law are the preservation and propaganda of the idea of peace, the acknowledgment of law and its means as a valuable component of peace achievement, the investigation of the causes of peace-breaking and combating them, the formation of the principles of peaceful settlement of international disputes and of non-use of force or threat of force, the establishing of theoretical grounds for creating international organizations and elaborating the concept of collective security.

**Key words:** perpetual peace projects, the peaceful dispute settlement, the non-use of force or threat of force, international organizations, the history of international legal thought, international courts, collective security.

**Анотація.** У статті досліджується, як так звані проекти вічного миру зробили внесок до наукової міжнародно-правової думки. Такі проекти пропонуються століттями, і як результат вони стали складати досить значний напрямок людської думки; багато з них були створені визначними в історії людьми, які репрезентують різні сфери діяльності. Хоча такі проекти можуть вважатися міждисциплінарним винаходом, їх внесок у розвиток понять та ідей міжнародного права може розцінюватись як особливо суттєвий. Узагальнено значення

декількох таких знаменитих проєктів. Зроблено висновок, що серед наслідків впливу, який проєкти вічного миру мали на наукову міжнародно-правову думку, - збереження та пропаганда ідеї миру, визнання права та його засобів як цінного компонента досягнення миру, дослідження причин порушення миру і боротьба з ними, формування принципів мирного вирішення міжнародних спорів і незастосування сили або загрози силою, встановлення теоретичних засад для створення міжнародних організацій і розробка поняття колективної безпеки.

**Ключові слова:** проєкти вічного миру, мирне вирішення спорів, незастосування сили або загрози силою, міжнародні організації, історія міжнародно-правової думки, міжнародні суди, колективна безпека.

**Аннотація.** В статті досліджується, як так називаемые проєкти вечногo мира внесли вклад в научную международно-правовую мысль. Такие проєкти предлагаются столетиями, и как результат они стали составлять довольно значительное направление человеческой мысли; многие из них были созданы выдающимися в истории людьми, представляющими разные сферы деятельности. Хотя такие проєкти могут считаться междисциплинарным изобретением, их вклад в развитие понятий и идей международного права может расцениваться как особенно существенный. Обобщено значение нескольких таких знаменитых проєктов. Сделан вывод, что среди последствий влияния, которое проєкты вечногo мира имели на научную международно-правовую мысль, - сохранение и пропаганда идеи мира, признание права и его средств как ценного компонента достижения мира, исследование причин нарушения мира и борьба с ними, формирование принципов мирного разрешения международных споров и неприменения силы или угрозы силой, установление теоретических основ для создания международных организаций и разработка понятия коллективной безопасности.

**Ключевые слова:** проєкты вечногo мира, мирное разрешение споров, неприменение силы или угрозы силой, международные организации, история международно-правовой мысли, международные суды, коллективная безопасность

**Introduction.** Among the concepts generated in the historical development of the scholarly thought of international law are the so-called 'perpetual peace projects'. They can be generally defined as proposals to create a union of states aimed at preserving peace in their mutual relations. These projects have been known for a rather long time, and, the attainment of the said goal remaining to be desired, the tendency of such proposals persisted. The additional interest in the projects is created by the personalities of their authors: such initiatives have been put forward by lawyers, philosophers, politicians, a world-famous poet. It is easy to assume that these project necessarily reflect the specific worldview of their authors. This later circumstance allows to look upon the 'perpetual peace projects' as an interdisciplinary invention and field of self-expression, but still, they can be considered as having made some significant contribution into the development of concepts and ideas of international law.

**The purpose of research** is to sum up the historical development of perpetual peace projects through their most important examples and to sum up their contribution to the development of international law.

**Recent literature review.** The theme of the perpetual peace projects has been addressed by such scholars as I.S. Andreeva [Андреева, 1963], L.M. Batkin [Баткин, 1965: 38], N.N. Ulyanova [Ульянова, 1965], and especially in Ukraine by V.M. Koretsky [Корецкий, 2004] and in recent times by V.V. Kopyyka and T.I. Shynkarenko [Копійка, Шинкаренко, 2012: 15-30]. This present article aims at summarizing especially the aspects of several of these projects which can be characterized as concerning international law.

