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RUSSIA'S AGGRESSION AGAINST UKRAINE: A CLASH OF TWO VISIONS OF THE INTERNATIONAL COMMUNITY AND INTERNATIONAL LAW

Abstract: Russia's aggression against Ukraine represents the culmination of a clash between two visions of the international community and international law. The first is the vision of the West, formulated especially under the influence of the United States. This vision is reflected in the current situation of the community, which is based on American hegemony, and in the state of international law, which has emerged especially after the end of the Cold War. The second vision is that of Russia and China, which has been systematically constructed since the end of the 20th century, supported at least in some aspects by other states belonging to or aspiring to the BRICS or the Shanghai Cooperation Organisation. The article undertakes an analysis from the perspective of the response of the West and, more broadly, the international community, to Russian aggression. It examines demands for change in the sphere of power within the community and relations between its members, as well as changes in the creation, interpretation and operation of international law. The consequences of the clash of these visions, which is of a systemic, civilisational nature with regard to both the community and international law, are also assessed.

Keywords: International community, international law, Russia's aggression against Ukraine, multipolarism, multilateralism, new global governance, principles of international law, human rights, democracy, rule of law, clash of civilisations

Preliminary Conceptual Reflections. Introduction

Russia's aggression against Ukraine took place in two phases; the first began in February and March 2014 and involved the occupation and subsequent annexation of Crimea and Sevastopol to Russia; the second took place on 24 February 2022 and involved the open armed invasion of Ukraine.¹ The events preceding both phases, as well as their course and ongoing aftermath, are known.² They are also subject to analysis from an international law perspective.³ These analyses most often concern Russia's formulated justifications and the current legal consequences of the invasion.

However, Russia's aggression against Ukraine is not just one of the many conflicts we are dealing with after the Second World War. Russia, one of the great superpowers with a powerful arsenal of nuclear weapons, a permanent member of the UN Security Council, the body responsible for maintaining international peace and security and responding to threats and breaches of peace and acts of aggression (Articles 24 and 39 of the UN Charter), is undermining the fundamental principles of the international order as set out in international law (respect for the sovereignty and equality of states, prohibition of the use of force against the political independence and territorial integrity of states, self-determination of peoples) by denying Ukraine's statehood and its right to freely decide its fate. In the second phase of aggression, Russia is also using threats to use nuclear weapons, which have not been formulated in conflicts since the end of the Cold War.⁴

Russia's aggression against Ukraine, however, is not an end in itself. It is not only a manifestation of Russia's interventionist policy applied to the so-called post-Soviet area, but is conceptually and strategically embedded in the realities of the contemporary world and linked to actions

1 The circumstances of the invasion described in: "Russian Invasion of Ukraine Draws Widespread – but Not Universal Condemnation", 595ff.

2 See calendar of the conflict: Walker, *Ukraine crisis: A timeline (2014 – present)*. On the course of the armed conflict see, i.a.: Institute for the Study of War, Ukraine Conflict Updates, <https://www.understandingwar.org/backgrounder/ukraine-conflict-updates>. Unless otherwise stated, access to web addresses throughout the study was verified as at 23 December 2022.

3 See i.a.: Müllerson, "Ukraine: Victim of Geopolitics", 133ff.; Kwiecień, "The Aggression of the Russian Federation Against Ukraine: International Law and Power Politics or 'What Happens Now'", 9ff; International Law and Defining Russia's Involvement in Crimea and Donbas, 13 February 2022, Global Rights Compliance, https://globalrightscpliance.com/wp-content/uploads/2022/05/International-Law-and-Russia-Involvement-in-Crimea-and-Donbas.pdf?fbclid=IwAR1uCoKAsEW_T_ZRT7tfCUrvjdBonx-SgC3MdeKYomxCsjr-u2zDb4wxr1s.

4 Partially similar view: Brunk, Hakimi, "Russia, Ukraine, and the Future World Order", 689.

with a much broader geopolitical dimension. It represents a blatant challenge to the position and role in international relations of a superpower such as the United States today.

Russia's aggression against Ukraine can be seen as the culmination of a clash between two visions of the international community and international law. The first vision, promoted by the United States and its Western allies (in particular NATO members, as well as Japan, South Korea, Israel, Australia, New Zealand and Taiwan), involves the recognition of the United States' hegemonic position in the international community and the state of international law as it emerged after the end of the Cold War under the strong influence of the Western world. It is a vision that has determined largely by the processes of the internationalisation and globalisation that enable the West to expand politically and economically.

The second vision seeks to radically remodel international relations and international law to include the role of non-Western powers as co-determinants of the world's destiny. This vision is formulated especially by the Russia-China tandem (at least since 1997), and to some extent also in collaboration with India (RIC).⁵ In a broader context, it is also advocated by other countries belonging to the grouping of countries known as BRICS (Brazil since 2010, Russia, India, China, South Africa since 2011) and even other non-Western states. For the purposes of this study, it will be referred to as the Non-Western Vision.

This paper will analyse the basic assumptions of the Western and especially the non-Western vision of the international community and international law. It is assumed that the latter is the antithesis of the Western vision. Its reconstruction will make it possible to realise the extent of the basic differences between these visions and show the fundamentally different civilisational choices that underlie them. The study assumes that the two rival visions of the international community and international law had been shaping themselves since the end of the Cold War, but that the Ukrainian crisis became an expression of their clash. A related thesis is that the aggression in Ukraine as a means of realising the non-Western vision is causing deep divisions in the international community and the consolidation of a conception of international law that is irreconcilable with its perception established *prima facie* by common consent after the end of the Cold War.

5 Given India's military cooperation with the United States, China's fear that Western manufacturing will shift to India, and border issues between India and China, India is a much less stable and radical member of BRICS than China and Russia.

For the purposes of this paper, vision is understood as a concept comprising two elements: an assessment of the existing situation and a proposal for a new order. In this context, it is important to note that, while the Western vision can be characterised as preserving and deepening the status quo as regards both the state of the international community and international law, especially as it existed prior to the 2022 military invasion, the non-Western vision as seeking to change this status quo requires much more attention and development. In establishing the vision, first of all, documents and other official positions of states will be taken into account, especially Russia, which, in preparing and carrying out the aggression, undertook to formulate justifications not only for the current actions, but also showing the broader geopolitical context. In addition, joint documents and other positions of Russia and China, as well as of the BRICS, will be analysed more broadly.

The discussion will be divided into four main parts. In the first, the process of shaping a non-western vision of the international community and international law will be shown. The most important documents and positions underpinning this vision will be indicated here. The following two will then reconstruct the basic assumptions of the non-Western vision of the international community and international law in their juxtaposition with those of the Western vision. The fourth section will show the potential consequences of the impact of this vision on international relations and international law.

1. Shaping the Vision of a New World

The process of shaping a new vision of the international community and international law began formally with the adoption in Moscow of the Russian-Chinese Joint Declaration on a Multipolar World and the Establishment of a New International Order, 23 April 1997. This declaration was communicated to the UN by a joint note.⁶ It was followed by other joint statements, such as the Sino-Russian Joint Statement of 10 December 1999,⁷

6 A/52/153, S/1997/384. The declaration was signed by President B. Yeltsin and PRC Chairman J. Zemin. The note to the UN was signed by, among others, the then Russian Ambassador to the UN, S. Lavrov.

7 Text: https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/200011/t2000115_678986.html.

and the Joint Statement Signed by the Chinese and Russian Heads of States, 16 July 2001.⁸ In 2001, the Shanghai Cooperation Organisation was established on the initiative of Russia and China.⁹ On 25 June 2003, China and India in turn adopted the Declaration on Principles for Relations and Comprehensive Cooperation.¹⁰ Despite tensions in mutual relations, cooperation bilaterally and with Russia, continues.

In 2006, the process of establishing BRICS began.¹¹ Within this grouping, a number of momentous declarations have been adopted in subsequent years (Yekaterinburg of 16 June 2009, Goa of 16 October 2016, Xiamen of 4 September 2017, New Dehli of 9 September 2021, Beijing of 23 June 2022).¹² Some of these were adopted before the aggression, others after the first or second stage. Although in them BRICS did not generally comment on Russia's aggression against Ukraine, focusing its attention on economic issues, its declarations are nevertheless relevant to the reconstruction of autonomous and alternative concepts to Western ones regarding the international order. These documents remain relevant regardless of the assessment of whether or not BRICS is capable of being a viable counterweight to the West.¹³

At the beginning of the 2000s, Russia began to officially prepare a plan to rebuild its own international position. Its first stage became the reconstruction of its influence in the post-Soviet space. The realisation of this stage, however, only foreshadowed Russia's further geopolitical

8 Text: https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/200107/t20010724_679028.html.

9 Currently, India, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan and Uzbekistan are also members. Iran is finalising its membership efforts. The organisation is based on the 2022 Charter. See the organisation's website: <http://eng.sectesco.org/>.

10 Text: https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/200306/t20030625_679085.html.

11 As a more cohesive grouping, it has been active since 2009. However, it is still not a formalised international organisation. It is seen as a counterweight to the G7. In addition to the current members, various developing countries aspire to join the BRICS, including Algeria, Indonesia, Mexico, Nigeria, Iran, Pakistan, Saudi Arabia, Sudan, Syria, Turkey, Venezuela and Zimbabwe. The origins of BRICS were linked to the economic aspirations of its members (the New Development Bank with its subsidiary in Africa, and the Contingent Reserve Arrangement were created). Today, the scope of activities is much broader. There are plans to establish a permanent secretariat (at Russia's initiative). A BRICS Parliamentary Forum has also been established. See the BRICS's website: <https://infobrics.org/>.

12 Access on the BRICS's website: <http://infobrics.org/documents/>, the Chinese Foreign Affairs Ministry: https://www.fmprc.gov.cn/eng/zxxx_662805/.

13 The critical view of the importance of BRICS: Kugiel, "The Relevance of BRICS after the Russian Invasion of Ukraine".

projects, which were closely connected to building a counterweight to the United States in the world. These aspirations were demonstrated by President Putin's famous speech at the Munich Security Conference in 2007,¹⁴ as well as Russian Foreign Minister S. Lavrov's statement on European security.¹⁵ Both politicians emphasised the encirclement of Russia on the one hand and the undermining of the international order, and thus international and regional security, by the United States on the other. Russia's aggression against Georgia in 2008 was imminent.

For the development and implementation of the anti-Western vision of the international order, Russia's security strategies are of essential importance. On 12 May 2009, Russia adopted a national security strategy until 2020 (the so-called Medvedev strategy).¹⁶ Another strategy was adopted shortly after the 2014 aggression against Ukraine, i.e. on 31 December 2015.¹⁷ The current one is the Russian National Security Strategy of 2 July 2021.¹⁸ Substantively, the 2015 and 2021 strategies were modifications of the 2009 strategy.¹⁹ It was adopted as the conceptual underpinning of the 2022 aggression. Nevertheless, it contained, among other things, a critical analysis of the international situation, interpreted and assessed the processes taking place in the international community, and defined the target, desired shape of the strategy. Reference is also made to Russia's security situation in the world, as well as its aims and means in international relations, its relations with other states, especially those belonging to the Shanghai Cooperation Organisation and BRICS, and the role Russia ascribes to international law.

Russia's position vis-à-vis developments in the international community and international law was also formulated more directly in relation to the aggression against Ukraine. Relevant statements and pronouncements from this perspective include President Putin's address

14 Texts of Mr Putin's speeches, including those by Deputy Prime Minister Ivanov and Minister Lavrov at the subsequent Munich conferences (until 2018): https://is.muni.cz/th/xlghl/DP_Fillinger_Speeches.pdf. See also Brunk, Hakimi, *ibidem*, 688.

15 Lavrov, *The Present and the Future of Global Politics*, 13 May 2007, Russia in Global Affairs 2007, No. 2, <https://eng.globalaffairs.ru/articles/the-present-and-the-future-of-global-politics/>.

16 Text, in English: <http://mepoforum.sk/wp-content/uploads/2015/08/NDS-RF-2009-en.pdf>.

17 Text, in English: <https://www.ieee.es/Galerias/fichero/OtrasPublicaciones/Internacional/2016/Russian-National-Security-Strategy-31Dec2015.pdf>.

18 Access to the text of the strategy and accompanying documents: <https://www.russiamatters.org/russian-strategic-documents>.

