



Putting the Rule of Law at the Center of a New European Security Architecture

by Christoph Heusgen



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“**A**bove all, Europe means peace. [...] An integral part of our European way of life is our values. The values of freedom, democracy, the rule of law.”¹ In 2016, then President of the European Commission, Jean-Claude Juncker, underlined the close link between the European Union’s (EU) role as a peace project and the values of the international rules-based order. The European security architecture has been built on the firm belief in the rule of law, rather than the law of the strongest. For decades, it has relied on peace through cooperation, coupled with a joint commitment to democracy and human rights. Russia’s invasion of Ukraine on February 24 has put an end to the longest lasting period of peace on the continent. Moscow’s stark and brutal violation of international law is forcing Europeans and Americans to rethink how peace can be restored and maintained through a new comprehensive European security architecture.

This architecture must be built on an even more forceful commitment to the rules-based international order and the respective norms and principles. To uphold this commitment, Europe and the US will have to forge a broad international coalition, including traditional partners in the West, but also rising powers in the Global South. The fight against impunity and for accountability should underpin any new European security architecture. For the EU to be at the forefront of this rules-based architecture, it will have to

¹ Jean-Claude Juncker, “State of the Union Address 2016: Towards a Better Europe – a Europe that protects, empowers and defends,” Strasbourg: European Parliament, September 14, 2016, <https://perma.cc/2LCN-7SBJ>.

become a more capable security player and stand ready to defend these rules and values at home.

Forge an International Coalition to Defend the International Rules-based Order

Russia's all-out war against Ukraine is the worst aggression in Europe since the end of World War II. It has overthrown the post-Cold War order and by violating the territorial integrity and sovereignty of Ukraine, it has trampled on the Charter of the United Nations (UN). Russia has already demonstrated its disrespect for the principles of the rules-based order on various occasions in the past, with the annexation of Crimea, but also by ruthlessly violating international law in Syria, Libya, and in Eastern Ukraine. In Syria, for instance, it was directly involved in the indiscriminate bombing of civilian targets, including medical facilities, and of densely populated areas, without a specific military objective. On top, Russia seriously violated its obligations under the Chemical Weapons Convention. Furthermore, according to UN reports, Kremlin-linked mercenaries, such as the Wagner Group, have been involved in grave human rights abuses in already fragile settings, including in Mali and in the Central African Republic. The invasion of Ukraine is only the latest and most brutal example for Moscow's attempt to rewrite the international rule book and to aggressively enlarge its sphere of influence.

The international rules-based order has to remain the backbone of a comprehensive new European security architecture. Europeans, together with their American partners, need to stand tall in their commitment to uphold this order, which includes strong and uncompromising support for international law and its foundational texts, the UN Charter, and the Universal Declaration of Human Rights. While transatlantic cooperation is key, an effective coalition upholding international law, humanitarian priorities, and human rights, needs to be global and has to include representatives of the Global South. As German Chancellor Olaf Scholz emphasized in his speech at the 77th general debate of the UN General Assembly, a united stance against Russia's aggression also means "that the up- and coming, dynamic countries and regions of Asia, Africa, and Southern America must be given a stronger political voice on the

world stage. That is in all of our interests as it gives rise to joint responsibility and greater acceptance of our decisions.”¹

A look at the past months shows that we are still some way remote from this united stance and sense of joint responsibility. US and European policymakers were baffled when seventeen African countries abstained from the vote on a resolution condemning Russia’s invasion of Ukraine in an emergency session of the UN General Assembly in March. A month later, nine African countries voted against the UN General Assembly resolution to suspend Russia from the UN Human Rights Council while twenty four of them abstained.

Building a broad alliance will thus take time and joint effort. It will also require concerted communication to counter misleading propaganda and disinformation. In large parts of the Global South, Russian and Chinese narratives, according to which the US and NATO are at least in part responsible for the war in Ukraine, resonate. Representatives of the US and European countries have to use every opportunity to emphasize that the current conflict is not an extension of the Cold War, with the “East” and the “West” as opposing poles, forcing the rest of the world to take sides. The fault lines lie between those who stand ready to defend the rules-based international order and those who seek to undermine it; between those that defend the territorial integrity of nation states and those that brutally violate it.

Representatives of the Global South often accuse the “West” of double standards when it comes to upholding the rules-based international order. They recall the invasion of Iraq of 2003, where the US itself violated international law and the territorial integrity of a country. They also criticize the US and Europe for turning a blind eye to brazen human rights violations, such as those committed during the 1994 Rwandan genocide. It is all the more important that Europeans, and above all Americans, acknowledge that they, too, are subject to the rule of international law and that it is the guiding principle for all their actions. Gaining the trust and support of countries in the Global South also means that Europe and the US will need to recalibrate partnerships and engage with them at eye level. Dedicated bilateral or

² Olaf Scholz, “Speech by Olaf Scholz, Chancellor of the Federal Republic of Germany, at the 77th general debate of the United Nations General Assembly, New York, 20 September 2022,” New York: UN General Assembly, September 20, 2022, <https://perma.cc/S3FW-KULG>.

multilateral security dialogues could help prepare collective responses to future violations of the rules-based order in Europe and beyond.

