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The Collapse of the International Legal Order?

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Abstract

We are largely back in the world which we remember from the 19th century with its balance-of-power politics, where imperialism was dominant and the major powers largely determined what was 'right' or 'wrong'. The more sophisticated international legal order which was developed over the years in the 20th century has been seriously undermined in the first decades of the 21st century.

The key question now is how to proceed from this presently disastrous situation: is the international legal order in a terminal stage? We always should keep in mind that there will come a time – hopefully sooner rather than later – that states will have to rebuild the international legal system, and it would be unwise if we would then have to restart from scratch. Therefore, we need new leadership in rescuing at least some key components of the legal order, including preferably the OSCE Decalogue of Principles. It seems that this pivotal role rests primarily with Western states in Europe, Canada and the Pacific. However, it is both necessary and feasible to engage also a number of developing countries, in particular those which have borne the brunt of the legal order's dramatic deterioration of the legal order in recent years.

Introduction

When the Helsinki Final Act (HFA) was signed fifty years ago, at the culmination point of détente in the Cold War period, it was clear that the development of public international law had reached a new milestone. The well-known Decalogue of Principles had elaborated existing standards and partially developed new standards which have had a great impact on the international law system in the last decades. Although this document was only politically binding, it had a great impact on the development of international law in the decades following the signing of the HFA. The Decalogue became a cornerstone of the European security architecture and is often considered as a document whose contents have acquired the status of customary international law.

In this essay I want to explore briefly in how far this achievement is still relevant in the present, turbulent international arena where respect for international law seems to have vanished to a high extent. The actions by the Russian Federation, the People's Republic of China and now also by the Trump administration in Washington show outright contempt for the basic norms which have been valid for decades. The question now is: Are we really back in the 19th century when balance-of-power politics, imperialism, nationalism, economic strength, and Realpolitik were the main factors determining international relations? Or may there still be hope that some of the achievements of the OSCE process in this legal area can be rescued? It is clear that we are speaking not only about the OSCE process, but about the international legal order at large.

Achievements of the OSCE process in the area of international law

The international legal order has benefitted greatly from the adoption of the HFA in 1975. The Decalogue of Principles constituted a unique document as it elaborated and further developed the existing fundamental principles of international law, focusing on the European context. The Decalogue contained many remarkable elements, not all of which which will be highlighted in this piece. It is worth noting, however, that for the first time in history, respect for human rights and fundamental freedoms has been recognized as a fundamental principle of international law (Principle VII). Similarly, highly important topics as 'cooperation among States' (Principle IX) and 'fulfillment in good faith of obligations under international law' (Principle X) were listed as fundamental principles. In order to make sure that no principle would be considered less important than another, the Decalogue unambiguously stated the following: "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" (Principle X).

Another important aspect of the Decalogue was related to Principle III about the 'Inviolability of Borders'. This principle aimed at once and for all recognizing the post-war borders in Europe (highly necessary as at that time several frontiers were still controversial, such as the Polish-German Oder-Neisse border). At the same time, in Principle I on 'Sovereignty', it was stated: "They consider that their frontiers can be changed, in accordance with international law, by peaceful means and by agreement." This element of 'peaceful change' was an important goal of the Western states. It made it clear that by mutual agreement among states, changes of borders are legitimate. However, this could never happen by force, which was outlawed in Principle II.

Impact of OSCE on development of international law

The HFA had a major influence on the interpretation and further development of international law standards, even though it was clear that the Decalogue and the HFA as such had a strong European focus. One example is the regulation of the rights of (national or ethnic) minorities at the international level. Following the HFA, the 'Copenhagen Document on the Human Dimension of the Conference on the Human Dimension of the CSCE', adopted in1990, played an important role in this context. The Copenhagen Document was the first international political agreement to provide a comprehensive and detailed set of commitments on the rights of national minorities, , which subsequently had a strong influence on the drafting of new rules on minority rights both in the UN and the Council of Europe. In the UN context it had a noticeable impact on the drafting of the General Assembly Resolution 47/135 with the well-known Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. This resolution was adopted without a vote in December 1992.

Another clear example of the CSCE influence on law making constituted the Council of Europe Framework Convention for the Protection of National Minorities (1994), which aimed at giving legally binding force to the politically binding CSCE commitments on minority rights at the time.

