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TERRITORIAL INTEGRITY PRINCIPLES OBLIGATIONS

HELSINKI

PRINCIPLES TREATIES

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- INTERNATIONAL LAW
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Helsinki Principles

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THE SPIRIT OF HELSINKI IN THE XXI CENTURY

Dr. Kira Spyrydonova
Ukraine

The history of the 21st century, both in Europe and globally, shows that the existent international system is getting into a deeper crisis. On the one hand, we see the erosion of the European system of cooperative security based on the CSCE Helsinki principles – non-legally binding political commitments of the states to respect each other’s sovereignty, adhere to human rights and international cooperation. On the other hand, even “hard” obligations under international law can be breached by states’ unilateral decisions. Does the spirit of Helsinki have a chance to survive under such circumstances? Is the simple political will of a group of states enough to face current challenges to the international order? Or should we frankly recognize that the principles of international law do not work, and try to elaborate a new system of rules for the modern world?

Changing International Order

Since the very beginning of the 21st century, we are witnessing a whole list of unordinary international events that have significantly challenged the existing world order. Let us name only few of them.

Firstly, the world was shocked by the 9/11 terrorist attack, which not only showed the real threats of the terrorism that can hurt everyone on this planet, but also brought into action Article 5 of the Washington Treaty, letting the US and its NATO allies intervene in Afghanistan under the pretext of a war against Al-Qaida, protected by the Taliban

regime. This decision is considered by many political scientists¹ as a de-facto recognition of non-state actors, and particularly terrorist organizations, as full-fledged participants in the current international system, on par with sovereign nation states. Then in 2003, we saw the American invasion of Iraq, which was carried out without any decision of any international organization and in violation of the very UN Charter. As the UN Secretary General Kofi Annan stated in September 2004, “I have indicated it was not in conformity with the UN Charter. From our point of view and the UN Charter point of view, it was illegal.”² This war put into question the legitimacy of the United Nations

¹ J.S. Nye, *Soft Power: The Means to Success in World Politics*, PublicAffairs: New York 2005;
G. Sumer, *9/11 and Its Impact On Realism*, Conference Paper, January 2008
[https://www.researchgate.net/publication/299289914_911_and_Its_Impact_On_Realism access: 28 June 2018];
D. Wagner, *Terrorism’s Impact on International Relations*, International Risk Management Institute, March 2003
[<https://www.irmi.com/articles/expert-commentary/terrorism%27s-impact-on-international-relations> access: 28 June 2018], etc.

² *Iraq War Illegal, Says Annan*, “BBC News”, 16 September 2004
[http://news.bbc.co.uk/1/hi/world/middle_east/3661134.stm access: 28 June 2018].

as the main international body, responsible for maintaining peace and security, and safeguarding international law.

In 2008 we witnessed two events, both of which undermined heavily the concept of sovereignty and territorial integrity of states: the proclamation of independence of Kosovo in February (partly recognized by the international community, as 111 UN member-states did so) and the Russian invasion of Georgia in August, subsequently leading to the creation of quasi-independent “republics” – Abkhazia and South Ossetia – on sovereign Georgian territory (recognized only by Russia, Syria, Nicaragua, Venezuela, and Nauru).

Finally, in 2014, Russia, with the illegal occupation of Crimea and launching the war in Eastern Ukraine, let itself flagrantly violate almost all its obligations and commitments under bilateral and international treaties – those concluded with Ukraine, within regional initiatives and the UN system. And the latter fact is most frightening because it affects the credibility of the UN itself: in Ukraine, a founding member state of the United Nations, it is Russia, another UN founding member state, that violates the UN Charter, UN Convention on the Law of the Sea, International Convention for the Suppression of the Financing of Terrorism, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Racial Discrimination, and other international law documents. All this has questioned seriously the role of international agreements in the modern world and their capacity to regulate relations among states.

In Europe, the CSCE/OSCE Helsinki principles were hurt the most. They were called to regulate relations on the continent

since the Cold War, when in 1975 two military alliances – NATO and the Warsaw Pact – understood that it was impossible to live peacefully together without any guiding principles and decided to adopt them at a pan-European conference on security and co-operation in Helsinki. The spirit of Helsinki since then became a symbol for other regions of the world of a possibility to achieve a peaceful co-existence for states with different political and ideological values within one region.

