

OSCE Principles: Which Principles?

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Abstract

The article explores the state of affairs of the basic principles of the Decalogue of Principles of the Helsinki Final Act of the OSCE after the violations of these principles by the Russian aggression against Ukraine. It gives an overview of the main features of the Decalogue as it was adopted in 1975 as well as more recent developments, in particular in relation to the non-intervention principle. Although several fundamental principles have been seriously violated, the author underlines the continued importance of the Decalogue and the need to make all efforts necessary to repair the image.

Keywords

Helsinki Final Act – decalogue of Principles of the Helsinki Final Act – non-intervention principle – inviolability of borders – Ukraine crisis – Minsk-2 armistice

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“What took place in Crimea is stipulated in the un Charter: self-determination. This document contains several principles, and a nation’s right to self-determination is a key one. Read the Charter. Territorial integrity and self-determination must be respected. The un General Assembly adopted a declaration that clarified the correlation of the basic principles of international law. It confirmed that territorial integrity and self-determination are inviolable, and countries claiming that their sovereignty must be respected have to respect the rights of ethnicities residing in this country and prevent violations of the right to self-determination through the use of sheer force.”

Sergey Lavrov, Foreign Minister of the Russian Federation at Munich Security Conference, 7 February 2015. In. http://www.mid.ru/brp_4.nsf/0/4E7CDDD252FDEF1F43257DE60031E493.

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1 Introduction

When Sergei Lavrov, the Russian Minister of Foreign Affairs, referred to the Russian annexation of the Crimea as an example of international norms working well, there was quite some laughter in the hall where the annual Munich Security Conference takes place.¹ It was just a visible sign of the deep divisions within the international community after the Ukrainian crisis erupted in the beginning of 2014. In spite of a growing international isolation of the Russian Federation as a result of sanctions by a large number of Western countries, the conflict continues unabated and token peace deals have limited impact on the ground, even though the Minsk-2 armistice has resulted in a lower level of violence.

Although there is an abundance of evidence for direct Russian involvement in the ongoing civil war in Ukraine,² the Russian authorities in Moscow continue to deny any involvement in the conflict in the southeastern part of Ukraine. The only positive aspect of this official denial is that it demonstrates that even the Russian authorities have to recognize that they would act in violation of existing international law if they would directly support the rebels in the Ukraine with troops, hardware and intelligence.

But the events from early last year have demonstrated that the Russian official statements can hardly be trusted. When uniformed military without signs of recognition were filling the streets in the Crimea in February 2014, President Vladimir Putin

1 See the article by Josh Rogin, ‘Europeans Laugh as Lavrov Talks Ukraine’, in <http://www.bloombergview.com/articles/2015-02-08/lavrov-s-comedy-routine-on-ukraine-isn-t-funny-to-europe?cmpid=yhoo>.

2 In March 2015 President Putin openly admitted that he had decided on the annexation of the Crimea one year before, which implied that his allegations at the time were lacking truth.

even was rejecting all allegations that these guys could be Russian troops by saying that everybody could buy these uniforms.

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Within days it became clear that these 'alien' military were nothing else than Russian troops, sent to occupy the Crimean peninsula. In any case it is obvious to almost all independent observers that Moscow is deeply involved in the warmongering in Ukraine.³

The fact that one powerful participating State of the Organization for Security and Co-operation in Europe (OSCE) has annexed part of the territory of a neighbouring OSCE partner State in obvious violation of key principles of the OSCE raises the question whether these OSCE principles, dating back to the Helsinki Final Act (HFA) of 1975, are still having any relevance. If one state can act in clear violation of several of these principles with relative impunity, the very basis of the whole Eurasian security structure is undermined. So the big question right now is whether the famous Decalogue of Principles of the HFA can weather this storm and how recent developments have had an impact upon its relevance. Before discussing these issues somewhat further, I will first give a brief presentation of the Decalogue of Principles and its main features.