Similarly, in many bilateral treaties on 'cooperation, friendship and good neighbourliness' among, in particular, states from Central and Eastern Europe, clauses can be found which gave legally binding force on political C/OSCE commitments, in particular in the area of the protection of minority rights.[1]

1 See e.g. Arie Bloed and Pieter van Dijk (Eds.), *Protection of Minority Rights through Bilateral Treaties – The Case of Central and Eastern Europe* (Leyden 2000).

Although I could give many more examples, let me, finally, also refer to the developing interpretation of the basic principle of non-intervention in internal affairs. This principle had always been invoked by states to prevent other states of expressing their concerns about worrisome developments inside the former. Time and again it has been confirmed 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' (preamble of the 1991 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE). This interpretation became also the general standard for commitments in the political-military area.[2] Ultimately this resulted in the perspective of the OSCE as a 'community of values' and a 'community of responsibility'. This was a major achievement, certainly in comparison with the much more restrictive interpretation of the non-intervention principle in the UN context, outside the OSCE area. Even though this development had been reversed to a high extent in the last two decades, when relations with Moscow soured and a number of OSCE participating States started favoring the old, restrictive interpretation again, it is still a legal development worthy of mentioning.

These examples demonstrate clearly how important the role of the OSCE has been in initiating and stimulating law making processes at the international level. This is not limited to a so-called 'soft law' process alone, but this process also implied the transformation of OSCE's most basic principles and norms into standards of regional customary international law. In this way, several OSCE commitments acquired binding legal force.[3] I am mentioning this, in particular, because it demonstrates how important the role of the OSCE as a political organization has been and why it is crucial to aim at rescuing this from oblivion because it will be strongly needed when stability will be reestablished at the European continent.

However, even though the OSCE's role in this area has been important, these standards clearly have not been able to prevent a number of highly disturbing developments in the international arena in the last two decades.

Violation of basic principles of international law: the case of the Russian Federation

Developments in the first decades of the 21st century have demonstrated the fragility of these fundamental principles of law within the OSCE area and the wider world. In spite of basic principles such as, in particular, 'inviolability of borders', 'refraining from the threat or use of force against the territorial integrity or political independence of any State', the 'territorial integrity of States' and 'non-intervention in internal affairs', practice has shown how all of these and other principles have been grossly violated by a major member of the OSCE community.

Although the Russian military intervention in Georgia in 2008 could to some extent still be 'justified' as a response to the Georgian military action against South-Ossetia, the situation worsened in 2014. When the Russian Federation (RF) sent its notorious 'little green men' without identification marks to Ukraine's Crimea, followed by the Russian annexation of this territory, the world was witnessing a major violation

2 This was authoritatively confirmed in Art. 1 of the 1994 Code of Conduct on Politico-Military Aspects of Security which was adopted at the OSCE Budapest Summit. In this document the OSCE 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.'

3 See e.g. Eric Manton, 'The OSCE Human Dimension Process and the Process of Customary International Law Formation', in: *OSCE Yearbook*, 2005 (Baden-Baden 2006), pp. 195-214.

of fundamental legal principles: it became clear that the international standards of jus cogens[4] would not prevent Moscow from undertaking its imperialistic goals. Although the organization of a 'referendum' among the Crimean population about the territory joining the RF could to some extent still be considered as evidence that even Moscow felt obliged to comply with international standards, the way it was organized was nothing more than a scam. The outcome of 97% in favour of integration with Russia was just something that nobody outside the Russian orbit would take seriously.[5] Although Russia denied its involvement in the military operations in the Donbass area in 2014, no independent observer doubted the substantial support by the Russians in the start of the civil war against Ukraine at that time. There could be no doubt that the RF was committing aggression against its neighbouring state. The 'authorities' of the self-proclaimed people's republics of Luhansk and Donets would not have been able to achieve their military 'successes' without the support of a major external force, i.e. Moscow.

The climax of all this came with the Russian-dubbed 'special military operation' by the Russians against Ukraine in February 2022. It was nothing more than all-out aggression against the Ukrainian state with the aim to bring about a regime change in Kyiv and bringing this independent country under Russian control. The serious effects of the war on innocent Ukrainian civilians until the present day cannot be overestimated.[6]

Although in particular Western countries strongly protested against the Russian operations, other countries supported Moscow, or were less vocal in their opposition. In this context, the Chinese actions are indicative, as it is clear that Beijing provides substantial military and political support to the Russians. Although the Chinese authorities always try to explain their international policies with references to respect for international legal standards, in particular the norms of 'non-intervention', 'equality and mutual respect', 'sovereignty' and 'peaceful resolution of disputes', unfortunately their actions are regularly in violation of these same standards. Power politics turn out to be more decisive than the normative framework of the international legal order. In this context the Chinese bullying actions towards all other coastal states of the South-China Sea don't need any further explanation: China also adheres in practice more to power politics than to international norms.