**The main results of the research.** The 'perpetual peace projects' were created in various epochs in history. It naturally follows that they reflect general or the most prominent tendencies in

the development of both legal ideas and international relations characteristic of the respective periods.

Some projects originate from the late Middle Ages. These are such famous projects as that by Pierre Dubois (1306), Dante Alighieri (1313) and Jiří z Poděbrad (George of Poděbrad) (the early 1460s). These projects deal, to this or that extent, with the internal organization of Christendom and the competition of ecclesiastical and secular powers.

The work by Pierre Dubois 'De Recuperatione Terrae Sanctae' ('The Recovery of the Holy Land') is obviously an illustration of the fight for predominance between the ecclesiastical and secular powers, and it is also an example of the efforts of one actor in the European international relations (namely France, led by the strong monarch Philip the Fair) to pursue with determination its own interest using the motto of a general one (namely the re-conquest of the Holy Land). This project includes such legal elements of security support as the undertaking of the Catholics not to wage war against each other, the creation of an international court with a possibility of appeal against its decisions to a supreme authority, and various forms of sanctions against offenders. It also provided for the military means of enforcement and the collective military aid of monarchs following the community interest [Dubois, 1891].

'De Monarchia' ('On the Monarchy'), a treatise by Dante Alighieri, who, besides being a poet of genius, was also a celebrated scholar, can be seen as a polemic answer to the work by Pierre Dubois and to those tendencies of political strife marking the epoch which had brought it to life. 'On the Monarchy', among other things, is aimed at proving how one person under whose power the union takes place (that is, the Emperor) is to serve in his place the good of all the union's participants [Алигьери, 1999: 22, 28, 31, 39, 49]. Dante's Empire is a sort of a system of security of the humankind, which is to be achieved through the individual responsibility of the Emperor rather than through the cooperation of its members. The Empire is an idealized pattern of the world order, where the particular legal mechanisms of functioning and control, except dispute settlement, are absent, but the principles of its functioning are given a very elaborate description.

'The Project of Establishing Peace Among All the Christians', associated with the name of Jiří z Poděbrad (George of Poděbrad), King of Bohemia, was brought about by Jiří's conflict with the Roman Pope and had as its purpose to prevent Jiří from international isolation. This project has the form of an international treaty, composed with perfection, and proposes to create an organization of the European princes aimed at their common defence against the Turks. The organization should be based on the equality of its members with no leading role for either Pope or Emperor. The project includes such elements as the mutual undertakings of members not to use force and to deliver assistance, the elaborate undertakings as to dispute settlement, the decision taking on the basis of equality, a system of organs resembling the one of the UN (it included an organ of general representation, assembling periodically, a council and a court), the new law, required to be created in accordance both to nature and to the peculiar features of various states going to be united [1]. A particular trait of this project is its being devised obviously for practical purposes. It may possess some additional interest as proposing the legal pattern to avoid an inter-state conflict caused by the activities of private persons.

The projects of the Early Modern Times necessarily took into account the practice and the experience of international relations of the period, for instance, the wars of religion. The establishment of the principle of state sovereignty created the framework for the emergence of such projects in the following centuries.

The so-called 'Great Design' (le Grand Dessein), or the project of creating the Christian Republic associated with the name of the French King Henry IV and formulated by his chief minister M. de Sully in his memoirs (first published by parts in 1638 and 1662), had as its political aim to weaken the might of the Habsburgs. The characteristic features of this project are: the creation of the new organization of international order as the result of victory over the mutual enemy, the common ideology, the balance of force of the members, an international organ authorized to discuss the political issues and with the particular responsibility for peaceful dispute settlement, the function to force the states outside this community to behave in correspondence to

the community's interests [*Sully*, 1810: 62–118]. The popularity of Henry IV's name contributed to the fame of this project.