The Decalogue of Principles of the 1975 HFA

Incorporation of the Decalogue of Principles Guiding Relations among Participating States in the HFA was a major development at the time both in terms of political détente and in terms of international law. Even though the HFA 'only' had the character of a politically binding document, its signing by all heads of state and government of the then 35 States of the Conference on Security and Co-operation in Europe (CSCE) reflected the high importance attached to the document. In this document all CSCE States solemnly pledged to comply with ten basic principles in their mutual relations. The elaboration of these principles was a milestone, as it was for the first time that such principles had been elaborated in such detail in the context of the East-West dialogue.⁴

These ten principles are the following:

- I. Sovereign equality
- II. Refraining from the threat or use of force
- III. Inviolability of frontiers
- IV. Territorial integrity of States
- V. Peaceful settlement of disputes
- VI. Non-intervention in internal affairs

3 In March 2015 Putin even revealed that he had taken the decision to annex Crimea already well before the controversial referendum there. See: 'Putin reveals secrets of Russia's Crimea Takeover Plot', in <http://www.bbc.com/news/world-europe-31796226>.

4 At the global level the fundamental principles of international law had been elaborated in the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the UN General Assembly on 24 October 1970. The HFA developed these principles somewhat further in the East-West context and expanded the number of principles, in particular with the principle about the protection of human rights and fundamental freedoms. Although the 1970 Declaration technically was just a non-binding recommendation of the UN General Assembly, the adoption of the HFA Decalogue added to the legal significance of these elaborated principles.

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief

VIII. Equal rights and self-determination of peoples

IX. Cooperation among States

X. Fulfillment in good faith of obligations under international law

It would go too far to deal with all aspects of the text of the Decalogue, but a few remarks have to be made in order to highlight its significance.

First of all, in spite of the fact that the Decalogue was a major step forward in the East-West relations at the time, its adoption was not an easy task. As a matter of fact, the text can be seen as a craftsmanship of diplomatic terminology, where major differences had been carefully covered up by compromise language. In other words, the Decalogue still had to some extent the character of a document where parties' disagreements were reflected in language that could be interpreted in different ways.⁵

Secondly, although the inviolability of borders and territorial integrity (principles III and IV) were considered key elements of the Decalogue, the Western countries successfully managed to include also a clause on 'peaceful change of borders', although this was not included in principle III itself. As a compromise this clause landed in the text of principle I on 'sovereign equality'. Here one can find the following essential text: "They consider that their frontiers can be changed, in accordance with international law, *by peaceful means and by agreement*" (Italics added: AB). In this way the Western participating States managed to keep the (theoretical) door open to change the post-WWII borders in Europe, although it was explicitly agreed that unilateral action was prohibited and that any change would require the consent of the state parties concerned. For the Warsaw Pact countries the adoption of the principles on inviolability of frontiers and respect for territorial integrity constituted the main successes of the whole Helsinki process at the time, as it solemnly sanctified the post-war borders in Europe, which was one of the main aims of the CSCE for the Eastern bloc.

Thirdly, although ten principles were outlined, it has been expressly agreed upon in the text that all principles will be applied in an inter-linked way. Principle X of the Decalogue states: "All the principles set forth above are of primary significance and, accordingly, they will be equally and unreservedly applied, *each of them being interpreted taking into account the others*" (Italics added: AB). Only on this basis the Western countries at the time accepted the just-mentioned clause on 'peaceful change' in another place than in the text of the principle of inviolability of frontiers. The aim was also that principles such as the inviolability of borders (principle III) would not be undermined by a principle such as 'equal rights and self-determination of peoples' (principle VIII).

Fourthly, in the principle on 'equal rights and self-determination of peoples' (principle VIII) the CSCE States recognized the right of all peoples to determine their own internal and external political status "without external interference". However, this should be done "at all times in conformity with the purposes and principles of international law, *including those relating to territorial integrity of States*" (Italics added: AB). This clause points in the direction that participating States had in particular internal self-determination in mind, to be exercised within existing state borders, but definitely not self-determination processes initiated or imposed by neighbouring countries.

Fifthly, in 1975 the Decalogue was hailed as a major step forward in the process of international law making, as principle VII

⁵ See also Osmo Apunen, 'The principles of relations between the states of Europe', in Kari Möttölä (ed.), *Yearbook of Finnish Foreign Policy 1975*, Finnish Institute of International Affairs, Helsinki, 1976, pp. 36–47.

on the protection of human rights and fundamental freedoms was for the very first time in history listed at the same level as the more traditional international law principles as respect for state sovereignty, non-aggression and territorial integrity. This achievement was to some extent counterbalanced by principle VI on 'nonintervention in internal affairs': "The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations." This resulted in the conflict between East and West in the Cold War period where the former communist countries tried to escape scrutiny of their human rights record by claiming them to be 'internal affairs'. After the fall of the Berlin Wall this situation was rectified, in particular at the urging of the new regimes in the former communist countries, by declaring these human rights issues to be of 'international concern' (see below).