New US administration threatens to undermine the international legal order even further

With the new US administration under President Donal Trump, since January 2025 the international legal order seems to be under direct threat even more. Immediately after taking office, Trump started threatening old-time allies with interventions which until recently would have been considered unthinkable. It started with his plan to 'buy' Greenland from Denmark, a close NATO ally, followed by direct threats against the Danish government if they would not be willing to comply with his demands. Canada, another close ally and neighbour, got the message that it should become a new federal republic in the USA federation and Trump started even addressing his Canadian counterpart as "Governor". Panama got the message that the Americans could take over the Panama Canal because of high passage tariffs and Chinese influence, if need be, by the use of force. Although sometimes the messages seem to get mitigated somewhat, in the core they remain the same and are clear threats in violation of international law.

4 *Ius cogens* or 'compelling law' are standards which are generally recognized as obligatory on *all* states and from which no derogation is allowed under any circumstances. There is large agreement that such peremptory norms are, among others, the prohibitions of aggression, genocide, slavery and torture.

5 The simple fact that around ten percent of the Crimean population consisted of Tatars, who were and are strongly against a Russian takeover of the territory, is already a sign of how fraudulent the 'referendum' was.

6 OSCE's ODIHR published six interim reports on violations of international humanitarian law and international human rights in Ukraine (see: https://www.osce.org/odihr/537287).

Trump's attitude towards Article 5 of the NATO treaty, which provides for collective defense in case of an armed attack on one or more of the member states of the alliance, is also a violation of the treaty by making it conditional on the level of defense spending by the member states. Although there is nothing wrong with the American demand of higher defense spending by its allies, this 'conditionality' of the application of Article 5 comes close to blackmail.

The Trump administration also managed to undermine the global network of bilateral and multilateral trade agreements by ruthlessly imposing tariffs on imports from almost all other countries under the pretext that the US is in an economic 'emergency situation' and that trade with the US is a 'privilege' and not an entitlement. Effective legal means to address this legal anomaly hardly exist, so the possibilities that Trump can be 'called to order' are virtually absent.[7] 'Classical' instruments of reprisal seem to be the only tools the international community has left to counter the American blackmail, but in view of America's power position it is not likely that reprisal actions will be effective.

How all this can be reconciled with the most fundamental principles of international law such as those on 'non-aggression', 'respect for sovereignty' and '*pacta sunt servanda'* remains a mystery. It seems that the US government in line with the RF is also back in the 19th century when power politics was the dominant policy in international relations.

Apart from these appalling moves by the new Trump administration, its approach of the Russian-Ukrainian conflict was even more a surprise. Instead of continuing a united Western front against the Russian aggression against Ukraine, the administration opened the door for Moscow. Washington opted for a direct negotiation with Moscow, aimed at bringing about an end to the conflict without the participation of Ukraine itself, or its Western allies. What is even more worrisome is that the US president started referring to his Ukrainian colleague as a 'dictator', who holds power without legitimate elections, whereby he also started to repeat the Russian narrative that the war was provoked and started by Ukraine. In other words: suddenly the Americans opted for the Russian perspective on the war. Before negotiations even could start, the Americans recognized the territorial gains by the Russians as something that could not be undone, at the same time withdrawing their consent to a commitment which would allow Ukraine to become a member of NATO. It does not need any explanation that the regime in Moscow was extremely pleased: without any negotiations they got a major part of what they wanted (territorial gains, neutralization of Ukraine, political withdrawal of Americans from the European scene) and a total sidelining of the European NATO and EU states. The pressure on the Ukrainian authorities to give the Americans direct access to their deposits of rare earth materials in exchange for further military support would also not qualify as behaviour in line with international minimum standards. This action was largely considered to be undue pressure as experts consider the conditions to be exploitative, warning of long-term economic burdens for Ukraine in the longer term.[8] Moreover, the threat to withhold further military aid if Ukraine would not accept a deal in this area is a direct violation of, in particular, the non-intervention principle.[9]

7 See e.g. the article published by *Deutsche Welle* by Andreas Becker, 'Trump Tarriffs: Can US be punished for breaking trade laws?', in: https://www.dw.com/en/can-us-be-punished-for-imposing-tariffs/a-71788197

8 See, e.g., the Eurasia Daily Monitor of 26 February 2025.

9 Principle VI of the HFA Decalogue states, among others: "They will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind."