The proposals of Jan Amos Komenský (Iohannes Amos Comenius), the famous scholar and teacher, which were set down in the sixth part of his treatise 'General Consultation on an Improvement of All Things Human' (1643–1670, first published in 1950), included the creation of the permanent assembly of arbitrators, which would comprise the tribunal of educators, the one of ecclesiastics and the one of politicians. The assembly would have functioned by way of regular congresses and would have combined the tasks of justice and administration with those of opposing and preventing offences. The key role was attributed to prevention [*Коменский*, 1963: 66–81.]. J.A. Komenský's proposals are especially marked by his recognition of the spread of education and the development of human personality to perfection as significant prerequisites to establishing peace.

W. Penn, the famous Quaker leader and founder of the American Commonwealth of Pennsylvania, also had his plan, which is explained in his work 'An Essay towards the Present and Future Peace of Europe by the Establishment of an European Dyet, Parliament, or Estates' (1693). The elements of W. Penn's proposals include: an international structure possessing the functions of peaceful dispute settlement and law-making, an international representative body, working by way of sessions, a procedure of international peaceful dispute settlement, the collective sanctions for non-performance or untimely performance, the compensation for damage caused by illegal behaviour, the regulation of armaments of the members [*Пенн*, 1963]. This project may be seen as predicting several types of inter-state unions, which appeared in the future.

One of the most famous and frequently discussed perpetual peace projects is one of a European republic, put forward by Ch.-I. Castel, abbot de Saint-Pierre in connection with the Congress of Utrecht, 1713-1714. Seeing the relations of the peoples in Europe as a system of interconnections, Ch. de Saint-Pierre proposed to create a general union of the European states, based on a free agreement of members. The Union would have possessed general laws, interpreted and applied also with uniformity, a court, authorized to take all-obligatory decisions, and the ability to organize centralized enforcement, which would have prevented the opposition of the particular and general interests [*Сен-Пьер де*, 1963]. This union would not have possessed such features as redistribution of territories among the member states, a common enemy, or a special privileged status for any of its members. It should have been grounded on an international agreement and achieved peacefully. The ability of the union to resist any of its members in case of non-obedience, the elimination of the reasons for war and the prevention of the reasons for a new possible confrontation were deemed to be the main preconditions for the union's success.

The fame of Ch. de Saint-Pierre's project is largely due to the philosopher J.-J. Rousseau, who made an abbreviation of it (1761) and followed it with critical commentary of his own. Although welcoming Ch. de Saint-Pierre's idea, J.-J. Rousseau pointed out the too high cost of its implementation, for it could be put to practice by war only [*Руссо*, 1963].

The project by another famous philosopher J. Bentham, contained in his work 'The Principles of International Law' (first published in 1843, the project itself written between 1786 and 1789), could be considered to contain a high degree of naivety, for many of his proposals were obviously inadmissible for state policy. J. Bentham indicates, though, several influences on peace support. These are disarmament and the limitation of armaments, the fate of dependent territories, the elimination of reasons for war, the understanding of war's economic disadvantage, the control of public opinion over states' policy, the abolition of secret diplomacy included, and the self-education of people. The international legal means of peace support, named by J. Bentham, included the codification of international law, the peaceful settlement of inter-state disputes and the collective sanctions on behalf of the international community in respect of a peace-breaker. J. Bentham also established the connection between international peace support and internal responsibility of governments [*Bentham*, 1843].

The famous philosopher E. Kant, the author of a wide-known work 'Perpetual Peace: A Philosophical Sketch', first published in 1795, proposed to create not a European unity, but a worldwide one. He also showed the mutability of purposes and means of their achievement in

historical processes and the interaction of opposite factors in the attainment of a goal [Кант, 1994a], [Кант, 1994b]. Several legal means of peace support, proposed by E. Kant, such as the principle of non-interference in the internal affairs, the protection of territorial integrity and political independence of states, and the non-use of military force aimed at receiving the payment of debts, entered the international law later on. In his 'Metaphysics of Morals' (1797) the philosopher himself acknowledged that the federation envisaged by him was due to break up, but still, the 'interminable approaching' to the perpetual peace was necessary [Кант, 1994a: 387-388]. This notwithstanding, E. Kant contributed to the popularity of the idea itself and generated further polemics concerning it.