19 Strategies are approved by decrees of the President of the Russian Federation. A comparison of Russia's National Strategies (2009, 2015, 2021), in Russian: https://rusmilsec.files.wordpress.com/2021/07/natsec_comparison_2021-1.pdf.

to State Duma deputies, Federation Council members, heads of Russian regions and civil society representatives justifying the annexation of Crimea on 18 March 2014,²⁰ and, in the case of the second phase of the aggression, Putin's television address of 21 February 2022 explaining the reasons for recognising the self-proclaimed Donbass republics and concluding a treaty of friendship and mutual cooperation with them,²¹ as well as his statement of 24 February 2022 justifying the launch of a special military operation.²²

New Russian-Chinese statements correspond with Russia's aggression against Ukraine. Noteworthy in particular are the Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law of 25 June 2016²³ and the Joint Statement of the Russian Federation and the People's Republic of China on International Relations Entering a New Era and the Global Sustainable Development adopted on the sidelines of the beginning of the Winter Olympic Games in Beijing on 4 February 2022.²⁴ They represent a strengthening of bilateral cooperation.²⁵ They also formulate, in a more mature and up-to-date manner, the common view of Russia and China on the balance of power within the international community and on international law and its role in international relations.

2. A non-Western Vision of the International Community

2.1. Preliminary Remarks

Over the course of history, the shape and nature of the international community has undergone significant changes. The Second World War resulted in the organisation of this community largely within the framework of the United Nations. In doing so, its statutes established that in key

20 Text: <http://en.kremlin.ru/events/president/news/20603>.

21 Text and video with transcription in English: <https://www.c-span.org/video/?518097-2/russian-president-putin-recognizes-independence-donetsk-luhansk-ukraines-donbas-region>.

22 Text: <https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine/>.

23 Text: https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201608/t20160801_679466.html.

24 Text: <http://en.kremlin.ru/supplement/5770>.

25 It is perceived that the strengthening of Russia-China ties has been influenced by Western sanctions against Russia taken in response to the annexation of Crimea. Roberts, *Is International Law International?*, 285. At the same time, Roberts notes that the attitude of both countries towards the United States is not identical (296-287).

matters of maintaining and restoring international peace and security, the unanimous consent of the great powers was fundamental. In other respects, no joint management was established. In doing so, a certain role and autonomy of regional structures was retained, including in the provision of local peace and security. At the initial stage, the UN was dominated by Western and Latin American states.

Shortly after 1945, however, there was a serious strain in relations between the United States and the West and the USSR and its allies, which came to be known as the Cold War. In the course of it, there were numerous changes in the subject structure of the community. Decolonisation resulted in a large group of states in Africa, Asia and Oceania becoming members of the UN. Like Latin America, they became a field of rivalry between the two superpowers. A large number formed the Non-Aligned Movement. The People's Republic of China was also admitted to the UN, removing the Republic of China (Taiwan).

However, the United States emerged victorious from this Cold War, proving to be the only superpower capable of taking action, including military action, in any part of the world.²⁶ The USSR and the camp of socialist states disintegrated. In the place of the USSR, a dozen new states emerged. Attempts to recreate a soft version of the USSR (the Commonwealth of Independent States) failed. The United States became the sole hegemon in the community.²⁷ The military alliances and economic groupings of the socialist states and some alliances of developing countries collapsed. Instead, NATO survived, which on the one hand expanded, while on the other the military guarantees weakened somewhat. The process of European integration also developed. The main economic organisations in the world, such as the international financial institutions and the WTO, came under US/Western influence.

The end of the Cold War allowed for the political and economic expansion of the West, facilitated by the processes of internationalisation and globalisation. The United States gained a geometrically growing competitive and technological advantage, including over other Western countries. With its position as super-hegemon, the US has intervened with allies, including armed interventions with the authorisation of the UN Security Council

²⁶ Orford, "Regional Orders, Geopolitics, and the Future of International Law", 170-179.

²⁷ Kwakwa, "The international community, international law, and the United States: three in one, two against one, or one and the same?", 25ff, and Paulus, "The influence of the United States on the concept of the "International community", 57ff.

(Afghanistan, after the 2001 attack on the WTC, Iraq/Kuwait, 2001)²⁸ or without it (most dramatically in Yugoslavia/Kosovo, 1999, and Iraq, 2003²⁹).³⁰ Nonetheless, in addition to the United States, the European Union has become economically and politically active on a global level, in addition to other Western states. Consequently, despite US dominance, there is at least to some extent a coordination of the US position with other Western countries (within the G7, NATO, OECD,³¹ bilateral US-EU consultations, or bilateral contacts between US and France and Germany).

In the Western perspective, there is also a conviction of the need to ensure the functioning of the international community on the basis of multilateralism, including the role of the UN, and the new global governance, an aftermath of globalisation (the inclusion of states, international organisations, non-state actors in governance, the reduction of the role of sovereignty, non-interference in domestic affairs in connection with the distinction of collective interests, the existence of global public goods and global commons, the need for states to respect standards of democracy, human rights and the rule of law, and to submit to international control related to this).

At the same time, regional integration efforts have been undertaken in various parts of the world, with greater or lesser success. Some of the integration blocs were the result of the promotion of the European model, while others became centres of resistance to American (Western) hegemony. At the same time, American and European expansion, which took place during the Cold War and expanded significantly after its end, did not arouse the enthusiasm of many states, which either lost their position as co-hegemon or felt excluded from, or objectified by, global processes. Under these conditions, a new, non-Western vision of the international community is being formulated.

28 Kohen, "The use of force by the United States after the end of the Cold War, and its impact on international law", 197ff.

29 Orford, "Regional Orders, Geopolitics, and the Future of International Law", 179, points out that the US was portrayed as a legal and moral power. The 2003 invasion of Iraq without Security Council authorisation proved to be a turning point.

30 Franchini, Tzanakopoulos, "The Kosovo Crisis, and M. Weller, *The Iraq War-2003*", 594ff, 639ff.

31 However, the OECD also includes Chile, Columbia, Costa Rica, Mexico.

2.2. Assessment of the State of the International Community

A critical assessment of the state of the international community comes shortly after the establishment of closer cooperation between Russia and China. Thus, the Sino-Russian Joint Statement of 10 December 1999 states that

The forcing of the international community to accept a uni-polar world pattern and a single model of culture, value concepts and ideology, and a weakening of the role of the United Nations and its Security Council; the seeking of excuses to give irresponsible explanations or amendment to the purposes and principles of the UN Charter; the reinforcing and expanding of military blocs; the replacing of international law with power politics or even resorting to force; and the jeopardizing of the sovereignty of independent states using the concepts of “human rights are superior to sovereignty” and “humanitarian intervention”. The two sides agree to work together with the rest of the world to oppose the momentum presently preventing the establishment of a just multi-polar structure for international relations.

The negative assessment of the situation in the international community is sharpened in Russian rhetoric at the beginning of the 21st century. Thus, Vladimir Putin, while attending the Munich Security Conference in 2007, criticised the unipolar vision of the international community and the taking of unilateral actions in international relations. He pointed to the processes of transforming economic powers into political powers and international relations into multipolar ones. In this context, he questioned the existing global security architecture. He pointed to the expansion of NATO, the West’s rejection of disarmament and non-proliferation policies, the militarisation of space, the new arms race, including the perfecting of nuclear weapons, the transformation of the OSCE into a “vulgar instrument designed to promote the foreign policy interests of one or a group of countries.”³²

Also in 2007, Russian Foreign Minister Sergey Lavrov condemned the division of the world into civilised and uncivilised. He expressed the need to build a new collective leadership of the world’s major powers (the United States, Russia and the European Union). At the same time, he pointed out that on some issues Europe was closer to Russia than to the United States, thus

32 A speech delivered at the MSC 2007 by the President Vladimir Putin, p. 8.

seeking to reinforce the existing differences between Europe and the United States. He also demanded Russia's inclusion in the new Atlantic formula. This narrative formulated by Putin and Lavrov would be developed in Russia's later political positions and doctrines.

In particular, Lavrov undertook an assessment of the functioning of the international community, especially in the Eastern European region, in a speech at the Munich Conference in 2018, thus already after the first phase of the aggression against Ukraine. He saw the conflict in Ukraine at that stage as internal. Lavrov considers it a consequence of NATO's expansion to the East. In Lavrov's view, during the preparation of the Association Agreement with the European Union, Ukraine was forced to choose between the West and Russia. He pointed out that after the anti-constitutional coup, Ukraine is not a state that can govern itself. It is also not willing to fulfil the Minsk agreements concluded in 2014 and 2015. He also stressed that other CIS and Balkan states are also being forced to choose between the West and the East. Lavrov deduced that the West's policy of replacing undesirable governments in the Middle East and North Africa and forcing them to approve foreign development models, causing chaos and, paradoxically, importing problems into Europe (terrorism, illegal migration and others).³³

Shortly before the 2022 aggression, Russia presented its Security Strategy (2021), in which it deepened its criticism of the state of the international community. It acknowledges that the international situation is undergoing changes in a multipolar direction, which the US and its coalition partners do not want to accept. They are still trying to impose their vision of the community and the rules within it. They do not respect the agreed principle of indivisible security, they violate the basic principles of international law (sovereignty, non-interference in internal affairs), they apply double standards, they ignore the solutions adopted within the UN, they use unilateral measures. They aim to dismantle the post-Soviet space (which is conceived as a space of Russia's influence, one sphere of civilisation), isolate and harm Russia by applying sanctions against it, and ignore its security interests.

The Strategy also points out that the United States has a consistent policy of abandoning its international arms control obligations. The planned deployment of US medium – and shorter-range missiles in Europe and the Asia-Pacific region poses a threat to strategic stability and international

33 A speech delivered at the MSC 2018 by the Minister of Foreign Affairs Sergey Lavrov, pp. 65-68; https://is.muni.cz/th/xlghl/DP_Fillinger_Speeches.pdf.

security. Tensions are rising in the post-Soviet area and in other regions of the world, international terrorism and extremism are expanding. It is becoming necessary to prepare for armed defence.

A blunt assessment of the situation in international relations was also expressed on the eve of the 2022 aggression, in the Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development of 4 February 2022. It was raised here

certain States, military and political alliances and coalitions seek to obtain, directly or indirectly, unilateral military advantages to the detriment of the security of others, including by employing unfair competition practices, intensify geopolitical rivalry, fuel antagonism and confrontation, and seriously undermine the international security order and global strategic stability. The sides oppose further enlargement of NATO and call on the North Atlantic Alliance to abandon its ideologized cold war approaches, to respect the sovereignty, security and interests of other countries, the diversity of their civilizational, cultural and historical backgrounds, and to exercise a fair and objective attitude towards the peaceful development of other States. The sides stand against the formation of closed bloc structures and opposing camps in the Asia-Pacific region and remain highly vigilant about the negative impact of the United States' Indo-Pacific strategy on peace and stability in the region.

Russia and China have also expressed concern about the emergence of a “the trilateral security partnership between Australia, the United States, and the United Kingdom.”³⁴ They recognised that

the U.S. withdrawal from the Treaty on the Elimination of Intermediate-Range and Shorter-Range Missiles, the acceleration of research and the development of intermediate-range and shorter-range ground-based missiles and the desire to deploy them in the Asia-Pacific and European regions, as well as their transfer to the allies, entail an increase in tension and distrust, increase risks to international and regional security, lead to the weakening of international

³⁴ Trilateral Security Partnership was established on 15 September 2021 on the basis of the Joint Leaders Statement on AUKUS (text: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/15/joint-leaders-statement-on-aucus/>). See also Fact Sheet: Implementation of the Australia – United Kingdom – United States Partnership (AUKUS) 6 April 2022, file:///C:/Users/cezary/Downloads/implementation-of-AUKUS.pdf.

non-proliferation and arms control system, undermining global strategic stability.

It was also pointed out that

the denunciation by the United States of a number of important international arms control agreements has an extremely negative impact on international and regional security and stability. The sides express concern over the advancement of U.S. plans to develop global missile defence and deploy its elements in various regions of the world, combined with capacity building of high-precision non-nuclear weapons for disarming strikes and other strategic objectives.

2.3. A New Vision for the International Community

2.3.1. Preliminaries

One of the first expressions to create a new vision of the international community became the Russian-Chinese Joint Declaration on a Multipolar World and the Establishment of a New International Order of 23 April 1997. Here the will to promote a new international order was announced. In characterising the state of the international community, the parties recognised that a profound transformation of international relations had taken place at the end of the 20th century. It became a consequence not only of the end of the Cold War, but also of the collapse of the bipolar order. In this context, the “positive trend towards a multipolar world” and the “considerable vitality of regional economic cooperation organisations” were perceived.

It was recognised that diversity “in the political, economic and cultural development of all countries is becoming the norm”. As a result, differences in social system ideologies and value systems need not be seen as “an obstacle to the development of normal relations between States”. It was also stressed that

All countries, large or small, strong or weak, rich or poor, are equal members of the international community. No country should seek hegemony, engage in power politics or monopolise international affairs.