However, since the end of the 1990s, particularly after the 1999 OSCE Istanbul Summit, where Russia refused to withdraw its troops from Moldova and Georgia, which resulted in a failure of the Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe (the adapted CFE treaty), we see the gradual decline of the OSCE's role on the continent in maintaining international peace and security. As Dr. Wolfgang Zellner said, it is “the Russian attitude [that] is critical for the Organisation's future, for an OSCE without active Russian participation would lose much of its *raison d'être*.”³

Russia violated almost all Helsinki commitments by launching its aggression against Ukraine in 2014, but the OSCE found in the Ukrainian-Russian conflict a new sense for existence, because some participating states were about to leave the Organization. After the illegal occupation of Crimea, the OSCE Special Monitoring Mission (SMM), operating in Ukraine for monitoring the implementation of the Minsk Agreements, was created, as was the OSCE Observer Mission (OM), operating in Russia at the checkpoints Gukovo and Donetsk, for monitoring the situation on a part of the Russian-Ukrainian border according to the

³ W. Zellner, *Russia and the OSCE: From High Hopes to Disillusionment*, “Cambridge Review of International Affairs”, Volume 18, Issue 3, 2005, p. 389.

Berlin Joint Declaration in the Normandy format. These field missions, related in many ways to peacekeeping, which were not typical for the Organization before, put new tasks on the OSCE's table. Now civil observers in both missions have to deal with military activity, verify ceasefire violations and withdrawals of different kinds of weapons (for the SMM), or monitor movements across the border (for the OM).

Helsinki Decalogue

So, taking this into account, can we say that the OSCE and the spirit of Helsinki are not relevant for Europe and for the world anymore? The answer for the situation with the OSCE is clearer – if the Organization still exists and has even expanded its activity, it is relevant. The situation with the spirit of Helsinki is a little bit more difficult. Let us take a look at the current state of implementing the Helsinki Decalogue, ten guiding principles stated in 1975 CSCE Helsinki Final Act, called to regulate relations among all actors in Europe. Namely, they are⁴:

I. Sovereign equality, respect for the rights inherent in sovereignty

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

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. Co-operation among States

X. Fulfilment in good faith of obligations under international law

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Sovereign Equality, Respect for the Rights Inherent in Sovereignty

As we have already mentioned, the concept of sovereignty is under a permanent challenge in the 21st century. It is enhanced by the existence of non-governmental actors, impossibility to exercise sovereignty over territory internationally recognized as “yours”, impossibility to control some parts of territory.

At the same time, states are still the main actors in international relations and there is a sovereign equality among them. For instance, even when non-governmental organizations (considered to be important actors on international stage by the neoliberalist school⁵) are participating in international intergovernmental organizations (where only states have full-fledged membership), it takes form of “mythic” forums that do not adopt any

⁴ Conference on Security and Co-operation in Europe Final Act, CSCE: Helsinki 1975 [https://www.osce.org/helsinki-final-act?download=true access: 28 June 2018].

⁵ J.S. Nye, *The Rising Power of NGOs*, “Project Syndicate”, 24 June 2004 [https://www.project-syndicate.org/commentary/the-rising-power-of-ngo-s access: 28 June 2018].

relevant decisions. We see this happening with the OSCE Parallel Civil Society Conferences, second-track discussions such as Helsinki+40, T20 meetings in the case of G20, etc. Governments realize that such bodies are important for public opinion and use them for their own needs, mostly on the national level especially for and before the elections. Almost all non-state entities are still considered by states only as instruments.

Refraining from the Threat or Use of Force

We have mentioned before two examples of Russia violating this and the next four Helsinki principles – Russian aggression against Georgia and Ukraine. In the first case, Russian troops had illicitly crossed the Russian-Georgian border and advanced into the South Ossetian conflict zone as an answer to Georgian military activity in Tskhinvali, and later started massive land, air, and sea invasion of Georgia until the Georgian defeat. In the Ukrainian case, the presence of the Russian armed forces in Crimea and the Black Sea Sevastopol Naval Base were used for preparing a special operation of the peninsula's occupation, conducted in February-March 2014. Not only were the Ukrainian military bases in Crimea blocked for more than a month by armed "little green men" without insignia, but they were also present at every "polling station" in the peninsula on the day of the so-called "referendum", threatening lives of citizens.

On the global scale, the most recent example of using the threat of force in negotiation was the US-North Korea dialogue before the Trump-Kim summit of 12 June 2018 (the USA is one of the OSCE participating states). However, in this case the exchange of threats worked well for ensuring the summit took place. When the North Korean vice-foreign minister Choe Son-hui said in May that "We can ... make the US taste an appalling tragedy it has neither experienced nor even imagined up to now"⁶, the answer of Donald Trump was even tougher: "You talk about your nuclear capabilities, but ours are so massive and powerful that I pray to God they will never have to be used."⁷ And even after such threats, the summit not only took place in time, but also the presidents and states "have developed a very special bond"⁸, favouring the de-nuclearization process on the Korean peninsula.