Lay the Foundation to Prevent Future Crimes of War and Aggression

Europe and the US will have to ensure that, once the war in Ukraine ends, Russia will not endanger the sovereignty and territorial integrity of any country in Europe again. These principles have been crucial for European peace and security in the past, and they will remain so in the future.

Europe has to act as a driving force behind accountability and the fight against impunity. In this regard, Europe could help ensure that Russian crimes committed during the war against Ukraine will not be left unprosecuted. According to Erik Møse, Chair of the Independent International Commission of Inquiry on Ukraine, Russia has committed war crimes in Ukraine, including through the deployment of explosive weapons in populated areas, ill-treatment and torture during unlawful confinement, as well as sexual and gender-based violence.¹ There should be no impunity for Russia's war crimes and for violating the fundamental principles of territorial integrity, as laid down in the UN Charter. A strong stance against impunity would also be vital to prevent others from doing the same. In early October, the Ukrainian President Volodymyr Zelenskyy called for a Special Tribunal for the Punishment of the Crime of Aggression against Ukraine. Such a Special Tribunal could fill the loophole that currently exists, supplementing the prosecution of the International Criminal Court (ICC). While the objective is clear, we have to figure out how to implement such a Tribunal. In this regard, we have to address important questions: What could be the legal basis of such a tribunal? What are the prospects of a Resolution of the UN General Assembly to this end? Should the tribunal focus solely on the crimes committed by Russia or should it have a wider mandate? Europe can play a vital role in answering these questions and engaging partners in the debate and Germany should assume a leading role.

³ United Nations, "Independent International Commission of Inquiry on Ukraine to the Human Rights Council: War Crimes Have Been Committed in Ukraine," Press Release, September 23, 2022, <https://perma.cc/UB9V-W7BM>.

Second, there has to be stronger and more credible deterrence to prevent the violation of territorial integrity and sovereignty in the future. Europe and the US have to discuss how a ceasefire with Russia can be secured once the war in Ukraine ends, including the provision of sufficient and credible security guarantees to Ukraine. This would also be crucial to ensure that the sovereignty and territorial integrity of other post-Soviet countries is respected. In any effort to secure a ceasefire, the participation of the US would be indispensable. But even so, the American pivot to the Pacific will continue and the pressure on Europeans to play a leading role in ensuring stability on their own continent will increase. More capable European countries, ready to assume greater responsibility, will thus be a crucial element of a comprehensive new European security architecture.

Defend And Promote the Rule of Law at Home

The EU and its member states can only be a credible driving force behind the rule of law and accountability if they promote both at home. These values are firmly embedded in the EU's legal foundation and serve as fundamental guidelines for its actions, both internally and externally. However, during the last years, several EU member states, most notably Poland and Hungary, have repeatedly violated these common values and the rule of law. Poland's democracy has been backsliding since the Law and Justice (PiS) party has taken power in 2015, introducing measures compromising in particular Poland's judicial independence. Hungary, for its part, has passed legislation against migrants and the LGBTQ community, restricted the independence of the media and the space for opposition parties and politicians, and consolidated control over the judiciary since 2010. In 2014, Prime Minister Viktor Orbán already outlined his vision of creating an "illiberal democracy" in Hungary.

While the democratic backsliding of Poland and Hungary has been going on for years now, the EU has not been able to effectively curb these developments. To become the engine behind a comprehensive new European security architecture, anchored in the rules-based international order, the EU has to take a stronger stance against its own member states that do not abide by the standards of good governance and the rule of law. This will imply a more effective use of the EU's financial rule of law conditionality mechanisms, but also additional steps to sanction the violation of democratic

principles and fundamental values. In this context, the EU should also look more closely into possibilities of disbursing EU funds directly to civil society organizations and other non-governmental organizations, who work hard to support democracy and the rule of law in Hungary, but are systematically sidelined or discriminated against by the Orbán government.

Prepare to Face New Realities

Russia's war against Ukraine has marked a *Zeitenwende*, a watershed moment, for the international rules-based order and for the European security architecture. To meet the realities of a more confrontational regional order and prepare for future eventualities, Europe and the US have to develop a new model for peaceful coexistence on the continent. A reinforced commitment to the rules-based order should be the very foundation of this new security architecture. Upholding the rules-based order will require forging a broad coalition, including partners from the Global South. Prosecuting crimes of war and aggression will be a necessary condition for restoring peace on the continent, and credible deterrence regarding the violation of its founding principles will be key to maintaining peace. This does not only mean defending these principles against external violations, but also doing more at home.