It was also pointed out that

A growing number of countries are beginning to recognise the need for mutual respect, equality and mutual advantage – but not for hegemony and power politics – and for dialogue and cooperation – but not for confrontation and conflict. The establishment of a peaceful, stable, just and rational new international political and economic order is becoming a pressing need of the times and an imperative of historical development.

The renunciation of discriminatory practices and the development of exchanges and cooperation in various fields on the basis of equality and mutual benefit will enable “common development and prosperity”.

The Joint Declaration drew attention to the centrality and role of the UN in the international system, which cannot be replaced by any other organisation. The parties indicated that peacekeeping operations should only take place with the consent of the Security Council and only with the consent of the state concerned, under the supervision of the Security Council. The Declaration also accepted that an important centre of the multipolar world was the Non-Aligned Movement.

In the following years, the ideas of the new international order formulated in the Joint Declaration were confirmed and developed in bilateral statements by Russia and China.³⁵ In their view, the new order is in the interests of all states.³⁶ Over time, BRICS documents emerged, also referring to the need to build a new order in the international community. The concept of a new international political and economic order consists of three interrelated ideas, i.e. multipolarism, multilateralism and new global governance.

35 E.g. Sino-Russian, *Joint Declaration on the International Order in the 21st Century of 1 July 2005*. See also Bin, *The New World Order According to Moscow and Beijing*.

36 E.g. Joint Statement Signed by the Chinese and Russian Heads of States, 16 July, 2001, where it was stated: “to promote the course of multi-polarity in the world is of benefit to the establishment of a new international order which is stable, democratic, non-confrontation, fair and just. Objectively speaking, such a trend accords with the fundamental interests of all states.” https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/200107/t20010724_679028.html.

2.3.2. *Multipolarism*

The United States takes the view of a unipolar world, which is characterised, on the one hand, by cooperation with its allies (the United Kingdom, European Union, other Western states) and, on the other hand, by the expansion of the democratic space in the world and the disciplining of states that attempt to violate the status quo. At the same time, it is important to be aware that the Western vision of the international community from this perspective is not fully coherent.

In the narrative of Russia, China and the BRICS states, the idea of multipolarity is fundamental, although it is sometimes hidden among other concepts. On the one hand, it is linked to questioning the unipolar world, the closer the aggression against Ukraine is to the unambiguous dominance of the United States, and on the other hand to demonstrating that the governance of the international community should be undertaken on a collective basis by a group of powers. In this way, multipolarism is also linked to the new global governance. The Joint Statement of the People's Republic of China and the Russian Federation On Major International Issues of 23 May 2008³⁷ recognises that the trend towards a multipolar world is irreversible.

The vision of the international community in non-Western terms is that of a multipolar world to meet certain standards. Thus, the 2009 Joint Statement of the BRIC Countries' Leaders³⁸ states that "a more democratic and just multipolar world order should be based on the rule of international law, equality, mutual respect, cooperation, coordinated action and collective decision-making of all states".

The idea of multipolarity is based on the belief in the need for a new distribution (redistribution) of power in international relations, including the inclusion of new large actors from different continents in different formats of action (such as India, Brazil, South Africa). This is accompanied by the ideas of respect for cultural diversity, equality of states, non-interference in their systemic and political choices, reform and strengthening of the UN,

37 Text: https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/200806/t20080616_679203.html.

38 Text: <http://infobrics.org/document/3/>. Similarly: Joint Statement of the IInd BRIC Summit, Brasilia, 2010, where it was stressed that "support for a multipolar, equitable and democratic world order, based on international law, equality, mutual respect, cooperation, coordinated action and collective decision-making of all States." <http://infobrics.org/files/pdf/7.pdf>.

greater democracy in international relations. In an environment where the West represents a minority of states, this implies a reduction in its role in the world and in the UN.

This understanding of multipolarity is encountered in the Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development of 4 February 2022. It states, among other things,

the development of such processes and phenomena as multipolarity, economic globalisation, the advent of information society, cultural diversity, transformation of the global governance architecture and world order; there is increasing interrelation and interdependence between the States; a trend has emerged towards redistribution of power in the world.

Russia and China called on all states to

respect the rights of peoples to independently determine the development paths of their countries and the sovereignty and the security and development interests of States, to protect the United Nations-driven international architecture and the international law-based world order, seek genuine multipolarity with the United Nations and its Security Council playing a central and coordinating role, promote more democratic international relations, and ensure peace, stability and sustainable development across the world.

2.3.3. Multilateralism

The second major concept of the new international order is multilateralism. This is not a new idea in international relations, although it is characteristic of recent times. In general, multilateralism can be described as a philosophy of contemporary international relations. It is expressed in the belief that states form a community (and not just a loose community) in which multilateral institutional and non-institutional mechanisms operate. Multilateralism refers to the need to recognise and respect the shared values and common interests of the community (universal or particular, especially regional), which go beyond the simple sum of values and interests important to individual states. These values and interests are protected collectively by the organised international community. A higher level of multilateralism,

promoted especially by globalisation, is expressed in the endeavour to demonstrate the existence of a global community whose actors are not only states and international organisations, but also non-state actors included in international processes. Common goods and values also acquire a global character (global commons, global public goods) and are not defined and regulated only by states.

The idea of a renewed multilateralism with a central role for the UN is promoted by, among others, the General Assembly.³⁹ The new multilateralism was refined in the UN Secretary-General's 2021 report *Our Common Agenda*.⁴⁰ Under the concept of the new multilateralism, the Secretary-General formulated 12 key obligations common to member states. He included: 1) inclusion (leaving no one behind; one of the tasks became the organisation of a World Social Summit in 2025); 2) protecting the planet, including action to protect the climate and ensure biodiversity; 3) promoting peace and conflict prevention; 4) upholding international law and ensuring justice, including a human rights-based approach as a means of addressing problems (comprehensive anti-discrimination legislation and promoting participation), applying human rights to the online sphere and frontier technologies, and recognising internet access as a human right; adopting a new vision of the rule of law; defining a global map of development and implementation of international law; 5) ensuring a central place for women and children; 6) building trust; 7) improving digital cooperation; 8) renewing the UN, including improving the governance of global public goods and re-establishing the Scientific Advisory Board to the Secretary-General; 9) ensuring sustainable financing; 10) strengthening partnerships; 11) listening to and working with youth, including in the context of future generations; 12) preparing for complex global crises.⁴¹

39 E.g. recently the resolution 14 December 2022, *Role of the United Nations in promoting development in the context of globalization and interdependence*, A/RES/77/175. It states, amongst others, in the preamble: "an inclusive, transparent and effective multilateral system to address the urgent global challenges of today, recognizing the universality of the United Nations, and reaffirming its commitment to promote and strengthen the effectiveness and efficiency of the United Nations". Resolution was passed 130:2:45.

40 Text: https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf.

41 *Our Common Agenda*, 6-7.

The UN Secretary-General also advocates basing the new multilateralism on deepened solidarity.⁴² He distinguishes it from charity. He treats it as a principle of working together, according to which it is necessary to act together. As he notes, no one can solve their problems alone. It is a responsibility for each other, “taking into account our common humanity and the dignity of each person, our diversity and differing levels of capacities and needs”. The basis for interaction would be a social contract at national level rooted in human rights.⁴³ In turn, ensuring solidarity between societies and with future generations requires a new agreement at the global level. In this context, the need to improve the protection of global commons and to ensure the protection of a wider range of global public goods is highlighted.⁴⁴

This vision does not correspond fully with the concept developed especially within the BRICS. Here, multilateralism is seen first as a method of emancipating the non-Western world. In this vein, the New Dehli BRICS Declaration of 2021 formulates the idea of an effective and representative multilateralism, which would be based on justice compensating for differences between states. Such multilateralism is “essential for building resilience against current and future global challenges, promoting well-being of our people and building a sustainable future for the planet.” Related to this is also the call for the international system to “Make instruments of global governance more inclusive, representative and participatory to facilitate greater and more meaningful participation of developing and least developed countries, especially Africa, in global decision-making processes and structures and make it better attuned to contemporary realities.” This system should ensure “inclusive consultation and collaboration for the benefit of all, while respecting sovereign independence, equality, mutual legitimate interests and concerns to make the multilateral organizations more responsive, effective, transparent and credible,” and

Making multilateral organizations more responsive, effective, transparent, democratic, objective, action-oriented, solution-oriented and credible, so as

42 The Secretary-General refers to the definition of solidarity as formulated in the General Assembly’s resolution Promotion of a Democratic and Equitable International Order of 18 December 2003, A/RES/57/213, where it reads that Solidarity, as a fundamental value, by virtue of which global challenges must be managed in a way that distributes costs and burdens fairly, in accordance with basic principles of equity and social justice, and ensures that those who suffer or benefit the least receive help from those who benefit the most (point 4(f)).

43 Our Common Agenda, 14.

44 Our Common Agenda, 17-18.

to promote cooperation in building international relations based on the norms and principles of international law, and the spirit of mutual respect, justice, equality, mutual beneficial cooperation and realities of the contemporary world.⁴⁵

Multilateralism is also framed as a method of collective resolution of international problems, the consequence of which is opposition to unilateral action, particularly the use of unilateral sanctions measures. This is the direction taken by the Goa BRICS Declaration of 2016, which recognises that multilateralism is collective action in solving international problems and addressing challenges and threats of this scope.⁴⁶ In this context, it is interesting to note that a critical analysis of the international situation, in particular the taking of unilateral measures by the United States, its ignoring of the role of the UN and the Security Council, leads the Russian conception of security to conclude (Security Strategy 2021) that, in response to enigmatic hostile actions, Russia has the right to take symmetric but also asymmetric measures, which, unstated, may after all involve the use of force. Such measures, importantly, may not only be in response to hostile actions, but may also be preventive in nature. It considers the exercise of this right to be consistent with international law.

2.3.4. The New Global Governance

In Western terms, global governance is about the inclusion of diverse actors, including non-state actors, in global governance, based on intersecting networks. It is the idea of distributed power, in which states do not necessarily always play a key role. It is the distribution of power in the international community between different levels and centres of different nature. However, since in practice the international institutions (especially financial ones), the economic sphere (most of the relevant non-state actors are corporations located in Western countries), and the information sphere (cultural dominance, the shaping of consumer needs and awareness is carried out by media and portals located in Western countries, the management of internet domains is carried out by an entity located in the United States) are

45 New Dehli BRIICS Declaration, points 13, 14.

46 Goa BRICS Declaration, point 9.

dominated by the West, global governance constructed in this way appears as an instrument of the West.

The non-Western vision of the new global governance deviates from this framing. In the non-Western view, the new global governance is a concretisation of multilateralism. Attention is focused on the construction of new power relations between states, to the exclusion of non-state actors and networks in particular, on the democratisation of international relations. As a result, as emphasised, among others, in the BRICS Summit Beijing Declaration of 2022, the key role in global economic governance should be played by the G20, not the G7. This is because the G20 provides greater representativeness and inclusiveness. In this Group, non-Western countries (specifically the BRICS and the 11 economies of the rising developing countries) are outnumbered.⁴⁷

Within the framework of the new global economic governance, China also calls for the establishment of closer ties with regional organisations operating especially in Asia and Africa (the African Union, League of Arab States, SCO, SAARC and ASEAN are mentioned), but also in South America. In this way, they intend to influence the policies of these organisations and their members. They are also considering influencing the countries of Eastern Europe. The Belt and Road Initiative, which China has been pushing since 2013 (with a total of around 130-150 countries),⁴⁸ aims to achieve this. In addition, they are seeking to transform the BRICS into a community of economic cooperation and the Belt and Road Initiative instrument. However, the literature highlights that the interests of China and the other members of the grouping, especially Russia, are not fully identical. For economic reasons, China is interested in including other countries in the grouping. From this point of view, Russia's aggression against Ukraine hinders Chinese plans. Through BRICS, China also intends to increase its influence in the region and strengthen the grouping's cooperation within the IMF, World Bank and WTO, thus strengthening its influence on international standard-setting and global governance mechanisms.

⁴⁷ Earlier Joint Statement of the BRIC Countries' Leaders (Yekaterinburg, Russia, June 16, 2009); Joint Statement of the II Summit BRIC in Brasilia: "We welcome the fact that the G-20 was confirmed as the premier forum for international economic coordination and cooperation of all its member states. Compared to previous arrangements, the G-20 is broader, more inclusive, diverse, representative and effective."

⁴⁸ Orford, "Regional Orders, Geopolitics, and the Future of International Law", 180. The author compares this initiative to the Expanded Marshall Plan. He points out that it is seen in the Chinese literature as embodying the idea of cooperative international law (185).