This ‘blackmail deal’ did not get to the stage of signature (yet), after the shocking meeting between Zelensky and Trump in the Oval Office in the White House on the last day of February 2025.[10]

Whatever ‘grand project design or strategy’ may be behind all these troublesome maneuvers by the US, it is clear that all these initiatives constituted a major undermining of what had been left of the international legal order. If the military most powerful country in the world is not even refraining from making direct threats of a military nature to its closest allies, as well as raising serious doubts about its legal obligations to assist its partners in case of attack by other states (in particular the European NATO states), it is no exaggeration to consider the norms-based international legal order to be in need of life support.

The international legal order: the present appalling state

The key question now is how to proceed from this presently ruinous situation of the international legal order. The checks and balances which were key elements of this order seem to have been abolished by the main players, the RF, the US, and to some extent also the People’s Republic of China. Aggression and (threat with the) use of force seem to have been accepted as handy tools in international relations as well as the sad fact that territorial gains as a result of military aggression are recognized: the American acceptance/recognition of the Russian territorial expansion on Ukrainian territory can hardly be seen differently.

It also seems logical to conclude that the Decalogue of Principles as enshrined in the HFA has been fatally wounded, and one may argue that practice demonstrates that main actors seem no longer to feel bound by the key principles of international law. So, let us be realistic and call a spade a spade: the international legal order has been undermined to such an extent that it basically ceased to exist, in spite of statements which try to aim in the opposite direction. However, does this all mean that once peace and stability in Europe have been restored to some extent that the old legal norms are no longer valid?

I think that this conclusion cannot (yet) be drawn. The indignation and official protest from, in particular, Western states against both the Russian aggression and the American threats of the use of force against some of their allies demonstrate that these Western key players in the international arena are strongly adhering to the rules of the international order as it has been developed in particular in the last century. Although their protests against the American misbehaviour may be expressed somewhat diplomatically in order not to totally disturb their relations with the ‘big brother’, the indignation about this behaviour is clear. And this indignation is clearly based on the perception that such behaviour is illegal and, therefore, unacceptable.

The role of the OSCE in this context is also relevant. Although the organization is totally paralyzed as a result of the Russian hostage taking of the OSCE, facilitated by its well-known consensus principle, the various OSCE institutions – which function *de facto* more or less autonomous – make it abundantly clear that they judge the Russian (and American?) actions as clear violations of the most fundamental OSCE principles. And it is also not without significance that in spite of the many condemnations of its behaviour, the RF did not opt for leaving the organization. Therefore, it continues to be accountable to the international community for its violations of many OSCE commitments and principles.

10 After a ‘cooling-off’ period on 30 April 2025 the US and Ukraine signed a rare earth deal with a more acceptable contents than what the Americans at first had in mind.

However, the most important aspect of the international legal order is reciprocity, mutual respect and trust, and it is obvious that this no longer exist. The major actors in the world simply no longer trust each other and, therefore, effective 'deals' are extremely hard to achieve. The situation becomes even worse when players are no longer interested in 'facts' and base their decisions on 'alternative facts' which often are outright untrue. It will require generations to rebuild confidence and it is clear that the world will remain a volatile and dangerous place for a long time to come. But without a minimum of confidence international principles and norms can hardly be expected to have a decisive impact. The rules of the jungle, as practiced during the old-fashioned power politics of the last decades, and, in particular, the fact that there are (territorial) 'benefits' to be gained from aggression against neighbouring states, will not be so easily sidelined anymore.

The international legal order: can it still be rescued?

Of course, it is obvious that whenever the guns go silent in the Russian war against Ukraine, the European security architecture requires a serious restructuring in which the roles of organizations like the EU, NATO and OSCE will be redefined. Although it is tempting to reflect on this new security architecture, I want to focus, in particular, on the legal basis for this new system.

Since the present essay is focused on the 50th anniversary of the HFA, let us consider first the future of the HFA Decalogue. In my opinion, it would be ideal if this document could be formally reconfirmed by all OSCE participating States, but it is highly unlikely that even a partial reconfirmation could be achieved. This is also due to the fact that the OSCE, since the full-scale invasion of Ukraine, has become a vocal tool against Russian aggression. Of course, the consensus principle prevented the adoption of formal OSCE decisions on this matter, but statements by the OSCE institutions, the Chair-in-Office, and other more or less autonomous bodies, show a common pattern - i.e. a strong condemnation of the Russian aggression against Ukraine. In these circumstances, it is highly unlikely that Moscow would be willing to accept a reconfirmation of this fundamental OSCE document, as this would basically imply a return to the 'old order'. And it is clear that Moscow (and others) are exactly trying to change that old order. Nevertheless, the (Western) OSCE States should continue to hammer on a reconfirmation of the full Decalogue.