3 Further Developments after 1975

The Decalogue of Principles of the HFA has been reconfirmed numerous times, also at the last OSCE Summit in Astana, Kazakhstan in December 2010. The Astana Commemorative Declaration explicitly states: "We reaffirm our full adherence to the Charter of the United Nations and to all OSCE norms, principles and commitments, starting from the Helsinki Final Act, the Charter of Paris, the Charter for European Security and all other OSCE documents to which we have agreed, and our responsibility to implement them fully and in good faith. We reiterate our commitment to the concept, initiated in the Final Act, of comprehensive, co-operative, equal and indivisible security, which relates the maintenance of peace to the respect for human rights and fundamental freedoms, and links economic and environmental co-operation with peaceful inter-State relations."⁶

In spite of these solemn reconfirmations, the Decalogue of Principles has undergone some changes in terms of its interpretation, in particular after the fall of the Berlin Wall in 1989. With the Cold War behind us, a new era of partnership and co-operative security was supposed to have begun and that was reflected in some interesting developments.

A first development was related to the controversial non-intervention principle which had been abused by the former communist regimes in order to thwart almost any substantive discussion about their human rights record. Now it was explicitly agreed that human rights issues are issues of international concern and do not belong exclusively to the domestic jurisdiction. A good example of this new consensus can be found in the preamble of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE of October 1991: "The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned."⁷ Earlier in 1991 this same agreement had been achieved already concerning the protection of the rights of people belonging to national minorities.⁸

Some experts are of the opinion that this substantial reinterpretation of the non-intervention principle is only related to the

6 See paragraph 2 of the Astana Commemorative Declaration: Towards a Security Community, adopted at the OSCE Summit Meeting in Astana, Kazakhstan, 3 December 2010, in <http://www.OSCE.org/cio/74985>.

7 See the preamble of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE of 3 October 1991 (for the full text, see: <http://www.OSCE.org/odhr/elections/14310>). Printed version in the large collection of CSCE documents: Arie Bloed (ed.), *The Conference on Security and Cooperation in Europe; Introduction and Basic Documents*, Dordrecht etc., 1993.

8 See the Report of the CSCE Meeting of Experts on National Minorities which was held in Geneva in July 1991. In chapter II one finds the following paragraph: "Issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State." For the full text, see: <http://www.OSCE.org/hcnm/14588?download=true>.

human dimension of the OSCE,⁹ but in reality this development also relates to the politico-military dimension, as is clearly shown by the 1994 Code of Conduct on Politico-Military Relations. Its article 1 reads as follows: “The participating States emphasize that the full respect for all CSCE principles embodied in the Helsinki Final Act and the implementation in good faith of all commitments undertaken in the CSCE are of fundamental importance for stability and security, and consequently constitute a matter of direct and legitimate concern to all of them.”¹⁰

All these agreements point in one direction, i.e. a much less strict interpretation of the non-intervention principle within the OSCE, an organization which is often described as a ‘community of values’ and a ‘community of responsibility’. The reduced scope of the non-intervention principle is in line with this philosophy. As a matter of fact this drastic reinterpretation of the non-intervention principle happened when the political will was there to abandon its previous highly restrictive nature which was an impediment for smooth international relations. However, reality at the present time is very different, as after around 2000, when the OSCE began its biggest downward period in its history, several OSCE participating States started again invoking the non-intervention principle in order to keep the organization at a distance. The Russian Federation, for instance, considered the conflict in Chechnya as an internal affair and was after the 1990s no longer interested in any OSCE involvement in that conflict. As a matter of fact this reflected a backward development which is clearly not in line with the basic OSCE concepts of co-operative and comprehensive security, but it has to be accepted as a matter of fact.