Meanwhile, Russia sees the BRICS mainly as a political organisation and would like to institutionalise it. It also proposed the establishment of a new G8 (BRICS members plus Indonesia, Mexico, Iran and Turkey). However, China's opposition caused the project to be withdrawn. The conflict in Ukraine, however, brings Russia closer to China and makes it dependent on China.⁴⁹

Political governance, on the other hand, the BRICS countries associate with the key role of the UN Security Council. In their understanding, no sanctions action should be taken without its consenting. Its composition should also be expanded to include India, Brazil and South Africa (implicit BRICS Summit Beijing Declaration of 2022, New Delhi Declaration of 2021).⁵⁰ Finally, military governance would be based on a military balance between the West and the RIC powers and their allies, as well as disarmament and arms control.

2.3.5. Partial Conclusions

Russia's aggression against Ukraine and the response to it by the United States and its allies is fostering closer and broader cooperation between Russia and China, and to some extent with other BRICS countries, as well as with aspiring BRICS countries. It also results in the consolidation and development of a vision of a new international community.

The analysis of the non-Western vision of the international community confirms the thesis that, to a significant extent, it is the antithesis of the existing concept of the international community. In the view of Russia and China, as well as other BRICS members, it is intended to be a multipolar community rather than a unipolar one. Indeed, the world is undergoing a transformation towards more centres of global economic and political development and the empowerment of new global and regional leaders. Economic superpowers are transforming into political superpowers, which should have an impact on the functioning of the international community. Multipolarism is therefore also a kind of democratisation of international relations. There is no place for the hegemony of a single state. It is an expression of opposition to attempts to misrepresent the results of the Second World War.

49 Ghosal Singh, "BRICS and BRI: China Aims for Strategic Alignment", 10-11, 13.

50 Point 15 of the Declaration adopted at the XIIIth BRICS Summit (2021), <https://brics2021.gov.in/brics/public/uploads/docpdf/getdocu-51.pdf>.

The new vision of the international community is to operate on the basis of multilateralism. It is understood, however, not as mere multilateralism, but as the equitable emancipation of developing states, a method of reflecting the fact that numerically, population-wise, these states constitute the vast majority of the world. Multilateralism must therefore meet the criteria of inclusiveness and representativeness. Understood in this way, it should find expression in the instruments of action in international relations, especially within international organisations.

Finally, the new global governance is supposed to mean not reasserting the dominance of the West by establishing a network of different actors, including non-state actors, procedures for new governance, but ensuring that developing countries, and especially the BRICS members, have a proper influence on decisions taken within international institutions, including above all the UN Security Council, the international financial institutions or the WTO. The new global governance is to make the G20 the key informal decision-making body in international relations, especially economic relations.

It is interesting to note that the non-Western vision of the international community indicates a commitment to respect and adherence to international law, including in particular the UN Charter. However, the construction of a new international order (the reconstruction of the existing order) also requires a new view of international law. This raises the question of how Russia and its allies view international law.

3. A New Vision of International Law

3.1. Preliminary Remarks

The foundations of current international law were established in the aftermath of the Second World War. They are determined in particular by the UN Charter of 1945. The substantive content of the Charter is determined by its objectives and principles (interpreted in the light of the 1970 Declaration of Principles of International Law and international jurisprudence, viewed at the same time as fundamental principles of international law), as well as the system of collective security. The Charter also determines the scope of economic, social, cultural, and humanitarian cooperation among UN members, significantly influencing the content and direction of the development of substantive international law. For its members, the Charter establishes

obligations that override other international obligations (Article 102). For this reason, among others, the Charter has come to be regarded more contemporarily as the constitution of the international community.⁵¹

The end of the Cold War, linked to the collapse of the USSR, brought a will for closer cooperation. Principles of international law, including the principle of self-determination and the protection of human rights, began to be linked to values recognised as fundamental to the international community (UN General Assembly resolutions: Millenium Declaration of 8 September 2000 and World Summit Outcome of 16 September 2005; freedom, equality, solidarity, tolerance, respect for nature and shared responsibility).⁵² The disintegrating impact of internationalisation, integration, and globalisation on the state as a subject of international law and the rules protecting it was also recognised. This has led to a tendency to reduce the importance of principles such as sovereignty or non-interference in internal affairs.⁵³

International co-operation (something more than co-existence) also resulted in a significant expansion and diversification of international law.⁵⁴ Universal regulations emerged in various areas of international law (e.g. trade law, environmental law). International jurisprudence also developed, including in the sphere of international criminal law.⁵⁵ International arbitration has been revived. The norms of international law have begun to be subjected to a more expansive interpretation (e.g. human rights, humanitarian law).

Additionally, efforts were made to incorporate standards of democracy, the rule of law and human rights into universal international law, which was generally supported by the West. Respect for these standards was subjected to international control. A policy of conditionality also began to be applied on a wider scale, making the operation of international law conditional on the fulfilment of criteria based on these standards. On more than one

51 E.g. Fassbender, *The United Nations Charter as the Constitution of the International Community*; Dunhoff, Trachtman (eds.), *Ruling the World? Constitutionalism, International Law and Global Governance*; Klabbers, Peters, Ulfstein, *The Constitutionalization of International Law*; Macdonald, Johnston (eds.), *Towards World Constitutionalism. Issues in the Legal Ordering of the World Community*.

52 A/RES/55/2, A/RES/60/1.

53 Viñuales (ed.), *The UN Friendly Relations Declaration at 50. An Assessment of the Fundamental Principles of International Law*.

54 E.g. Treves, "The Expansion of International Law", 304ff.

55 Sciculuna, *The Politics of International Law*, 301-313.

occasion, the West, particularly the United States, took unilateral measures of a sanctioning nature. The West has also encouraged the adoption of its own standards in regional regulations emerging in the non-Western world, but this has not been without problems. As a result of the dominant position of the United States in the international community, the notion of hegemonic international law emerged as law created and operating according to the will of the hegemon.⁵⁶

3.2. Assessing the State of International Law

The current state and practice of international law is subject to criticism by both non-Western states and academia, including, at times, those operating in the West. Various critical approaches to international law are emerging,⁵⁷ including the so-called Third World Approach to International Law (TWAIL),⁵⁸ analyses that seek to demonstrate the multipolarity of the international order⁵⁹ and to highlight the problem of the lack of internationality of international law,⁶⁰ as well as in concepts of building a new international law.⁶¹ These ideas and analyses sometimes form the intellectual background of state doctrines. In the most general terms, it can be said that they are underpinned by a belief in the excessive influence of Western states, now especially the United States, in the creation, interpretation and application of international law, as well as its unilaterally favourable enforcement by the West.⁶²

This critique of the international legal order has been reflected and politically supported to the highest degree in the state doctrines of Russia,

56 Knox, "Hegemony", 343-355; Byres, Nolte (eds.), *United States Hegemony and the Foundations of International Law*.

57 Kotova, Tzouvala, "In Defence of Comparisons: Russia and the Transmutations of Imperialism in International Law", 710ff.

58 Chimni, "Third World Approach to International Law: A Manifesto", 3ff. More: Singh, Meyer (eds.), *Critical International Law. Postrealism, Postcolonialism, and Transnationalism*; Bachand, *Théories critiques et droit international*; Bianchi, *International Law Theories. An Inquiry into Different Ways of Thinking*; Roucouas, *A Landscape of Contemporary Theories of International Law*.

59 Happold (ed.), *International Law in a Multipolar World*.

60 Roberts, *ibidem*, passim.

61 E.g. Yasuaki, *A Transcivilizational Perspective on International Law*, 165-170, 179ff.

62 He, Sun, *A Chinese Theory of International Law*, 63; Roberts, *ibidem*, 280.

China and, to a lesser extent, other BRICS states. This criticism has been exacerbated with the Ukrainian conflict.⁶³

The unequivocally negative assessment mainly concerns the understanding and application of the foundations of international law. It has been carried out primarily by Russia. However, various aspects considered negative are also shown in various joint Russian-Chinese statements (e.g. in the field of disarmament and arms control) and in BRICS documents (mainly in the economic, financial and trade spheres).

Russia and other BRICS members draw attention primarily to the instrumental treatment of international law by the West, a kind of misappropriation of its foundations set by the UN Charter, especially the principles enshrined therein, including in particular the principles of sovereign equality, prohibition of the use of force and non-interference in internal affairs. Criticism also refers to the unilateral imposition of international law with a specific content on non-Western states, the unilateral use of various means of pressure and intervention, including under the banner of humanitarian intervention or responsibility to protect. It is also pointed out that double standards are applied to non-western states, disciplining them by referring to standards of human rights, democracy and the rule of law, according to Russia and China and their allies, which have no formal legal basis or which are given a western understanding. The West's disregard for its security obligations and its unilateral undermining of the collective security system are also raised.

Thus, at the Munich Security Conference in 2007, Russian president Putin stated that

We are seeing a greater and greater disdain for the basic principles of international law. And independent legal norms are, as a matter of fact, coming increasingly closer to one state's legal system. One state and, of course, first and foremost the United States, has overstepped its national borders in every way. This is visible in the economic, political, cultural and educational policies it imposes on other nations.

He also added:

63 Mälksoo, *Russian Approaches to International Law*, chapters 3 and 4; He, Sun, *ibidem*, esp. chapters 4-7.

In international relations we increasingly see the desire to resolve a given question according to so-called issues of political expediency, based on the current political climate. And of course, this is extremely dangerous. It results in the fact that no one feels safe. I want to emphasise this – no one feels safe! Because no one can feel that international law is like a stone wall that will protect them. Of course such a policy stimulates an arms race.

As a result,

it is necessary to make sure that international law have a universal character both in the conception and application of its norms.⁶⁴

In the context of preparing an armed assault on Ukraine in 2022, a good exemplification of Russia's stance towards international law is provided by the 2021 Security Strategy. Here it states that Russia seeks to ensure stability in international relations based on unconditional compliance with international law, while strengthening the role of the UN and the Security Council in solving global and regional problems. Russia also opposed the weakening or selective application of international law.

The Strategy accuses the West of trying to impose its rules on other members of the international community, using unfair competition, unilaterally using restrictive measures (sanctions) and openly interfering in the internal affairs of sovereign states. As a result, universally recognised principles and norms of international law are being undermined, existing institutions and systems of international legal regulation are being weakened and destroyed, the system of treaties and arms control agreements is being dismantled and the political-military situation is deteriorating, predictability is being reduced and trust in relations between states is being undermined. Space and information spaces are becoming new spheres of warfare. The application of double standards in international politics hinders the effectiveness of multilateral cooperation in such important areas for the international community as ensuring equal and indivisible security for all states, including in Europe, resolving conflicts, combating terrorism, extremism, drug trafficking, organised crime and the spread of infectious diseases, ensuring international information security and solving environmental problems. Unilateral measures of a protectionist nature and

64 A speech delivered at the MSC 2007 by the President Vladimir Putin, 2.

sanctions are used within the global financial, monetary and trade system. This is accompanied by unfair competition.

A negative view of the state of international law was also formulated by Vladimir Putin on the day the second phase of aggression began (speech of 24 February 2022). He stated that the Russian perception of international law is based on the assumption that its foundations were formed as a result of the Second World War.⁶⁵ Meanwhile, in the aftermath of the Cold War, a single hegemon emerged. This hegemon led to the incorporation into existing international law of norms declared unilaterally, without respect for the interests of all states and without an understanding of responsibility. This hegemon also began to take unilateral actions, including military operations without Security Council authorisation, which became a source of terrorism and extremism, especially in the post-Soviet area.

Russia's official position finds support in international law academia. Particularly glaring in this context is the position of the Presidium of the Russian ILA, which adopted a Statement polemicising the position of ILA Executive Head Christine Chinkin of 25 February 2022 on Ukraine. In it Chinkin confirmed the commitment to international law.⁶⁶ However, the Russian branch of the ILA accused him that such a confirmation had not been formulated in other cases where armed action was taken by the United States (Vietnam, Nicaragua, Panama, Grenada, Iraq in 2003 and others).⁶⁷ Its position also recalls the dropping of bombs on Hiroshima and Nagasaki after the signing of the UN Charter as flagrant violations of international law. The involvement of the United States in the overthrow of President Yanukovich in 2014 is also raised, as are Ukraine's violations of international law in the Donbas and Crimea up to and including the *coup d'état*. Violations of the Minsk agreements by Ukraine are also pointed out. The Statement considers the special military operation to be liberationist in nature against Russian citizens in eastern Ukraine. It emphasised that Russia does not intend to occupy Ukraine, subject to its denazification and demilitarisation.

65 As Mälksoo, *Russian Approaches to International Law*, 172-184, aptly pointed out, for Russia the key date from the perspective of the formation of international law is 1945, not 1989 or 1991. As a result, Russia's interpretation of the UN Charter is based on the assumption that the victors of World War II, like the five oligarchs, are to decide the fate of the world. Without their unanimous consenting, no military intervention can legitimately take place.

