

International Law in the „Multipolar World Order“: A stronger role is necessary - and possible

Dominik Steiger

In view of the numerous violations of international law, including Russia's war of aggression against Ukraine and Hamas's terrorist attacks on Israel, and also the contraventions of international humanitarian law and non-compliance with the provisional measures order issued by the International Court of Justice (ICJ) in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), the question of the role of international law in a "multipolar world order" arises with renewed urgency. The various roles of international law have evolved further since the end of the Second World War and the bipolar world order existing at that time. Whereas the rule of international law appeared to be expanding in the unipolar world that emerged after the Cold War with the United States as hegemon, it has come under attack from various directions in recent years. This trend is very likely to intensify with the election of Donald Trump as the 47th president of the United States. As the worldwide promotion of peace, prosperity and freedom can only succeed on the basis of cooperation and the effectiveness of international law, renewed efforts to strengthen it are imperative.

The meaning of the term "multipolar world order"

The term "multipolar world order" has steadily gained in popularity in recent years. It indicates that the world is in the throes of change, the dominance of the Western countries is increasingly being called into question, and the Global South is gaining a stronger voice in international relations. The term must, however, be treated with caution. It goes back to

Russian and Chinese papers from the mid-1990s and is intended to mark the contrast with the hegemonic world under US leadership. Purely in a descriptive sense, it is debatable whether this is ultimately correct: granted, the US's authority has taken a battering, but it is still the world's leading economic and military power. Neither the EU nor China or India and certainly neither Russia nor Brazil can rival the United States. Nevertheless, it is apparent that power shifts are occurring and that states like Russia believe that they have free rein to do as they please in their own "backyard". In addition, the Global South is rightly demanding – and also exerting – more influence. The strengthening of new states and forums such as BRICS, which had more than 30 countries participating at its latest meeting and gained four new members (Egypt, Ethiopia, Iran and the United Arab Emirates), makes this clear. The clarity of the post-1990 unipolar world order no longer exists in this form today. For these reasons, the term "multipolar world order" should be used here despite its difficulties.

A weakened pacification function in the transition to the "multipolar world order"

Law in general – and, accordingly, international law as well – has various functions. Post-1945, the pacification function has become a central pillar of international law. The Preamble of the United Nations Charter refers to the determination "to save succeeding generations from the scourge of war". Maintaining international peace and security is stated in Article 1 to be the first purpose of the United Nations. Article 2 (4) – the prohibition of the threat or use of force – is regarded as a central norm of the Charter. Back in 1970,

in the bipolar world order, Thomas M. Franck posed the rhetorical question: “Who killed Article 2 (4)?” But norms continue to exist even if they are contravened. What ultimately leads to the erosion of a norm is the belief that the norm must change. In view of the numerous violations of the prohibition of force, however, the pacification function is not working to the extent envisaged in 1945. Examples of this from the bipolar world are the Vietnam and Afghanistan Wars, as well as the many (proxy) wars on the African continent. The Kosovo War in 1999 and the Iraq War in 2003 are representative of the unipolar world order. The US’s airstrikes in Syria in violation of international law and, of course, Russia’s war of aggression against Ukraine can be mentioned as examples in the transition from the unipolar to the multipolar world order. Violations of the prohibition of force are pervasive, then, in all three phases.

It is possible, however, that Russia’s war of aggression against Ukraine, which began back in 2014, will not remain an isolated case but may be the prelude to a large number of future military conflicts. How so? What characterises a multipolar world order, as German Chancellor Olaf Scholz writes in his Foreword to Germany’s National Security Strategy, is that “new centres of power are emerging”. If the hegemon becomes weaker, new – including military – opportunities arise for other actors to secure power and influence for themselves, as exemplified by China’s military activities in the South China Sea and the Russian invasions of Georgia and Ukraine. Hybrid warfare and the expansion of the influence of non-state actors are other indications. There are fears – by no means unjustified – that China will attack Taiwan. It is therefore even more important to underpin the validity of the norm prohibiting the use of force with action, including by indirect means, as with the transit of German naval vessels through the Taiwan Strait in September 2024 for the first time in more than 20 years.

There is no global consensus, however, even on Russia’s war of aggression. The General Assembly resolution condemning the war was supported by 141 countries, but states that are regarded as new centres of power, such as China and India, abstained. At the 2023 G20 Summit in New Delhi, too, Russian aggression was censured indirectly, but only very indirectly and with far less clarity than at the G20 Summit in Bali the previous year.