The Russian attitude was more or less symptomatic for the way many OSCE participating States started to consider the presence of OSCE missions on their territory as a stigma and started to undertake efforts to close them down. In other words, when the OSCE aimed at assisting weaker or autocratic OSCE countries in the full implementation of its principles, these same countries became more and more sensitive about the functioning of these missions. As a matter of fact, several OSCE states managed to get these missions either closed down (e.g. in the Baltics, Croatia, Belarus) or transformed into presences with a much weaker mandate (e.g. Azerbaijan, Uzbekistan, Tajikistan, Ukraine). This can also be seen as a development which points in the direction of a stricter interpretation of the non-intervention principle in contrast to the agreements of the early 1990s.

More serious violations of OSCE principles started occurring in the first decade of 2000, when a re-asserted Russian Federation was distancing itself from the basic principles of inviolability of borders and respect of territorial integrity after the brief Georgian-Russian war in 2008. This resulted in the official Russian recognition of the independence of the two Georgian breakaway republics of South-Ossetia and Abkhazia, thereby openly violating Georgia’s territorial integrity. (In practice this recognition of independence comes close to a Russian annexation as well, as virtually all citizens of both so-called independent states have Russian passports.) This was not in line with the requirements as laid down in the HFA basic principles, as discussed in the previous paragraph. Most strikingly, there was no consent whatsoever from the Georgian side, but it turned out that the initial strong negative reactions from the Western countries rather soon faded away and it was more or less back to ‘business as usual’. This could have given Moscow the conviction that it had more or less free hand in what it considers to be its zone of vital interests. The HFA principles turned out to be the main victims in this development.

From this perspective the developments around Georgia turned out to be a perfect prelude to what was to unfold in Ukraine after the ouster of the pro-Russian President Viktor Yanukovich in February 2014. Under the pretext of protecting the rights of Russian-speakers the Russian authorities invaded the Crimea and after a highly controversial referendum in March as an expression of ‘self-determination’ by the people in the Crimea they decided to annex it. Although the Russian authorities so far continue to deny their direct involvement in the ongoing conflict in the eastern part of Ukraine, there is overwhelming proof that Russian troops are directly supporting the rebel forces in the “People’s Republics” of Luhansk and Donetsk. This was

9 See, e.g. Pal Dunay, *The OSCE in Crisis*, Caillot Paper No. 88, April 2006, published by the Institute for Security Studies in Paris, pp. 36–37.

10 Code of Conduct on Politico-Military Aspects of Security, 3 December 1994. Text in <http://www.OSCE.org/fsc/41355>.

and is a blatant violation of the most important key principles of the HFA which until this time constituted the main basis for the Eurasian security system, including the principle to refrain from the threat or use of force. Paradoxically, in 1975 the Warsaw Pact countries considered the adoption of these same principles of inviolability of frontiers and respect for territorial integrity as the main successes of the CSCE at the time.

However, although the Russian Federation nowadays is seriously criticized for its invasion and annexation of the Crimea and its political and military intervention in the southeastern part of the Ukraine, the Western countries in 1999 were strongly criticized by the Russians for the Western intervention in the Kosovo crisis without a UN Security Council mandate. And Moscow considered the declaration of independence of Kosovo in 2008 an outright violation of the principle of territorial integrity and inviolability of frontiers, in this case of Serbia. Without any doubt this controversial case (in spite of the fact that now more than 100 states have recognized Kosovo) has had a strong influence on the thinking within the political leadership of the Russian Federation.

4 The Helsinki Principles: Which Principles?

Since the recent developments in the southern and eastern part of the Ukraine basically reflect the total demise of the key principles which secured a relative stability and security at the European continent, the question arises how it will be possible to return to a more stable environment. The Russian actions have brought Europe back to a pre-1975 situation and the 'might is right' approach by the Russian Federation, one of the main players on the European continent, have thrown us back to an almost 19th-century environment.

What are the prospects of a possible return to a post-1975 situation? At first glance the chances are slim. The international response to the Russian aggression towards Ukraine does not seem to be a harbinger of better times. This response basically consisted of an increasing number of sanctions on the Russian Federation and a certain strengthening of the NATO, including sending some troops to countries like the Baltic States. In addition, in particular Germany and France aim at promoting a political dialogue with the Russian authorities "in order to engage Russia with the aim of ending the conflict and moving toward a more cooperative relationship".¹¹