66 Statement of the Presidium of the Russian Association of International Law, text: <http://www.ilarb.ru/html/news/2022/7032022.pdf> It is worth noting that there is no ILA branch for China. Taiwan has such a branch.

67 Similar criticism of the conduct of the United States and its allies: Roberts, *ibidem*, 282-283.

Actions hostile to Russia were pointed out in relation to the admission of more former Soviet bloc countries and even former union republics to NATO (the Baltic States are mentioned here). NATO and the US have also undermined the system of security agreements, including the Helsinki Final Act of 1975. Consequently, Russia is acting in self-defence and for the protection of human rights, in accordance with Russia's treaties with the Donetsk and Lugansk republics. This reiterates and confirms the state argumentation justifying the so-called special military operation.

As an analysis of the statements and other documents of Russia and its allies shows, Russia's aggression against Ukraine has resulted in a decisive sharpening of the critical assessment of the state of international law, its instrumental use by the West. It concerns many legal aspects of international life, in particular the West's undermining of the arrangements contained in the UN Charter and the international security system therein. This criticism is carried out from principled positions and is calculated to demonstrate that the creation, interpretation and application of international law require a major change of a systemic nature and not just a tactical adjustment.

3.3. A "New Vision" of the International Legal Order

3.3.1. *Preliminaries*

Russia's aggression against Ukraine has also highlighted the existence of two competing visions of international law. In Western literature it is sometimes said that there are liberal and authoritarian conceptions of international law.⁶⁸ *Prima facie*, one might have thought that after the end of the Cold War, the liberal concept, promoted by the West, was also endorsed by non-Western states. In the meantime, it began to be increasingly actively opposed by a concept that was to a large extent the result of critically assessed developments in the international community or desired by non-Western states. It can be characterised in basic terms by relating the demands associated with the transformation of the international community (multipolarism, multilateralism, new global governance) to the creation, interpretation and operation of international law.

68 Sloss, Dickinson, "The Russia-Ukraine War and the Seeds of a New Liberal Plurilateral Order", 799.

3.3.2. The Relevance of the Concepts of Multipolarity and Multilateralism to the Creation of International Law

In the view of Russia, China and other BRICS states, but also many other states, the international order is or should be based on the principles of multipolarism, new multilateralism and new global governance. For the development of international law, the first two concepts are fundamental. Of these, the concept of multipolarism carries the most political weight.

In the view of Russia, China and their allies, multipolarism means that the international community functions on the basis of a multipolar order and a rejection of the hegemony of one superpower, one culture. Translated into the language of international law with regard to its creation, one could assume that multipolarism means creating law in a more balanced way than at present. This is because all the key powers concerned should be involved in the process. Without their consenting, international law should not be created. They legitimise law-making processes and have a balanced influence on them. At the same time, their circle should be enlarged, adapted to changing international conditions (emergence of new global and regional political powers). The content of legal rules should therefore not be determined unilaterally.

The transformations taking place in the international community in connection with the new distribution of power and the corresponding changes in international law lead some authors to conclude that we are not actually dealing with multipolarity in international law, but with something more. This is referred to as the multi-hub structure of international law. In this way, W.W. Burke-White⁶⁹ argues that a new power structure in international law is emerging. It is characterised by three features: 1) “power is diffuse-a relatively large number of states are amassing significant power”; 2) “power is disaggregated-different states have relative advantages in different types of power (military power, economic power, and soft power) that have variable effectiveness in different areas of law”; 3) “power is asymmetrically distributed-many states have or can develop significant power advantages over others in the system on an issue-specific basis.” These characteristics produce a system that is not “unipolar, bipolar, or

69 Burke-White, “Power Shifts in International Law: Structural Realignment and Substantive Pluralism”, 5-6. As he mentions, “It is a vision of international law that reaffirms state sovereignty, bases the legitimacy of international legal processes and institutions on long-standing principles of sovereign equality, and puts the state back into the center of economic development” (77).

multi-polar, but rather multi-hub". The author emphasises that between the multipolar system and the multi-hub structure of international law is not merely semantic.

He demonstrates:

In a multipolar system, such as the Concert of Europe, a fixed group of Great Powers or poles engage in rivalry and balancing, dominating a far larger group of weaker, subordinate states. In contrast, in the newly emerging multi-hub structure a growing number of states play issue-specific leadership roles in a more flexible and fluid system. In the right circumstances, many different states can act as hubs, leading international legal processes or articulating preferences that attract followers and alter substantive norms.

Burke-White further argues that

Whereas in a classical multipolar system, the status of a field usually turned on its ability to coerce followers, in the multi-hub structure, with a wide range of states capable of assuming leadership in a flexible system, the ability of a hub to attract followers will often be as or more important than its ability to coerce them. The multi-hub system thereby empowers states that are not hubs in a particular instance with choices as to which of a number of hubs to follow on any given issue or even to build the issue-specific power necessary to assume leadership themselves.

Burke-White derives two important implications for international law from this new system. First, it promotes international legal pluralism as hubs assume leadership and advance alternate norms within and among a number of flexible subsystems in a kind of variable geometry. As hubs seek to gain followers, they have opportunities and incentives to articulate distinct preferences for the evolution of the substance of international law that reflect their own interests and may be attractive to potential followers.

Second, this new structure pushes and pulls international legal processes—such as rulemaking, interpretation, and enforcement—from the global level of the system towards these separate, flexible subsystems. Burke-White also argues that the large number of states and the diffusion of power among them, as well as the asymmetry in the distribution of power, cause the processes of lawmaking, as well as in the interpretation and enforcement of international law, to shift from the global level to the particularistic level (to the subsystems of international law).

However, in the context of Russia's 2022 aggression against Ukraine and the intensification of the superpower rivalry, one may wonder whether this perception of change and the consequences for international law is accurate. The aggression has highlighted that the dispersion of power in international relations is largely a fiction. Indeed, globalisation, which was supposed to foster this, has led to an asymmetry in relations between states in many areas. It is, after all, differently shaped than Burke-White believes. Strong states have become stronger, weaker states weaker. Increasing competition has objectified numerous states, including medium and medium-industrialised ones. Only the superpowers are able to compete effectively with each other (and not all of them in all fields) and agree on what international law should be. There has therefore been an aggregation of powers, rather than different states gaining an advantage in different fields.

The Ukrainian conflict has also shown that the idea of democratising international relations and, by extension, creating international law on the basis of the representative participation of equal states, as formally promoted by the states of Russia and China and other BRICS members and their sympathisers, is not fulfilled. What matters is the position of the superpowers, possibly groupings of states associated with them.

The second concept that is relevant to the creation of international law is multilateralism. It is not necessarily related to multipolarity, as it can operate in a unipolar system. At the same time, it defines the methodology for the creation and operation of international law. Multilateralism is essentially a new conception of international law.⁷⁰ Until the nineteenth century, international law was essentially based solely on a transactional philosophy, in which a mutual, bilateral exchange of rights and obligations was central. Multilateralism was not helped by the lack of international organisations.

Modern multilateralism took shape gradually during the 19th and 20th centuries to reach its peak development after the end of the Cold War. For international law, it is an utterly fundamental concept, even though it does not always find recognition in works characterising the concepts of international law.⁷¹ From an axiological perspective, multilateralism is expressed in the legal affirmation of the values and interests of the international community. The instruments for their petrification and protection are in particular common customary law and certain multilateral treaties, above all those

⁷⁰ Similarly, but not identically, Daudet, "1919-2019, le flux du multilatéralisme", 17ff.

⁷¹ Cf. e.g. d'Asprement, Singh (eds.), *Concepts for International Law. Contributions to Disciplinary Thought*, passim.

to which a special ordering or systemic function is attributed in international law (*traités-lois*/lawmaking treaties rather than *traités-contrats*/transactional treaties; treaties as constitutions of the whole or part of the international order) and derive from them particular kinds of obligations for their parties (*erga omnes partes*, integral obligations), as well as partly common customary law (*erga omnes* obligations, *ius cogens*). Their identification and definition, as well as their respect, are fostered by international organisations, especially universal ones (they are entrusted with the most important common tasks, as in the case of the UN Security Council – the duty to ensure and restore international peace and security), as well as international courts and tribunals in the broadest sense, including criminal courts (international crimes).

With regard to multilateralism, Russia, China and other BRICS states not only do not oppose it, but fully support it. At the same time, however, although it is not articulated explicitly, they look at customary law, especially treaties, differently. For them, they are instruments of a transactional nature. For they place at the core of multilateral international law-making the sovereign equality of states and the associated consenting, without which international law cannot be valid. At the same time, multilateral lawmaking should involve numerous states, especially, with a view to their emancipation, developing states. Law should not be the product of a single centre of power understood as a hegemon state or a narrow group of states. Multilateralism should be effective and representative.

3.3.3. Interpretation of International Law: the Role of Principles of International Law and Standards of Democracy, Human Rights and the Rule of Law

Some scholarly works point out that the difference between the West and the East in their apprehension of international law boils down to a different interpretation of international law. It stems from the subordination of this interpretation to the divergent interests of the superpowers.⁷² If this is the case, Russia's aggression against Ukraine has made it clear that differences in the interpretation of international law touch upon its foundations and are part of competing visions of international law.

72 Marchuk, "Powerful States and International Law: Changing Narratives and Power Struggles in International Courts", 65ff; Wittke, "The Politics of International Law in the Post-Soviet Space: Do Georgia, Ukraine, and Russia 'Speak' International Law in International Politics Differently?", 18off.

An expression of the non-Western interpretation of the foundations of international law became the very symptomatic Sino-Russian Declaration on the Promotion of International Law of 25 June 2016,⁷³ adopted already after the 2014 aggression but before the 2022 military onslaught. It demonstrates the fundamental difference in the outlook of these powers on international law compared to the Western approach and their desire to establish a just and equitable international order based on international law. At the same time, the declaration remains in the same vein as Russia's security strategies or Vladimir Putin's statements of February 2022. It negates the hegemony of the United States, rejects the rules of international law introduced after the end of the Cold War, in fact preaches a return to the concept of spheres of influence and interests familiar from the 19th century.

The Russian-Chinese Declaration reaffirms full commitment to the principles of international law as reflected in the UN Charter and the 1970 Declaration.⁷⁴ It emphasises that “the principles of international law are the cornerstone for just and equitable international relations featuring win-win cooperation, creating a community of shared future for mankind, and establishing common space of equal and indivisible security and economic cooperation.”

The principle of sovereign equality is recognised as the basis for stability in international relations. It also reaffirms the importance of the prohibition of the use or threat of force and condemns unilateral military interventions. It also expresses support for the principle of non-interference in the internal affairs of other states and condemns interference to force a change of legitimate governments and the extraterritorial application of national laws. It further endorses the principle of peaceful settlement of disputes, seeking to de-escalate tensions and promoting peaceful cooperation between disputing parties. However, it is considered crucial that dispute resolution mechanisms are consenting and are applied in good faith, in a spirit of cooperation. Their objectives should not be undermined by abuse.

At the same time, Russia and China agreed that double standards and the imposition of one country's will on another is unacceptable. They criticised unilateral sanctions that could nullify UN Security Council measures. They also condemned terrorism in all its forms, recognising that

73 Text: https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201608/t20160801_679466.html.

74 Similarly New Dehli BRICS Declaration of 2021, points 22, 24, 29; Goa BRICS Declaration z 2016, points 14, 55, 59, 64.

it is a global threat. Interestingly, they stressed the importance of immunity of the state, property and officials. It was stated that violations of these could be a source of escalating tensions.

Commentaries on the Declaration aptly note that China and Russia have challenged the hegemony of the Western world in the interpretation of international law in the Declaration.⁷⁵ In particular, attention is drawn to the condemnation of interference in the internal affairs of states to change legitimate governments. It is noted that the Declaration emphasises the sovereignty of states and the exclusive right of the Security Council to decide on the use of force (where both powers have veto power). It indicated that the peaceful settlement of disputes should be by consenting, which can be understood as a reluctance to submit to the mandatory jurisdiction of international courts. The West's post-Cold War emphasis on human rights and the democratic legitimacy of governments is seen as a unilateral attempt to reinterpret or circumvent the purpose of the UN Charter. Indeed, according to Russia and China, the Charter does not distinguish between democratic and non-democratic governments and does not require democratic legitimacy from governments. In assessing the Declaration, it is even argued that conceptually it harkens back to the Cold War era with its idea of peaceful coexistence and the perception of a world at war between Western and non-Western powers.