Inviolability of Frontiers

Eager to legitimize its domination over East European states, the Soviet Union wanted Europe's post-World War II borders to be fixed, insisting in 1975 on including this principle in the CSCE Final Act. Forty years passed, and we see the Soviet Union's successor, Russia, violating this principle. It occupied Crimea, eager to make the world recognize this annexation. Moreover, since 2014, more than 400 kilometres of Ukraine's state border are constantly violated by Russia's armed forces. Anyone who wants, not only the so-called "humanitarian convoys", can enter the territory temporarily

⁶ M. de Haldevang, *Read the Fiery North Korea Statement That Made Trump Cancel His Summit with Kim Jong Un*, "Quartz Media LLC", 24 May 2018 [https://qz.com/1287942/full-text-of-the-north-korean-statement-that-provoked-donald-trump-to-cancel-a-historic-summit/ access: 28 June 2018].

⁷ D. Trump, *Letter to Chairman Kim Jong Un*, White House, 24 May 2018 [https://www.whitehouse.gov/briefings-statements/letter-chairman-kim-jong-un/ access: 28 June 2018].

⁸ D. Nakamura, *Trump-Kim Summit: Trump Says After Historic Meeting, 'We Have Developed a Very Special Bond'*, "The Washington Post", 12 June 2018 [https://www.washingtonpost.com/politics/trump-kim-summit-trump-says-we-have-developed-a-very-special-bond-at-end-of-historic-meeting/2018/06/12/ff43465a-6dba-11e8-bf86-a2351b5ece99_story.html?noredirect=on&utm_term=.1a070ae3293f access: 28 June 2018].

non-controlled by the Ukrainian government. One of the consequences was the downing of the Malaysian Airlines MH17 plane in July 2014. Two hundred ninety-eight innocent victims were killed by Russia's 53rd Antiaircraft Missile Brigade, based in the southern city of Kursk⁹, over Ukrainian territory.

Territorial Integrity of States

In the context of Ukraine's and international response to the attempted annexation of Crimea in violation of this principle, we have to mention the adoption by the UN General Assembly of the resolution titled "Territorial Integrity of Ukraine" on 27 March 2014. Even if it did not implicate any legal consequences for Russia per se, it is the basis for introduction of the sanctions regime against the Kremlin and its proxies by a number of states. There is a desire by a vast majority of states to maintain this principle at the core of international politics. Also, it is useful for Ukrainian demands against Russia in international courts. Another question is what will happen if Russia decides to not comply with the decisions of such international tribunals, as it did with the European Court of Human Rights, when it adopted the law allowing itself to ignore international human rights rulings¹⁰ or threatened to withdraw from the Court¹¹.

Peaceful Settlement of Disputes

Even if there are no peaceful settlements of disputes where Russia is involved,

we still have good examples of states' good will in this sphere. For instance, we witnessed an improvement of relations between the Argentine Republic and the United Kingdom, even with the issue of the Falklands/Malvinas Islands still on the table. Thereby not only can the UN Special Decolonization Committee explain why it still exists in the 21st century but also states can go further in bilateral economic relations as well as in resolving issues "on the ground", such as identification of the remains of Argentine soldiers during the Falklands War; cooperation in the Southern Atlantic on fishery issues, etc.

Another bright example is a historical agreement between Greece and Macedonia achieved over the new name of the latter. With the new name of the Republic of North Macedonia, Skopje finally has opened doors to its membership in the EU and NATO.

Non-intervention in Internal Affairs

This is another principle proposed by Moscow in 1975, when it was very sensitive to criticisms of its authoritarian political system, and later violated systematically by Russia after the end of the Cold War almost in all post-soviet countries. Not even talking about the abovementioned, let us recall the gas and trade "wars" of Russia with Ukraine and Belarus, the 2007 cyber-attacks on Estonia, and the most recent interventions in the election processes in the US and Germany, or hacking operations to support Catalan independence.

⁹ Investigators: Buk Missile from Russian Antiaircraft Brigade Downed MH17, "Radio Free Europe", 25 May 2018 [<https://www.rferl.org/a/mh17-criminal-probe-to-appeal-to-the-public-for-help/29246988.html> access: 28 June 2018].

¹⁰ A. Sims, Vladimir Putin Signs Law Allowing Russia to Ignore International Human Rights Rulings, "Independent", 15 December 2015 [<https://www.independent.co.uk/news/world/europe/vladimir-putin-signs-law-allowing-russian-court-to-overthrow-international-human-rights-rulings-a6773581.html> access: 28 June 2018].

¹¹ A. Griffin, Russia Could Withdraw from European Convention on Human Rights, State News Agency RIA Reports, "Independent", 01 March 2018 [<https://www.independent.co.uk/news/world/europe/russia-echr-human-rights-european-convention-putin-kremlin-eu-a8234086.html> access: 28 June 2018].