An alternative approach could be to aim for a conditional formal reconfirmation: a reconfirmation with the simultaneous agreement that the Decalogue needs to be 'updated' through renegotiations. The benefit would be that formally the document would still be at the basis of the OSCE and, therefore, at the basis also of the future European security architecture. However, in practice it could turn out to be largely an empty shell, as 'renegotiations' would mean that all parties basically agree that at least parts of the old Decalogue may no longer applicable: the fact that a revision of the document is necessary implies that something is 'wrong' with its contents, thereby immediately affecting its authority. Perhaps deciding on a 're-interpretation' instead of a 'renegotiation' or 'revision' of the Decalogue could be compromise. If case states would decide just on a renegotiation or revision or updating of the Decalogue, this could mean that we would be back at 'square one, as it is clear that in the present circumstances it is almost unthinkable that consensus could be reached on new texts about such sensitive issues like 'sovereignty', 'inviolability of borders', 'self-determination of people' or 'non-intervention in internal affairs'. In other words, opening renegotiations about the contents of the Decalogue could be the final blow for its relevance. Moreover, efforts to revise the Decalogue seem wishful thinking right now, as the necessary minimum level of mutual trust among the key actors is absent. But there will be a time that states will have to rebuild international relations, and then it will be extremely useful to have the Decalogue formally still on the table. Even though the document has now become highly 'aspirational', that would be a better outcome than just starting from scratch.

If this assessment is correct, and the existing legal order as outlined in the Decalogue will be very hard to be rescued, the result would be that we need to return to the principles as laid down in the UN Charter of 1945, which are of a more general nature than the more elaborated OSCE principles from the Decalogue. These principles have been further elaborated in an authoritative way in General Assembly Resolution 2526 (1970): 'the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations'. In contrast to the OSCE documents, the UN Charter has legally binding force, even though its basic principles have been grossly violated. This is clear as both the RF and the US have acted in violation of these principles, both by the Russian aggression against Ukraine and by the above-mentioned interventions of the new Trump-administration against some of its close allies (in particular, Denmark, Canada, Panama), as well as Ukraine. It seems that a reconfirmation of these UN principles is also a necessary prerequisite for a future legal order. However, the fact that the Russian Foreign Minister is precisely pleading for respect for these principles in a time when his country is massively violating these principles, demonstrates the challenges ahead, but at the same time it may offer a starting point for discussions about the future of the international legal order.[11]

Conclusion

All in all, the future of the international legal order looks extremely bleak, in particular since key players in the world (RF, US and China) do not demonstrate compliance with its most basic norms and principles any more. Although the EU bloc still vocally shows that it wants to keep the existing legal order in place, it right now finds itself with this aim in a lonely place in the world. The battle for the survival of the international legal order is in a precarious phase, and the prospects of success in the short term are gloomy. Thanks to the most powerful actors in the world, in particular also the US administration which in the past claimed the role of the champion of the free world based on a norm-based legal order, we are now full speed on the road to a lawless international system where the major checks and balances have been destroyed. The building of a new legal order will be a huge challenge, and in this area it is of the greatest importance now more than ever that the Western countries of Europe, Canada and the Pacific take the lead in rescuing and rebuilding the legal order. At the end of the day, all states need to realize that an effective and credible international legal order is also to their own benefit. However, it is likely that in the rebuilding phase special attention will be given not only to formal agreements (the norms and principles), but in particular also to their enforceability. The discussions on the conditions for a ceasefire in Ukraine is telling in that respect: a ceasefire seems only feasible if it will be accompanied by effective security guarantees for Ukraine from third parties. In other words: just words, even though framed in formally legally binding terms, are no longer sufficient. Until confidence and trust will be restored, which will take a very long time.

11 See the article by RF Minister of Foreign Affairs, Sergei Lavrov, in which he complains about the selective application and disregard of the fundamental principles of international law. It's no surprise that he is blaming other actors for this behaviour instead of his own government. See S.V. Lavrov, *Pravovym fundamentom mnogopoliarnogo mira dolzhen stat' Ustav OON* [The legal basis of a multipolar world must be the UN Charter], in: Rossiia v global'noi politike, 2025, March-April, pp. 51-58.

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