The doctrine also correctly perceives that the emphasis on the principles of international law is typical of Russian textbooks on this law. This is because it allows, on the one hand, to emphasise the sovereignty of states and their equality and non-interference in internal affairs and, on the other hand, to downplay human rights, which in this view are only one of the goals of the UN. This approach is broadly in line with that presented in the Sino-Indian Agreement on Trade and Intercourse between the Tibet Region of China and India of 29 April 1954 where five principles are emphasised: mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit and peaceful coexistence, with no mention of human rights.⁷⁶ Sovereignty

75 Wuerth, *China, Russia, and International Law*; Mälksoo, "Russia and China Challenge the Western Hegemony in the Interpretation of International Law"; Roberts, *ibidem*, 290-299.

76 See Declaration on Principles for Relations and Comprehensive Cooperation between the People's Republic of China and the Republic of India, 25 June 2003, https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/200306/t20030625_679085.html, and also Carrying Forward the Five Principles of Peaceful Coexistence in the Promotion of Peace and Development

is a defining principle of international law for China and Russia. It serves to protect the civilisations of which both states are the centre. It also serves as a guarantee of equal participation in law-making processes (the idea of democracy between states in opposition to the idea of democracy within states, promoted by the West). Emphasising the importance of the prohibition of the use of force, in turn, is relevant in the context of condemning the unilateral use of force by the West (NATO), defending legitimate governments (as in Ukraine, 2014).⁷⁷

Differences in the sphere of interpretation of international law also make themselves known with regard to the understanding and meaning of human rights, democracy and the rule of law in international law. Western states recognise that human rights, democracy, the rule of law are an intrinsic part of international law, even though human rights appear as an objective in the Charter and democracy or the rule of law are absent from it completely. Russia, China and other members of BRICS look at the matter quite differently.

In this respect, the Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development (4 February 2022) is particularly authoritative. The Statement, issued just before Russia's armed assault on Ukraine, affirms the parties' strong mutual support "for the protection of their core interests, state sovereignty and territorial integrity, and oppose interference by external forces in their internal affairs."⁷⁸

Speech by Wen Jiabao Premier of the State Council of the People's Republic of China At Rally Commemorating the 50th Anniversary of The Five Principles of Peaceful Coexistence, 28 June 2004, http://id.china-embassy.gov.cn/eng/xntjgk/200406/t20040628_2114572.htm. The latter points to China's willingness to cooperate with other countries in supporting the principle of sovereign equality, respecting and maintaining the diversity of world civilizations, promoting the joint development of world economies on the basis of equality and mutual benefit, maintaining peace and security through dialogue and cooperation, strengthening the role of the UN and other multilateral mechanisms.

⁷⁷ Roberts, *ibidem*, 290-299.

⁷⁸ It was also recognised that the fundamental importance to pursue well-being for all and, with these ends, to build dialogue and mutual trust, strengthen mutual understanding, champion such universal human values as peace, development, equality, justice, democracy and freedom, respect the rights of peoples to independently determine the development paths of their countries and the sovereignty and the security and development interests of States, to protect the United Nations-driven international architecture and the international law-based world order, seek genuine multipolarity with the United Nations and its Security Council playing a central and coordinating role, promote more democratic international relations, and ensure peace, stability and sustainable development across the world.

In this context, with regard to democracy, Russia and China recognised that its understanding “is a universal human value, rather than a privilege of a limited number of States, and that its promotion and protection is a common responsibility of the entire world community.” They also stressed that

There is no one-size-fits-all template to guide countries in establishing democracy. A nation can choose such forms and methods of implementing democracy that would best suit its particular state, based on its social and political system, its historical background, traditions and unique cultural characteristics. It is only up to the people of the country to decide whether their State is a democratic one.

Russia and China also stated that “as world powers with rich cultural and historical heritage have long-standing traditions of democracy, which rely on thousands of years of experience of development, broad popular support and consideration of the needs and interests of citizens.” They further declared that

Certain States’ attempts to impose their own ‘democratic standards’ on other countries, to monopolize the right to assess the level of compliance with democratic criteria, to draw dividing lines based on the grounds of ideology, including by establishing exclusive blocs and alliances of convenience, prove to be nothing but flouting of democracy and go against the spirit and true values of democracy. Such attempts at hegemony pose serious threats to global and regional peace and stability and undermine the stability of the world order.

According to both powers,

the advocacy of democracy and human rights must not be used to put pressure on other countries. They oppose the abuse of democratic values and interference in the internal affairs of sovereign states under the pretext of protecting democracy and human rights, and any attempts to incite divisions and confrontation in the world. The sides call on the international community to respect cultural and civilisational diversity and the rights of peoples of different countries to self-determination. They stand ready to work together with all the interested partners to promote genuine democracy.

Russia and China also set out their positions on the protection of human rights. The Joint Statement accepted that “the Charter of the United Nations and the Universal Declaration of Human Rights set noble goals in the area of universal human rights, set forth fundamental principles, which all the States must comply with and observe in deeds.” At the same time, they stated that

as every nation has its own unique national features, history, culture, social system and level of social and economic development, universal nature of human rights should be seen through the prism of the real situation in every particular country, and human rights should be protected in accordance with the specific situation in each country and the needs of its population.

Russia and China also pointed out that

Promotion and protection of human rights is a shared responsibility of the international community. The states should equally prioritize all categories of human rights and promote them in a systemic manner. The international human rights cooperation should be carried out as a dialogue between the equals involving all countries. All states must have equal access to the right to development. Interaction and cooperation on human rights matters should be based on the principle of equality of all countries and mutual respect for the sake of strengthening the international human rights architecture.

No sympathy for international human rights monitoring mechanisms follows from this.

One of the fundamental concepts of international law is also the concept of security. In UN Charter terms, it is based on so-called collective security. This involves, on the one hand, the exclusion of the prohibition of the threat and use of armed force (subject to the right of self-defence) and the adoption of an order for the peaceful settlement of disputes, and on the other hand, the acceptance of a system of collective response to acts of aggression and violations of international peace and security. Within this framework, the Security Council and regional organisations and arrangements associated with it (Article 39 et seq. of the UN Charter) play a key role. Only they have the authority to take collective action, including in particular consenting to the use of military force under the auspices of the UN to maintain or restore international peace and security. The collective security system excludes preventive actions, pre-emptive strikes, etc. self-help measures.

However, international practice has resulted in modern doctrine nevertheless addressing the issue of *ius ad bellum* in exceptional situations.

Russia, China and the other BRICS states, however, adopt a peculiar conception of international security. As indicated in the Joint Statement of The People's Republic of China and the Russian Federation On Major International Issues of 23 May 2008, the parties stated that

international security is comprehensive and indivisible. The security of some countries should not be achieved at the cost of security of others, including the use of expansion of military and political alliances. The two sides stress the necessity to fully respect and accommodate the interests and concerns of relevant countries.

The principle of indivisible security has also become a flagship principle of BRICS. Its acceptance in this capacity is evidenced by, among others, the BRICS Goa Declaration of 2016 (point 9) and the BRICS Xiamen Declaration of 2017 (point 38).

The principle of indivisible security was elaborated, amongst others, in the Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development of 4 February 2022, where Russia and China acknowledged that they

are gravely concerned about serious international security challenges and believe that the fates of all nations are interconnected. No State can or should ensure its own security separately from the security of the rest of the world and at the expense of the security of other States. The international community should actively engage in global governance to ensure universal, comprehensive, indivisible and lasting security.

Moreover,

Russia and China stand against attempts by external forces to undermine security and stability in their common adjacent regions, intend to counter interference by outside forces in the internal affairs of sovereign countries under any pretext, oppose colour revolutions, and will increase cooperation in the aforementioned areas.

Thus, the principle of indivisible security also extended to common adjacent regions. It became the principle of security in the buffer zones.

Understood in this way, the principle of indivisible security is identical to the principle of equal and indivisible security found in Russia's 2021 Security Strategy, which was invoked by Putin in the context of justifying the aggression against Ukraine (speech of 21 February 2022). Putin stated at the time that it was a breach of this principle to attempt to expand NATO to include Ukraine, or even to expand NATO earlier to include Central and Eastern European states and to change their military status after joining NATO, contrary to the 1997 agreement with Russia, as well as to refuse to conclude a security agreement despite Russia's proposals in 2008 and 2021.⁷⁹ The concept of indivisible security is indeed recognised in OSCE documents (the 1999 European Security Charter), but on the basis of these it is only a political rule and not, as Putin claimed, a binding norm of international law.

3.3.4. The Operation of International Law

International law is not just a set of rules and principles. It also functions in relations between its subjects as a regulator aimed at influencing the behaviour of states. It prefers multilateral institutional mechanisms such as the UN. It limits the use of unilateral measures, including so-called sanctions. It also requires the settlement of disputes without arbitrariness and subjugation of others, by peaceful methods, which include non-judicial and judicial methods. The latter gained wider use after the end of the Cold War. The importance of judicial and arbitral jurisprudence has also increased. At the same time, globalisation has led to proposals to remodel certain procedures and mechanisms to take into account a wider range of actors and different levels of interaction, which has been termed global governance.⁸⁰

In the view of Russia, China and their allies, the effective and equitable operation of international law is closely linked to the recognition of the central

79 At the time, Putin cited the following as conditions for agreement: 1) renouncing NATO's expansion to the East; 2) not moving NATO's offensive weapons to the East, close to Russia's borders; 3) rolling back NATO's military infrastructure to what it was in 1997. In this way, he acknowledged that the problem was not Ukraine, but the creation of a new solution, at least a European one, in the security sphere that would be in line with Russia's interests. This, in turn, would mean creating a buffer zone between the West and Russia out of the countries of Central and Eastern Europe and Ukraine.

80 E.g. Benvenisti, *The Law of Global Governance*.

role of the UN. Thus, for example, in the 2016 Goa BRICS Declaration, the grouping's members declared their "strong commitment to international law and the central role of the United Nations as the universal multilateral organisation entrusted with the mandate for maintaining international peace and security, advance global development and to promote and protect human rights."

Regarding the use of unilateral measures in international relations, BRICS members raised in the Goa Declaration that "Implementation of principles of good-faith, sovereign equality of States, non-intervention in the internal affairs of States and cooperation excludes imposition of unilateral coercive measures not based on international law." In particular, it condemned "unilateral military interventions and economic sanctions in violation of international law and universally recognised norms of international relations."⁸¹

In turn, in relation to the obligation to settle disputes peacefully, in the context of conflicts in Africa and Asia, BRICS members stated in the 2021 New Dehli Declaration that "principles of non-interference in the internal affairs of States and reiterate that all conflicts must be resolved by peaceful means and through political and diplomatic efforts in line with international law, in particular the UN Charter."⁸²

At the same time, however, in the Russian Security Strategy of 2021 it can be read that

In the case of unfriendly actions of foreign states threatening the sovereignty and territorial integrity of the Russian Federation, including actions involving the application of restrictive measures (sanctions) of a political or economic nature or the use of modern information and communication technologies, the Russian Federation considers it lawful to take symmetrical and asymmetrical measures necessary to suppress such unfriendly actions, as well as to prevent their recurrence in the future.

This implies the permissibility of taking unilateral measures, including asymmetric ones. In doing so, it is not clear whether this also applies to military measures or not.

81 Points 6-9 of the Goa Declaration of VIII BRICS Summit (2016), <http://infobrics.org/files/pdf/97.pdf>. Similar wording can be found, for example, in the Xiamen Declaration of 2017 (points 6, 35, 38), http://infobrics.org/files/country/russia/documents/Xiamen_Declaration_China_2017.pdf.

82 New Dehli Declaration, point 22.

With regard to the peaceful settlement of disputes, there is a strong emerging belief in the need for collective and peaceful resolution of international problems. In doing so, the Goa BRICS Declaration emphasises that international disputes should be resolved through political and diplomatic means. However, there is no mention, characteristic of the BRICS position in general, of judicial means. This demonstrates a distrust of judicial methods of dispute settlement and, in the case of BRICS members other than Russia, a commitment to consensual methods of dispute settlement. Diplomacy and other friendly mechanisms are placed before binding third-party factor resolution.

3.3.5. Partial Conclusions

Criticism of the conduct of the United States and some Western states (especially those concentrated in NATO) leads Russia, as well as China and its allies, to formulate their own concept of international law. The preparation of Russia's aggression against Ukraine and its accomplishment become the impetus for its clarification and consolidation, the impetus for its expansion and deepening. The concept is an expression of the desire to restore, as its proposers understand it, the arrangements of the UN Charter taking into account the changes that have taken place in the balance of power in the international community, a manifestation of the desire for justice.