But would this be enough to save the trans-Atlantic and Eurasian order and the underlying Helsinki principles? The first signals are not very promising. Although the Germans and Russians (with a little help from the French) in February hammered out an 'armistice' for the fight in Ukraine during a nightlong summit session in the Belarusian capital Minsk (officially the agreement is called Minsk-2, as an elaboration of a first, failed armistice agreement of Minsk from September 2014), the Ukrainians were forced to pay a heavy price for this deal. Although an armistice in this bloody conflict can only be welcomed, its implementation started already with a serious breach of the agreement, as the rebel fighters successfully continued their siege of Debaltsevo. The Western countries hardly protested against this illegal conquest in outright violation of the agreement. More serious, however, the Minsk-2 agreement contains provisions which go way beyond an armistice and which basically undermine the constitutional order of Ukraine. For instance, the agreement obliges Ukraine to negotiate with the rebels about the conditions for elections to be held in the Donbas region which implicitly recognizes the Luhansk and Donetsk rebel leaders and which put a restraint on the Ukrainian electoral system. This is not in line with the Helsinki principles which guarantee that all OSCE states have the right to determine their own laws and regulations and to freely determine their own political systems (principle I). Also the clause that obliges Ukraine to renegotiate its association agreement with the EU with the Russians sitting at the same negotiation table is in contrast with the Helsinki principles which state that all OSCE states "have the right to belong or not to belong to international organizations, to be or not to be a party to bilateral or multilateral treaties including the right to be or not to be a party to treaties of alliance" (principle I). Last but not least the clauses which


¹¹ This was the way the German Foreign Minister Frank-Walter Steinmeier formulated it in an op-ed in the New York Times, in <http://www.nytimes.com/2015/03/12/opinion/save-our-trans-atlantic-order.html>.

oblige Ukraine to take responsibility for the reconstruction of the war-torn areas in the southeast saddle the country with not only unjustified, but also insurmountable financial burdens.

Although all these provisions may reflect a sense of realism, as it is obvious that the Russian side demanded these concessions as a *quid pro quo* for the armistice, at the same time it demonstrates that even the Western countries are willing to compromise about these very Helsinki principles. Or, in other words: the aggressor is being rewarded. It could even be said that this reflects a tendency in which big powers are allowed again to have their own spheres of influence with the result that some OSCE participating have *de facto* a more vulnerable status than others. As a matter of fact, it seems that the basic principles themselves have been challenged to such an extent that it is hard to repair them: although all states will for sure be most ready to reconfirm the principle of the inviolability of borders, the deeper-going question now is: which borders? The Helsinki principles have been damaged to such an extent that before one can talk of a restoration of these principles, the question has to be: Which principles? And which content?

Although the prospects for a revitalization of the Helsinki principles are, therefore, not shining, the situation is not totally hopeless. The Helsinki principles have become cornerstones for the stability in Europe and they have acquired a large authority. Although the Russian Federation has been seriously violating these same principles in the last couple of years, this does not automatically imply that these principles are no longer binding. Even the Russians seem to recognize this by their (sometimes weird) efforts to defend their actions as in line with these principles. If these would not matter any longer, Moscow certainly would not try to act in this way. Therefore, it is important that the (other) OSCE participating states continue to remind Moscow of its continuing commitments to comply with the HFA principles and to make sure that in spite of unavoidable, unpleasant compromises the main line of diplomatic action remains based on the HFA principles. In other words: the Helsinki principles indeed have been seriously violated, but they still exist and it is more important than ever to undertake efforts to reconfirm and revitalize them whenever possible.

The HFA Decalogue exists and it is important to try to contain the damage as much as possible. The achievements over the years since 1975 cannot simply be thrown out of the window by the actions of a single state, however serious these actions may be. One has to adhere to this view also for the simple fact that President Putin does not have the eternal life and it is not excluded that in the not too far future a new Russian administration will deeply deplore the actions of this rough leader. Also for this reason it is important to keep the Decalogue building intact, albeit seriously damaged for now. In order to be able to return to a minimum extent to the basic principles of 1975 at least a minimum of mutual trust has to be restored. With the existing political leadership in the United States, the European Union and the Russian Federation such trust will not return easily, but it is also not excluded. So, in conclusion it can be said that although serious discussions about the interpretation and implementation of the Helsinki principles are required, the premise should be that these principles are still fully in force. In the longer term even the Russian Federation will benefit from this approach. Alternatively, we would be back to a 19th-century situation and even common sense would tell us that this would not even be an option in the present-day interdependent world.



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