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Michael von der Schulenburg – The Ukraine war could have been prevented if the UN-Charta had been observed

US hegemonic claims and weapons do not bring order or peace

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With the war in Ukraine, we must once again ask ourselves perhaps the most important question for a peaceful future for humanity: can there be a world in which peace and an international order can be guaranteed by joint agreements between states, or will there only be a global order if it is enforced by a militarily, economically and politically dominant hegemonic power? This is a question of whether we will live in a world ruled by international law or by the law of the strongest. What follows are some thoughts on this.

In the Ukraine war, NATO countries are presenting themselves as the defenders of international law against a Russia that has blatantly broken it by invading Ukraine and aims at destroying a not further defined “international order”. But is it really that simple? Or isn’t it rather the case that all warring parties, including the USA and its NATO allies, have repeatedly broken, indeed abused, international law?

And not only that. If all parties to the conflict had complied with existing international law, this war could have been prevented. Immeasurable human suffering, and the death and immense physical and mental damage done to hundreds of thousands of people on both sides of the front would have been avoided. Ukraine would not have been driven to the brink of collapse by destruction, internal strife, impoverishment, mounting national debt and growing depopulation. It would have continued to exist within the borders of 1991. And humanity would not have been exposed to perhaps the greatest risk of nuclear conflict since the Cold War.

This article is not intended to decide when this war began or who is primarily to blame for it. However, the example of the war in Ukraine is intended to highlight the crucial importance of international law based on the UN Charter for maintaining a more peaceful world order.

The accusation of violating UN Charter

The accusation that Russia conducts a war of aggression in violation of international law dominates all discussions in NATO countries about the war in Ukraine. It is with this invocation of international law that NATO countries justify their military role in the war in Ukraine.

The accusation of violation of international law refers to the UN Charter. And it is true: in the Charter, all member states have committed themselves to not use military force to achieve political goals (Article 2/4), and in the event of an attack, each member state is granted the right to individual and collective self-defense (Article 51). The Russian invasion of Ukraine was therefore a violation to the UN Charter. This entitles Ukraine to self-defence and NATO states to support Ukraine militarily.

But can the UN Charter also be used to justify waging a war over several years that could end in the destruction of the attacked state? And does this also justify extending the war to Russia, with the risk of starting a nuclear world war? And all of this without even attempting to peacefully resolve the conflict that led to this war? Hardly! The purpose of the UN Charter is to preserve peace for mankind; it is not to justify wars. After all, the Preamble to the UN Charter begins with the mutual pledge: *“WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind...”* This should also apply to the war in Ukraine.

The UN Charter's call for peace

In the UN Charter, it is its call for peace that predominates its ban on military force – and not the other way around. The very beginning of the Charter states that its aim is “*to maintain international peace and security, and to that end: ...to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.*” (Article 1/1). Similar calls to settle conflicts through negotiation are repeatedly made in the Charter.

However, this call for peaceful solutions was not observed in this conflict. The conflict of opposing security interests centred on Ukraine has been obvious for a long time. Since 1997, Russia has repeatedly made it clear that it regards NATO's expansion into Ukraine and the Black Sea directly on its borders as an existential threat. It is a typical conflict that should have been resolved diplomatically in accordance with the UN Charter – and it could have been resolved! However, Russian offers to negotiate were repeatedly refused by the USA and NATO states. On the contrary, since 2008, NATO has been working towards Ukraine's membership while increasing the pressure on Russia. All treaties on arms limitations and confidence-building measures with Russia were terminated; Russia's nuclear second-strike capability was limited by missile defense systems in Romania and Poland; and NATO repeatedly held military manoeuvres on Ukrainian territory and in the Black Sea. NATO countries openly supported the armed overthrow of Ukraine's democratically elected president in 2014 to install a pro-NATO government in Kiev. The Minsk agreements were apparently never meant as solution but used to gain time for arming Ukraine. The NATO states had thus embarked on a path that made a peaceful solution, as prescribed in the UN Charter, increasingly impossible.

The argument that Ukraine was free to choose its security arrangements, and this was hence not a subject for negotiation, is also incorrect. In the 1990 OSCE Charter of Paris for a New Europe – which is a binding treaty under international law – all European states as well as the USA and Canada declared: “*Security [on the European continent] is indivisible and the security of each participating State is inseparable from that of all other States*”. In the OSCE's Istanbul Document of 1999, this was further specified: “*Each participating State will respect the rights of all others in this regard [i.e. security arrangements]. They will not strengthen their security at the expense of the security of other states.*”

Preventing a peaceful solution

In the event of war, UN member states are also obliged to find a peaceful solution through negotiations. In the case of the war in Ukraine, this was done. Ukrainian and Russian negotiating teams met just three days after the start of the Russian invasion. And only six weeks later, both sides agreed on a ten-point communiqué in Istanbul on March 29, 2022, which formed the basis for an all-encompassing Ukrainian-Russian peace treaty.