The vision of a new international law encompasses all spheres of international law: from the foundations of validity and methods of creation through interpretation to effective action. The creation of international law would be based on the principle of consenting states concerned while respecting their sovereignty and equality. International law-making would be supposed to be more inclusive and democratic. The interpretation of international law, in turn, should take into account the diverse nature of the purposes and principles of the UN Charter and avoid abusing the purposes of the Charter to create standards that have no legal basis and that are unilaterally defined by the West. Finally, the operation of international law should take into account the central role of the UN and the Security Council. The principle should be a new global governance, the quintessence of which is collective governance. This governance excludes unilateral measures, requires the interaction of many actors from different parts of the world (G20), and avoids coercion, including institutionalised coercion. Instead, consensual, diplomatic action is recommended.

To ignore or negate the perception of the international community and international law by Russia and China and their allies, so strongly articulated in the context of the aggression against Ukraine, to consider it an abuse or violation of international law, is of course possible and even desirable. The vision of international law remains in opposition to the basic tenets of international law as it is understood in the West. The concept of Russia and China and their allies is undoubtedly a challenge to this vision. However, the arguments cited by Russia, and at times also by China⁸³ and other non-Western states, cannot be ignored. This is not to condone it. Rather, it is a matter of reflecting on why this vision is gaining support in states that are not directly party to the conflict and what measures should be taken to convince states not overly involved on the side of Russia and China of the Western perception of international law.

4. The Consequences of a Clashing Vision of the International Community and International Law. Forecast

4.1. Preliminaries

Russia's aggression against Ukraine has become the culmination of growing contradictions between the United States and other Western states and Russia, China and their allies in terms of their perception of the international community and international law. After all, this raises the question of whether the clash of the two visions is merely a clash of certain political and legal narratives, or whether it gives rise to, or is likely to give rise to, more concrete, especially long-term, consequences. The answer to this question is certainly not simple and can only be given to a limited extent at this point, as it would still require in-depth studies. Moreover, as far as future consequences are concerned, it is linked to the undertaking of probabilistic considerations, which are necessarily subject to error and are in any case uncertain. It should

83 Zhao, Xiao, "Aggression and Determination: Two Basic Issues of International Law in the Russia-Ukraine Conflict", 278ff. The authors attempt to justify China's approach to aggression somewhat differently than Russia does by supporting China's abstention. They recognise that we are only dealing with aggression when the UN Security Council recognises it as such (282-283). They also argue that it is possible to remain neutral in the absence of a Security Council decision as to the existence of aggression, which is beneficial to the maintenance of international order (284-288).

be noted, however, that so far the consideration of the future of international law has not been considered methodologically flawed.⁸⁴

4.2. Consequences of a Clashing Vision of the International Community

As far as the clash of visions of the international community is concerned, it can be assumed that it is leading to a consolidation of existing divisions between states which is deepening, and even a certain polarisation of them. Indeed, the war in Ukraine has sharpened the division between two political camps (West and East), which are trying to attract or discipline states that are trying to stand on the sidelines. In this sense, the armed conflict itself, which more clearly demonstrates the dispute between Russia and the United States, is in a sense less important than the alliances (such as BRICS or the Shanghai Cooperation Organisation) that are forming or strengthening on this occasion.

The clash of visions of the international community has also made it clear that a large part of the international community perceives the armed conflict in Ukraine as a geopolitical conflict in which they do not want to get directly involved on either side, even if this involves not condemning obvious violations of existing international law and undermining the credibility of the foundations of the international order. This is demonstrated, among other things, by the votes in the UN General Assembly on resolutions relating to the aggression against Ukraine.

This is how the resolution entitled “The territorial integrity of Ukraine” (27 March 2014) was passed with difficulty.⁸⁵ It was passed by a majority of 100 votes (including some African, Asian and South American countries), with 11 against⁸⁶ and as many as 58 abstentions (all BRICS members

84 Considerations of this kind have been and continue to be carried out in the study of international law especially in connection with significant international events. E.g. Snow, “L’avenir du droit international public”, 281ff.; Elliott, “Future of International Law”, 268ff.; Friedmann, “The Disintegration of European Civilisation and the Future of International Law. Some Observations on the Special Foundations of Law”, 194ff. More recent literature: McDougal, “International Law and the Future”, 259ff.; Orford, *The Destiny of International Law*, 441ff.; Chimni, “The Past, Present and Future of International Law: A Critical Third World Approach”, 499ff.; Thielbörger, “The Status and Future of International Law after the Libya Intervention”, 11ff.; Trachtman, *The Future of International Law. Global Government*.

85 A/RES/68/262.

86 Armenia, Belarus, Bolivia, Cuba, Democratic People’s Republic of Korea, Nicaragua, Russian Federation, Sudan, Syrian Arab Republic, Venezuela, Zimbabwe.

abstained;⁸⁷ 24 countries did not participate in the resolution). Thus, only slightly more than half of UN members were willing to condemn Russia's violation of sovereignty, political independence and territorial integrity.

Since the 2014 aggression, the General Assembly has adopted two types of resolutions relating to Ukraine. These are resolutions on the militarisation of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov, and the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine. The last such resolutions were passed on 9 December 2021 and 15 December 2022, respectively.⁸⁸ It is, however, highly symptomatic that, despite the escalation of the crisis and the continuing Russian aggression, these resolutions did not arouse enthusiasm. They were passed by essentially a minority, as only just over 60/80 states were in favour of their passage (the resolutions were passed by majorities of 62:22:55⁸⁹ and 82:14:80,⁹⁰ respectively). Only the fact that large groups of states abstained

87 Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bangladesh, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, China, Comoros, Djibouti, Dominica, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Guyana, India, Iraq, Jamaica, Kazakhstan, Kenya, Lesotho, Mali, Mauritania, Mongolia, Mozambique, Myanmar, Namibia, Nauru, Nepal, Pakistan, Paraguay, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, South Africa, South Sudan, Sri Lanka, Suriname, Swaziland, Uganda, United Republic of Tanzania, Uruguay, Uzbekistan, Viet Nam, Zambia.

88 Respectively: A/RES/76/70 and A/RES/77/229.

89 Voted against: Armenia, Belarus, Bolivia, Cambodia, China, Cuba, Democratic People's Republic of Korea, Iran, Kyrgyzstan, Lao People's Democratic Republic, Mali, Myanmar, Nicaragua, Philippines, Russian Federation, Serbia, Sri Lanka, Syrian Arab Republic, Venezuela, Zimbabwe. Abstentions: Algeria, Angola, Argentina, Bahrain, Bangladesh, Bhutan, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Chad, Chile, Colombia, Djibouti, Ecuador, Egypt, El Salvador, Guinea, India, Indonesia, Iraq, Jamaica, Jordan, Kazakhstan, Kiribati, Kuwait, Lebanon, Libya, Madagascar, Malaysia, Maldives, Mexico, Mongolia, Namibia, Nepal, Nigeria, Oman, Pakistan, Paraguay, Peru, Qatar, Republic of Korea, Sao Tome and Principe, Saudi Arabia, Senegal, Somalia, Suriname, Thailand, Togo, Trinidad and Tobago, Tunisia, United Arab Emirates, Uruguay, Viet Nam, Yemen. The resolution on the militarisation of Crimea was not passed in 2022.

90 Voted against: Belarus, China, Cuba, Democratic People's Republic of Korea, Eritrea, Ethiopia, Iran, Kazakhstan, Mali, Nicaragua, Russian Federation, Sudan, Syrian Arab Republic, Zimbabwe. Abstentions: Algeria, Angola, Antigua-Barbuda, Armenia, Bahrain, Bangladesh, Benin, Bolivia, Botswana, Brazil, Brunei Darussalam, Cambodia, Cameroon, Central African Republic, Colombia, Congo, Cote d'Ivoire, Djibouti, Egypt, El Salvador, Eswatini, Fiji, Gabon, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Haiti, Honduras, India, Indonesia, Iraq, Jordan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Libya, Madagascar, Malaysia, Maldives, Mauretania, Mauritius, Mexico, Mongolia, Mozambique, Namibia, Nepal, Niger, Nigeria, Oman, Pakistan, Paraguay, Peru, Philippines, Rwanda, Saint Kitts-Nevis, Saint Lucia, Saint

allowed them to be adopted. In doing so, it is interesting to note that a number of states that supported the 2014 General Assembly resolution on Ukraine's territorial integrity have now voted against or abstained.

On the face of it, the situation looks better with regard to Russia's 2022 armed assault. In this case, not only was the matter taken over by the General Assembly, but the emergency special procedure set out in Resolution 377(V) Uniting for Peace of 3 November 1950 was implemented.⁹¹ Five resolutions have so far been passed under this procedure. The first related directly to aggression against Ukraine (2 March 2022). It was passed by a majority of 141 against 5 against and as many as 35 abstentions (including, apart from Russia, which voted against, and Brazil, the other BRICS countries).⁹²

Subsequent resolutions on the Ukrainian crisis referred to: Humanitarian consequences of the aggression against Ukraine (24 March 2022, 140:5:38), Suspension of the rights of membership of the Russian Federation in the Human Rights Council (7 April 2022, 93:24:38), Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations (12 October 2022, 143:5:35),⁹³ Furtherance of remedy and reparation for aggression against Ukraine (14 November 2022).⁹⁴ What is interesting again is the inability of a significant group of states (actually quite stable in number, around 35-45), including, apart from Brazil, the BRICS states, to support the seemingly obvious wording of the resolutions. This applies even to the resolution defending the principles of the UN Charter. Also puzzling is the significant lack of support for a resolution suspending Russia from the UN Human Rights Council (a total of more than 60 UN members were unable to accept the resolution), as well as (and perhaps especially) a resolution demanding the enforcement of Russia's responsibility for the aggression (importantly, it does

Vincent-Grenadines, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Tajikistan, Thailand, Togo, Tonga, Trinidad- Tobago, Tunisia, Uganda, United Arab Emirates, United Republic Tanzania, Viet Nam, Yemen, Zambia.

91 See the resolutions of the General Assembly adopted under this procedure also on other matters: <https://research.un.org/en/docs/ga/quick/emergency>. In truth, the Assembly's actions, apart from the Korean intervention, have produced very moderate results.

92 Voted against: Belarus, Democratic People's Republic of Korea, Eritrea, Russian Federation, Syrian Arab Republic, and abstained: Algeria, Angola, Armenia, Bangladesh, Bolivia, Burundi, Central African Republic, China, Congo, Cuba, El Salvador, Equatorial Guinea, India, Iran, Iraq, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Madagascar, Mali, Mongolia, Mozambique, Namibia, Nicaragua, Pakistan, Senegal, South Africa, South Sudan, Sri Lanka, Sudan, Tajikistan, United Republic of Tanzania, Uganda, Vietnam, Zimbabwe.

93 A/RES/ES-11/4.

94 A/RES/ES-11/5.

not mention the criminal responsibility of individuals – the decision-makers or perpetrators of the crimes) and the establishment of a mechanism to repair the damage caused by the aggression and a damage register. In the latter case, although 94 states supported the resolution, with only 14 against and 13 abstentions, as many as 72 did not vote.

The attitudes of states during votes on UN resolutions are analysed from the perspective of the division into democratic and non-democratic states, especially authoritarian ones. It is argued that they were supported by democratic states and the vast majority of hybrid states.⁹⁵ However, such an interpretation is not only possible, it is entirely accurate. There is, in fact, a significant group of states, irrespective of their constitutional characteristics, which, even if they support UN resolutions or formally endorse Western sanctions, do not in fact support them or do so not out of conviction but out of fear of a hostile reaction from the United States and its allies or are even under direct pressure from them. The coalition of sanctions to which reference is made (some 40 states are included),⁹⁶ does not include any state outside the previously defined West.⁹⁷ The opportunism on the part of a large group of developing states is to a significant extent an expression of their lack of support for the West and its leadership function in the world.⁹⁸

The existing divisions and reluctance to engage on opposing sides is also evidenced by the attitude of states in cases related to Russia's aggression against Ukraine in proceedings before international courts, especially the ICJ and the ICC. The attitudes of both the aggressor and other states – reacting critically and non-critically to the aggression – come into play.