The example of the Security Council also shows that the pacification function is weakening. Under Article 24 of the United Nations Charter, the Security Council is tasked with maintaining international peace and security. In the bipolar world, it was almost incapable of performing this function. This changed abruptly in the hegemonic world, visible inter alia in the establishment of the two criminal tribunals for Rwanda and the former Yugoslavia, and the war on terrorism. Since 2016, Russia’s use of the veto – often with China’s aid – has increased to such an extent that the Security Council has become dysfunctional again. In order to strengthen the pacification function, restricting the use of the veto, among other things, is being actively

discussed. This discussion should be promoted intensively, for in many cases, the veto makes it impossible for the Security Council to fulfil its task of maintaining international peace and security.

A further aspect of the pacification function is the settlement of disputes by peaceful means; this plays a particularly prominent role in the United Nations Charter, appearing in the aforementioned Article 1, among others. It also has an entire chapter – Chapter VI – dedicated to it. And finally, the Statute of the International Court of Justice forms an integral part of the Charter. In many cases, however, the ICJ does not possess jurisdiction, as states must explicitly consent to be bound by its rulings. This happens far too infrequently. Indeed, since the transition to the multipolar world order, the US and Russia have withdrawn from treaties that form the basis for the ICJ’s jurisdiction. There is a ray of hope: the ICJ is being utilised increasingly by states in cases in which it has jurisdiction, inter alia by countries of the Global South such as Gambia (v. Myanmar) and South Africa (v. Israel). It remains to be seen how the West will respond to these proceedings, which in some cases are directed against the West itself. It does not strengthen international law if – as has happened – these proceedings are discredited as political. Certainly, the dispute settlement mechanism established by the World Trade Organization (WTO) has not benefited politically from the fact that so many of its cases have been brought against the US, among others. For years, the US has blocked the appointment of new members to the WTO’s Appellate Body so that no further binding decisions can henceforth be taken against the will of the parties.

The governance function: a focus of anti-Western criticism of international law

The governance function is fundamental to the rule of law. Power is exercised and stabilised with the aid of the law. This was already the case in the early days of international law, inter alia during the process of global colonisation. In the bipolar world order, the two superpowers sought to keep each other in check, whereas in the unipolar world, the US was able to exercise authority by means of international law, e.g. in the UN-mandated deployments in Iraq in 1990, Afghanistan in 2001 and Libya in 2011. Furthermore, in the 1990s, numerous liberal institutions were established or strengthened that translated Western values into international law, such as the WTO, the two criminal tribunals and the International Criminal Court (ICC).

In the multipolar world order, by contrast, the aim is to roll back this Western power and influence. This is also how Russia ultimately justifies its illegal war of aggression against Ukraine: the war, it claims, is directed against Western hegemony. At the International Economic Forum in St. Petersburg in June 2023, hailed as the Africa Summit, Putin spoke about how the «neo-colonial order» had ceased to exist in favour of a multipolar system. His argument is reminiscent of the – in some ways justified – criticism voiced by Third

World Approaches to International Law (TWAAIL) that international law is a product of the West which the latter has used, and continues to use, to facilitate its claims to hegemony. The decolonisation debate is not a short-lived trend; on the contrary, it will continue to preoccupy us in the decades to come.

The legitimising function – and delegitimisation through double standards

Law must be perceived as legitimate in order to play a significant role. This applies both to the processes by which law is created and enforced and also to its content. In the multipolar world, this legitimising function is starting to waver. Granted, in both the bipolar and the unipolar world, there was already criticism that international law is developed and enforced selectively and is not only used but also abused as an instrument of power. In the multipolar world, this criticism is intensifying, with particular emphasis on the flaws and failings of the unipolar world order. A key point of criticism concerns the West's double standards, which manifest inter alia in its conduct of the Iraq War from 2003 without a UN mandate, extrajudicial killings and torture in the war on terrorism, and the US's illegal airstrikes in Syria, which were widely – but wrongly – supported by Western states. Many countries also deplore the muted criticism from many Western states, particularly the US and Germany, of Israel's violations of international law in the war in Gaza.

Likewise, the use of the term “rules-based international order” by the Global North, including the Federal Republic of Germany, delegitimises international law. Precisely what is meant by this phrase is unclear. It is used in various ways, sometimes as an alternative to, and sometimes as a synonym for, the term “international law”. As a result, legally binding rules (hard law) become conflated with weaker, non-binding rules (soft law). The consequence is a watering down of international law. There is also a risk that because of this, fixed and formalised rules on how law is created, complied with and enforced will be relinquished and replaced by informal rules. This leads to a lack of clarity and precision in the law – and weakens international law.