Respect for Human Rights and Fundamental Freedoms, Including the Freedom of Thought, Conscience, Religion or Belief

Another paradox: While there has been a huge leap during the last 40 years in expanding the understanding of human rights – for example, the right to same-sex marriage, in the OSCE we see a crisis of the human rights concept. On the one hand, for years it has been impossible to achieve any relevant human rights decision at the Organization’s Ministerial Meetings. On the other hand, there is an urgent need for this because of the aggravation of the situation in Russia and Ukrainian territories occupied by Russian occupational authorities. Oleg Sentsov’s case has brought enormous attention to the problem of political prisoners in Russia, among which about 70 persons are Ukrainian citizens.

Equal Rights and Self-determination of Peoples

This Helsinki principle from the very beginning was understood differently by different CSCE participating states. If for the Western democracies it was introduced by the American President Woodrow Wilson in 1918 and played an important role at the Paris Peace Conference of 1919 for creating new nation states on the terrains of former



the problem of the irrelevance of the Helsinki principles to the current international situation is its “gentleman” and non-obligatory status

empires, for the USSR it was just the freedom of a people within a state to determine their own political and economic situation, as a clear refutation of the Brezhnev Doctrine, which certainly did not imply the right to secession. Although the best example of self-determination in Europe was probably the German unification of 1990, later the principle was also applied in the Balkans and in the Soviet Union to justify the breakup of existing states. Once this had happened, however, the principle of territorial integrity took over and the borders of the new states in their turn became inviolable – as in the case of Kosovo, and of Georgian or Ukrainian occupied territories.

And this goes in a sharp contrast with situations in other regions of the world, where Western states can force other actors to recognize the results of referendums if they want – as was with the South Sudan case in 2011, when independence was recognized without problems and the country became a UN member, or do not want – as was with Iraqi Kurdistan’s 2017 referendum.

Cooperation among States

Another hot topic that shows that not everyone is interested in the relevance of this principle is the recent US withdrawal from the UN Human Rights Council. Why do states need cooperation, if they can act unilaterally? As the US State Secretary M. Pompeo declared when he announced the decision, “When they seek to infringe on our national sovereignty, we will not be silent.”¹² This telling remark illustrates that even the US seeks a reality where states can have greater independence from international law and multilateral diplomacy and not always need cooperation.

¹² M. Pompeo, *Remarks on the UN Human Rights Council*, US Department of State, 19 June 2018 [https://www.state.gov/secretary/remarks/2018/06/283341.htm access: 28 June 2018].

Fulfilment in Good Faith of Obligations under International Law

All previous examples of the Helsinki principles' violations show that we cannot do it "in good faith". We cannot do it when we do not have an effective sanction mechanism. And we need to look for an effective one if we want the international law to work.

In this sense, the problem of the irrelevance of the Helsinki principles to the current international situation is its "gentleman" and non-obligatory status. The OSCE itself does not exist from the formal legal point of view as an international organization. It does not have a statute document, nor its decisions are obligatory. They are even called "commitments", not "obligations", while its members are not called "members" but rather "participants".

We see clear examples of the largest and the most powerful nations ignoring the spirit of Helsinki aimed at favouring international cooperation. Russia let itself flagrantly violate all ten CSCE guiding principles by its aggression against Ukraine in 2014. The USA has shown that it can withdraw without any consequences from the UN Human Rights Council, or even from the Iran Nuclear Deal, having an attitude to the international law as to presidential executive orders, which

can be cancelled by the next administration. And only Communitarian Europe, which itself is living through the Brexit crisis, has a will "to fix" everything and bring back the international law.

Finnish President Tarja Halonen said on the occasion of the 30th anniversary of the first CSCE Conference held in Finland: "The Helsinki Final Act was the real Magna Carta of détente. Not only was it a charter governing relations between States, it was also a charter of freedom for nations and individuals."¹³ Do we live now under the conditions of détente? It is highly unlikely, so we should not be surprised that there is no more Helsinki spirit in the air. It looks more like we are witnessing a new crisis of the whole international system: Those who want may trace the tendency of the current international order to destroy its bases – multilateral diplomacy and international law.

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¹³ Address by President Halonen at an Occasion Marking the 30th Anniversary of the Helsinki Final Act, Ministry of Foreign Affairs of Finland, 01 August 2005 [https://um.fi/speeches/-/asset_publisher/up7ecZeXFRAS/content/presidentti-halosen-puhe-etykin-30-vuotisjuhlassa?_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_up7ecZeXFRAS_redirect=https%3A%2F%2Fum.fi%2Fspeeches%3Fp_id%3Dcom_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_up7ecZeXFRAS%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_up7ecZeXFRAS_cur%3D21%26_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_up7ecZeXFRAS_delta%3D50%26p_r_p_resetCur%3Dfalse%26_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_up7ecZeXFRAS_assetEntryId%3D494603&curAsset=0&stId=47307 access: 28 June 2018].