However, the communiqué did not lead to a peace treaty. A few days earlier, on March 24, 2022, NATO had already made it clear at a special summit in Brussels that it would not support such peace negotiations. When President Zelensky nevertheless stuck to the Istanbul Communiqué, British Prime Minister Boris Johnson made it unmistakably clear to the Ukrainians during a surprise visit to Kiev on April 9, 2022, that they would lose all support from the West if they signed a peace treaty with Russia.

On April 26, 2022, the US Secretary of Defense, Lloyd Austin, declared that the USA's goal in the Ukraine war was as follows: "*We want to weaken Russia so much that it will never again be able to do things like a military invasion of Ukraine*". With this, the USA also formulated a political goal that it wanted to achieve by military means, which is equally in contradiction to the UN Charter. The consequence was that any possibility of an early peace was lost, and Ukraine sank into a war that could now endanger its entire existence.

If the NATO states had backed the Ukrainian-Russian peace negotiations of March/April 2022 in accordance with the UN Charter, this war could have been ended after two months – and on much better terms for Ukraine than would be possible today.

The principle of mutual sovereignty

The mutual recognition of state sovereignty was a cornerstone of the peace settlement of the Peace of Westphalia in 1648 and remains so to this day. This is enshrined in the UN Charter as the "*principle of sovereign equality*" in Article 2/1). This means that every state has the right to choose its own political order and to regulate its internal affairs without any interference from other states. In the Ukraine conflict, this principle has been blatantly violated.

Victoria Nuland, the then-US Assistant Secretary of State for Foreign Affairs, admitted in 2014 that the US alone had invested five billion dollars in the "westernisation" of the country. This was a huge sum for one of the poorest countries in Europe. It is even very likely that the sums involved were much higher and included funding from other Western states, their secret services, and private foundations. Western politicians repeatedly joined the demonstrators on Kiev's Maidan Square, some of whom were armed, and pledged their support – an almost unique breach of national sovereignty that no Western country would accept for itself.

In a wiretapped conversation between Nuland and the US ambassador in Kiev at the time, they even discussed which particularly US-friendly politician should be appointed Ukrainian prime minister after a successful overthrow. And that is what then happened. The fact that in the process President Yanukovich – who had emerged from national elections in 2010 that the OSCE and EU had described as free and fair – was deposed, did not seem to bother anyone in the West. Without this interference in internal affairs in violation of international law, there would probably have been no illegal coup, no deepening of hostilities between the Ukrainian and the pro-Russian halves of the population, and no secession of Crimea and Donbas.

The principle of universality

But perhaps the most astonishing aspect about Western accusations that Russia is waging a war of aggression is that the US and its NATO allies have themselves repeatedly waged wars of aggression in violation of international law. We may still remember the wars against Serbia (1999), Iraq (2003), Libya (2011) and Syria (2014), all of which violated international law. What is less well known is that between 1992 and 2022, the USA intervened militarily 251 times in other countries (US Congressional Research Service). This does not even include CIA operations and support in proxy wars. It is probably fair to assume that most of these interventions were in violation of international law. The USA's claim to global hegemony, which is based on military strength, is simply not compatible with the UN Charter, which is based on the sovereign equality of states and the principle of non-violence.

International law only makes sense if it is universal – in other words, if it applies equally to all states. These multitudinous interventions by NATO states in violation of international law had already overturned the UN Charter long before Russia’s illegal attack on Ukraine. On this background, accusations against Russia seem morally dishonest and questionable. In the West, we have become accustomed to accepting different standards for ourselves and “others”. This is probably also the reason why NATO countries like to talk about a fictitious “rules-based international order” and no longer about the UN Charter.

Are changing times leading us back to the UN-Charter?

Today, the USA is no longer the sole military, economic, technological and therefore political superpower it was 30 years ago. The USA – and its European allies – will have to accept that they represent only 10% of the world’s population and will increasingly have to share power with other states around the world. We have already entered a multipolar world.

The hope in the 1990s that the USA, as a force for good and progress, would use its military power to create a global order in which democracy, the rule of law and economic prosperity would prevail, has crumpled. None of the 251 military interventions, none of the CIA operations and none of the arming of proxies have created democracies, the rule of law or economic prosperity. They have only caused chaos, anarchy, economic and social ruin, and immeasurable human suffering. Ukraine is probably facing a similar fate. Hegemonic claims and weapons do not bring order or peace.

Perhaps it is precisely this senseless and inhumane war in Ukraine that will convince us that the UN Charter, which culminates in the joint pledge of all 193 member states of “**never again war**” and “**humanity**“, promises a more equal, better and more peaceful future for all of humanity. We all just need to want to live up to it!