The international relations in the aftermath of the French Revolution of 1789 were the context for the ideas of V.F. Malinovskyi, the first director of the Tsarskoe Selo Lyceum, expressed in his 'Thoughts on War and Peace' (written in 1790-1798, first published in 1803). V.F. Malinovskyi showed continuity with the European tradition of the perpetual peace projects, but introduced the argumentation of his own, joining the values of the Age of Enlightenment and Christianity together. The union of the European powers, proposed by him, possessed evident supranational features. International agreements should have been replaced in it by common legislation, and diplomatic representation should have given place to representation in the common council [Малиновский, 1963].

The common feature of the projects by J. Lorimer and J. Bluntschli is their reliance on the principle of division of power, similarly to the internal order of a state. J. Lorimer denied the possibility that international order could be established forever with no necessity for development as well as with absolute equality of all the recognized states. His project had two variants. The first one (1871) envisaged a system of international organs including a Congress, which would have been a legislature and an executive jointly, and a Court with the right to review the decisions of the Congress. The right of each state to vote in the Congress would have depended on its rank of relative importance, defined in each meeting of the Congress and consisting of several components considered [Lorimer, 1871]. The second one (1877) proposed to create an international organization with the internal division of three powers, corresponding to that existing in Great Britain and corresponding mostly to its interests [Lorimer, 1877]. J. Bluntschli (1895) proposed a Congress of the European countries with no supranational features, but with a possibility to contribute to the development of international law, to guarantee its enforcement and to support the equality of all nations. The Congress should have been composed of the Council, the Senate and the tribunal, or the court of arbitration. The Congress could have been developed into a universal one [Bluntschli, 1895].

Special attention should be paid and special credit given to the ideas stressing the usefulness of an international court as a means of peace support. The treatise 'On an international court' by L.A. Kamarovskyi (1881) is not a perpetual peace project in the strict sense. Though containing proposals as to the establishment of a permanent international court in the future, it openly excludes the question of the legality of the use of force from the court's jurisdiction. In this respect the treatise reflects the principles of international law of its epoch, refusing to restrict sovereignty decisively for the sake of peace. It, nevertheless, outlined several ways in which the court could have contributed to peace maintenance, the just settlement of disputes by it included, and expressed the thought that the establishment of an international court was to pave the way for creating an international organization with a view to maintain international peace [Камаровский, 2007: 242-243]. The H. Kelsen's project of 'Covenant of a Permanent League for the Maintenance of Peace' (1944) had the advantage of possibility to take into account the experience of the League of Nations, and it saw the international court with compulsory jurisdiction as the centre of the system of international guarantees of peace and security [Kelsen, 1995: 110]. Both these projects, though in different ways, demonstrate the recognition of international courts and judicial application of international law as significant contributors to the preservation of international peace.

**Conclusion.** The traces of impact that the creation of perpetual peace projects had on the general development of the scholarly thought in international law can be noticed in several directions. Firstly, it is the preservation and propaganda of the idea of peace itself, accompanied by

the acknowledgement that some of the means of its achievement should be those presented by law. It should be also acknowledged, though, that some of these projects were put forward not for the pure sake of peace itself, but as tools for solving current political problems for the benefit of the state of a project's origin. Secondly, the composition of such projects led to the general investigation of the causes of peace-breaking, this in turn leading to the problem of these causes being either diminished or excluded. Then, some contribution of these projects to the formation, at least in theory, of several principles of international law should be noted; this especially concerns the principles of peaceful settlement of international disputes, and, later on, of non-use of force or threat of force.

The role of these projects in establishing theoretical grounds for creating international organizations is quite evident, but a feature of special interest in some projects is an effort to introduce internationally the division of powers like that existing in states. Although the efforts to imitate this division certainly had some influence on the structure of international organizations, they also stressed the differences between states and international intergovernmental organizations as their unions. Sometimes, in search of the means of establishing perpetual peace, the elements of the idea of supra-nationality were expressed as its prerequisite.

Another impact of the perpetual peace projects on the scholarly thought of international law is in their approaching to the modern notion of collective security and its legal aspects, including international responsibility for the breach of peace, the means of peace enforcement and prevention of the breach of peace.

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