The shaping and ordering function: the risk of fragmentation in a multipolar world order

The shaping and ordering function of the law increases the (output) legitimacy of government conduct. The law must be in a position to solve problems and find answers to current challenges. In the early days, this function was poorly developed; it was mainly about the coordination of government action. In the bipolar phase, international law increasingly evolved into the law of cooperation. Numerous major treaties came into existence in the bipolar world – the Geneva Conventions, the human rights treaties and the Con-

vention on the Law of the Sea. This trend intensified in the unipolar world, with the adoption of the United Nations Framework Convention on Climate Change in 1992, the formation of the WTO on the basis of the General Agreement on Tariffs and Trade (GATT) in 1994, and the further development of human rights, inter alia through the establishment of the ICC in 2002; the international financial institutions were also strengthened.

In the multipolar world, there is a risk that universal cooperation will decline, even though multilateral treaties on biodiversity, climate change mitigation and also the law of the sea have emerged in the last 10 years. Withdrawals from treaties, e.g. from disarmament agreements, are also occurring, however. Furthermore, informal rules – as in the biodiversity-related conventions and the Paris Agreement – are gaining traction, as are formal and informal bilateral and regional groupings such as BRICS, the New Silk Road, the Asian Infrastructure Investment Bank and the Shanghai Cooperation Organisation. Granted, bilateral and regional agreements and institutions are not always, or necessarily, a sign of tensions. On the contrary, they may result in healthy competition between diverse organisations or in desirable institutionalisation at regional level. It is essential to look closely to determine to what extent international law is strengthened or, alternatively, weakened when the law is fragmented among various groups of states.

In order to strengthen international law, an increased capacity for compromise and, indeed, tolerance is ultimately required. The problems facing our world demand that states work together, e.g. in the areas of climate change or regulation of artificial intelligence. The bipolar world and the new universal treaties that have emerged in the last few years, as well as, more recently, the G20 Summit in New Delhi in September 2023 show that despite many difficulties, agreements can be reached, latterly on strengthening the international financial institutions and on international infrastructure projects, for example.

Power-constraining and freedom-securing function: sovereign equality vs. protection of human rights

The principle of territorial integrity has been repeatedly emphasised, not only in the debate at the opening of the 79th session of the General Assembly in September 2024. At least since 1945, the principle of territorial integrity has existed to safeguard the freedom of states. Before that, state sovereignty was also understood as the right to war, whereas now it is freedom from war. Sovereignty thus permits power to be constrained in the external sphere – no state may interfere in another's internal affairs through coercion – and thus enables the exercise of authority at the domestic level.

From 1945 onwards, however, international law has also imposed restrictions on sovereignty in order to

protect human rights. These rights limit the exercise of authority internally. In the unipolar world, human rights also served to justify interference in other states' internal affairs, in some cases even by force. In the multipolar world order, the objective is to strengthen sovereignty again, supposedly leading to greater freedoms, at least for states.

The advocates of this reading negate human rights in this context, seeing them as a Western vehicle for the exercise of power. Granted, the West itself is partly to blame for this – the key phrase being “double standards”. However, this does not justify calling into question the universality of human rights – one of the major achievements of international law since 1945. Observance of human rights is essential in order to strengthen international law as a whole. The progressive curtailment of the human rights of migrants, not only by means of deportations, e.g. to Afghanistan, in contravention of international law, the human rights violations in the context of climate change and the intelligence services' violation of the right to privacy must accordingly be stopped.

A stronger role for international law is necessary – and possible

This brings us to a somewhat depressing conclusion: in the multipolar world, the role of international law is in jeopardy. Due to a lack of political will, it cannot always fulfil its functions. Nevertheless, the role of international law must be strengthened in line with the rule of law – specifically, the international rule of law. The fact is that international law's pledge to strengthen peace and prosperity for everyone through legally constituted cooperation while also limiting authority for the sake of the freedom enjoyed by weaker states and also by individuals – the key phrase being “human rights – can only succeed with a stronger role for international law.

This requires, on the one hand, more mandatory dispute settlement mechanisms with whose assistance judicial solutions, at least, can be found for political conflicts. On the other, in view of the challenges that are likely to arise in the coming years and decades

and in the interests of “ensuring survival”, in the words of the Independent Commission on International Developmental Issues in 1980, it is necessary to further develop and implement norms in areas such as the climate, biodiversity, migration, artificial intelligence, disarmament, and global health, inter alia via a pandemic treaty. As the 2015 Paris Agreement and the 2022 Global Biodiversity Framework have shown, this is possible in principle even if all the poles in the multipolar world do not play along to an equal extent but some states take on more responsibility; in view of Trump's election, Germany and the EU are called upon particularly here. This should give us cause for hope and inspire us to continue thinking and working together on how cooperation on the basis of law can succeed in a future multipolar world order.

Author

Professor Dominik Steiger | Chair of International Law, European Law and Public Law at Dresden University of Technology (TU Dresden), Academic Director of the Center for International Studies (ZIS), TU Dresden, and member of the Advisory Board of the Development and Peace Foundation (sef:).

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