Thus, in the case of the trial before the International Court of Justice following Ukraine's complaint against Russia that Russia's aggression against Ukraine was based on a false allegation that Ukraine had violated the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide,⁹⁹ as many as 33 states have declared their intervention in the trial. However, these are exclusively Western (not just European) states, including the United States. They do not include not only the BRICS members, but also

95 Sloss, Dickinson, *ibidem*, 799-802.

96 Sloss, Dickinson, *ibidem*, 801.

97 See "Russian Invasion of Ukraine Draws Widespread – but Not Universal Condemnation", 605-614.

98 Cf. the opposite view in the context of the war in Ukraine: Brunk, Hakimi, *ibidem*, 694.

99 Case No. 182 The complaint has already been filed on 27 February 2022.

any state from Africa, Latin America and non-western Asia.¹⁰⁰ It is interesting to note that the aforementioned state activity is not seen in other genocide cases (e.g. the pending *Gambia v. Myanmar*,¹⁰¹ or the completed proceedings in *Croatia v. Serbia*¹⁰² and *Bosnia and Herzegovina v. Serbia*¹⁰³). This confirms that the dispute is geopolitical in nature. The gravity of the violated norms of international law is not crucial here. At the same time, Russia's open aggression of 2022 triggered a greater mobilisation of the West before the ICJ than the 2014 aggression, as evidenced by the lack of intervention in the Ukrainian-Russian dispute over violations of the Convention on the Elimination of the Financing of Terrorism and the Convention on the Elimination of Racial Discrimination, initiated after the 2014 aggression, although it remains closely related to it.¹⁰⁴

The situation is similar with regard to the initiation of criminal proceedings before the International Criminal Court. The Prosecutor of the Court has indeed initiated a criminal procedure. Its launch was requested in a joint referral by 39 states (later joined by 4 more). However, also in this case, only three states outside the strict group of Western countries joined the request (Chile, Colombia, Costa Rica, with ties to the West).¹⁰⁵

In connection with the aggression against Ukraine, Russia also undertook a policy of refusing to submit to international justice (as it did to oppose Security Council sanctions). As a result, Russia decided not to participate in the interim measures proceedings before the International Court of Justice, arguing in a letter dated 7 March 2022 that the Court

100 The list of declarations on the MTS website (as at 1 January 2023): <https://www.icj-cij.org/en/case/182/intervention>.

101 Access to case files: <https://www.icj-cij.org/en/case/178>.

102 Access to case files: <https://www.icj-cij.org/en/case/118>.

103 Access to case files: <https://www.icj-cij.org/en/case/91>.

104 Access to case files: <https://www.icj-cij.org/en/case/166>.

105 The proceedings were eventually opened on 2 March 2022 and covered crimes committed in the context of the situation in Ukraine since 21 November 2013. See: <https://www.icc-cpi.int/ukraine>. Cf. Sloss, Dickinson, *ibidem*, 803-804.

lacked jurisdiction.¹⁰⁶ Russia also raised preliminary objections regarding the jurisdiction and inadmissibility of the complaint in the main case.¹⁰⁷

In addition, with Russia's exclusion from the Council of Europe as a result of the aggression, it also ceased to be a party to the European Convention on Human Rights (15 March 2022), which had the effect of limiting its potential responsibility for aggression-related violations only to a period of six months from the date of termination (acts committed until 16 September 2022). At the same time, given the track record of Russia's cases before the Strasbourg Court to date, it does not encourage optimism about the execution of possible judgments establishing Russia's responsibility for violations of the Convention, especially in the Ukrainian cases. Moreover, according to the Council of Europe, 2,129 judgments and decisions have yet to be fully implemented by Russia and remain pending before the Committee of Ministers.¹⁰⁸

Russia's aggression against Ukraine in 2014 and 2022 also demonstrated the differences between Western states. In particular, Russia attempted to split the United States and the European Union and to introduce divisions within the latter. It has not succeeded fully, despite the European Union's energy entanglement. However, it perpetuated the essential two centres within the West, namely the US-UK and Germany-France tandem. The former has been reconstituted, especially after its withdrawal from the European Union (The New Atlantic Charter and Joint Statement of 10 June 2021).¹⁰⁹ France and Germany, on the other hand, with their own long-term common interests pursued through the European Union, consider their mutual relationship

106 In Russia's view, the case does not concern the interpretation, application or implementation of the 1948 Convention. Indeed, the Convention does not concern the use of force or the recognition of states (it concerns the recognition of the Donbass republics by Russia). Ukraine's claim that the aggression is linked to Russia's allegation of genocide by Ukraine is, in turn, false. Russia emphasises in the letter that the special military operation is being conducted on the basis of the UN Charter, its Article 51 (right to self-defence) and customary international law. There is also no question of a violation of the prohibition of genocide in customary international law. Text: <https://www.icj-cij.org/public/files/case-related/182/182-20220307-OTH-01-00-EN.pdf>.

107 *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, ICJ Order on Provisional Measures, 16 March 2022, point 23, as well as Order, 7 October 2022.

108 Moreover, 17,450 applications against Russia are currently pending before the Court. More: Russia ceases to be party to the European Convention on Human Rights, <https://www.coe.int/en/web/portal/-/russia-ceases-to-be-party-to-the-european-convention-on-human-rights#>.

109 Text: <https://www.gov.uk/government/publications/new-atlantic-charter-and-joint-statement-agreed-by-the-pm-and-president-biden>.

particularly privileged, emphasising the establishment of the European pillar of NATO and a common defence capability, as well as the introduction of Germany (not the European Union) to the UN Security Council (the so-called Treaty of Elysée of 22 January 1963, a *de facto* Joint Declaration, and especially the Treaty of Franco-German Cooperation and Integration of Aix-la-Chapelle/Aachen of 22 January 2019).¹¹⁰ Although the establishment of these centres of interaction took place before the open invasion of Russia, they verified themselves in terms of a community of interests in the context of a response to aggression. It can be assumed that the two centres do not form an identical vision of the international community. In particular, France and Germany are certainly more in favour of multipolarism and multilateralism, including in the sphere of international law.¹¹¹

However, the division of the international community or the separation or resurgence of decision-making centres within the creators of particular visions is not the only consequence of clashing visions of the world. For the consolidation and deepening of the division of the community means the creation of peculiar new zones of influence (in Russian-Chinese terms, regions of civilisation), and with them buffer zones. Within these, a regional order will be produced, with its own system of values and principles and the possibility of interference in the internal affairs of the states of the region (the Russian idea of the permissibility of asymmetric measures, as well as the concept of indivisible security endorsed by the BRICS members). It can also be assumed that regional organisations (especially non-Western ones, including BRICS or the Shanghai Cooperation Organisation) will be strengthened and their membership circle will expand, especially to include states that are openly reluctant to the West.

Moreover, the ideas of multipolarism and multilateralism as an instrument for the emancipation of non-Western states lead to a position whereby states are key. Non-state actors play a secondary role. As a result, the Western vision of the transformation of the international community is rejected.

110 Entered into force on 22 January 2020. Access to bilateral declarations and treaties: <https://www.france-allemande.fr/Une-relation-bilaterale-au-service-de-l-Europe.html>.

111 As an aside, it may be noted that in the Treaty of Aachen France pledged to support Germany's membership of the Security Council (not the European Union; it is true that formally the EU cannot be a member of the UN. However, the country holding the presidency could fulfil such a role).

The division of the community will also make the functioning and reform of universal international organisations much more difficult. It can be expected that the veto in the UN Security Council will be used more often on issues sensitive to either side. Its reform, as well as modifications of other UN bodies, will remain in limbo. This is because it will be impossible to obtain consent to changes from all parties concerned. In general, it can also be assumed that the importance of universal international organisations in international relations will decline. They will become, as during the Cold War, sites of bilateral diplomacy rather than multilateral diplomacy. Their function of inspiring or in the sphere of multilateralising the actions of states will be seriously reduced.

4.3. Consequences of Clashing Visions of International Law

From a formal point of view, it can be predicted that Russia's aggression against Ukraine and the polarisation of the international community associated with it will result in a perceptible shift on a universal scale and in sensitive areas (their circle will widen to include economic, financial and trade issues, among others) towards an emphasis on the individual consent of states to any binding of rules of international law (and not tacit consent or acquiescence) and the minimisation of restrictions on the freedom to enter into obligations. The search for a basis for the validity of norms beyond consenting will be much more difficult (e.g. greater emphasis on the persistent objector rule in the case of common custom). The mistrust and exacerbated confrontation that have led to a significant undermining of credibility and trust between the West and the East will certainly make it much more difficult to agree not only on new multilateral treaties or amendments to them, but also on soft obligations of universal scope. If the international courts do not want to detach themselves too much from real international conditions and their jurisprudence is subject to questioning, they will probably be less inclined to decree the existence of customary rules (on the basis of assertion or induction) and more cautious in making purposive (functional) and even systemic interpretations of treaties. One should also expect the development of particularistic regulations in a number of areas, especially sensitive ones, including those related to the provision of security in the broadest sense.

In substantive terms, the clash of visions of international law highlighted by Russia's aggression against Ukraine can be expected to lead to increased difficulties in determining and understanding the content of core values for the international community and ensuring their legal protection.

It seems that the values mentioned in the Millenium Declaration of 2000 and developed in the World Summit Outcome of 2005 will be interpreted quite differently by the two parties to the dispute and their efforts to implement them in international law will be oriented differently. It can be assumed that there will be a recognition that the principles of international law protecting the state, such as sovereignty, equality, non-interference in internal affairs (not necessarily respected within spheres of influence), are crucial in universal relations. This, in turn, will lead to a reduction in the relevance in universal relations of standards of human rights, democracy and the rule of law at the international level and their international control.

It can also be considered that the operation of international law will be much more difficult than it was after the end of the Cold War. In view of the difficulties in reaching agreements at the universal level in relations between opposition parties, one should expect more frequent recourse to unilateral measures, including those of a sanctioning or disciplinary nature. This, in turn, may involve an increase in the importance of foreign relations law (especially law authored by the powers) at the expense of international law in general and their extraterritorial application. Moreover, the legality of unilateral measures is likely to be questioned. However, establishing the legality of action through judicial means of dispute resolution will also not be easy. This is evidenced by the emphasis on consenting as an absolute prerequisite for the application of these measures. Rather, a turn towards diplomatic arrangements is to be expected, even at the expense of applicable international law.

5. Final Conclusions

Russia's aggression against Ukraine is the pinnacle of the clash between the two visions of the international community and international law and a catalyst for their development. It is also a test of their relevance and effectiveness. At the same time, the aggression shows that it is only an element of a broader geopolitical game. Its roots lie in the entrenched rivalry stemming from the national interests of the superpowers, the desire of the non-Western powers to preserve, or rather restore, the balance of power between the United States and the new or revived powers (and perhaps even to gain an advantage over their rivals), the sense of marginalisation and objectification in international relations, and the international legal order on the part of numerous non-Western states. This means that no matter how

the Russian aggression ends, the rivalry of visions and their implementation in international relations will continue and deepen. For it has deeper causes.

Antagonism is particularly evident between Russia and the United States. However, Russia is not alone. It is supported in particular by China, although formally it does not uncritically approve of the aggression and does not openly assist it militarily. They are, however, decidedly closer to Russia than to the United States (in November 2022, at the G20 summit in Bali, they opposed calling the Russian invasion of Ukraine a war, expressing understanding of Russian security interests;¹¹² President Biden also had to ‘warn’ China and some other countries, such as Saudi Arabia, against giving aid to Russia). Indeed, China has a different approach to competing with the West than Russia in that it trusts in gaining an economic advantage or balance against the West. However, they are not in the situation of Russia, which is in direct contact with NATO and for whom military rivalry has always been crucial (this is how Russia views BRICS). Economic arguments have only supported it, which is now reflected in weaponising food and energy.

Antagonistic visions of the international community and international law are subjective in the sense that they are interpretations of the state and projections of the development of the international community and international law. However, they are not equivalent visions, equally legitimised. Indeed, the Western vision is to a significant extent entrenched in international law, while the non-Western vision seeks to transform the international community and international law. At the same time, despite the arguably legitimate criticism of Russia’s understanding and operation of international law, as well as that of some other states supporting it, one has to reckon that even defeating Russia, establishing and enforcing its responsibility for aggression and other internationally unlawful acts related to it, and punishing war criminals (which I generally doubt, given that we are dealing with a nuclear power) will not change the fact that the antagonistic visions discussed here will survive any aggression.

Is a compromise possible between the visions under consideration? No, and if so, it will be temporary. Compromise will only postpone the moment of clash. Will either of them prevail in such a clash? Possibly. However, this victory could take place through a devastating conflict or

¹¹² Shepherd, Rauhala, Tan, “In G-20 talks, China objects to calling Russian invasion of Ukraine a ‘war’”.

a protracted economic struggle. If the vision of the West were to prevail, then within such a contest it is necessary to find effective arguments and mechanisms to allow at least some developing countries to participate more actively in the governance of international life. It has turned out that such a mechanism is not globalisation, with its effects in terms of asymmetrical development, the deepening of disparities, the dominance of transnational capital, mainly coming from the West, the imposition of economic, social and cultural visions on small- and medium-sized countries that become the object of globalisation. Is this possible in practice? It is difficult to say. Nevertheless, if we are to continue to live in peace, develop and overcome the great challenges facing the international community, the West should seek to involve more actively the vast majority of the that community in shaping the vision of the international community and international law, so that this vision could be recognised as shared by them.

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