

TO DEAL, or NOT TO DEAL?

To deal, or not to deal? may be the Gretchenfrage of international law right now. Over the past months we have witnessed yet another cataclysm of blows dealt to the law of nations, not only by the usual suspects, but also by the president of the very nation, which had been a key architect of the post-1945 world order and its international law. Donald Trump engaged in trade wars with ever greater parts of the globe, raising tariffs irrespective of extant treaties, extorted thinly veiled tributes from long-time allies like Taiwan in return for security guarantees, issued an executive order imposing sanctions on the International Criminal Court (<https://ofac.treasury.gov/recent-actions/20250213>, consulted on 10 May 2025), unilaterally changed the internationally recognized cartographic term Gulf of Mexico (Limits of Oceans and Seas, 3rd ed., International Hydrographic Organization, 1953, p. 14) and, in an almost obsessive fashion, repeatedly threatened openly to annex Greenland, a part of the composite Danish Commonwealth, to which the United States are bound by a military alliance, NATO.

Yet over the past few days we were also witnesses to a series of events, which took international law in a different direction, although running on two very different tracks. International law, as we know it at least since 1945 displayed remarkable signs of resilience. On 9 May 2025 the Council of Europe, Ukraine and the representatives of an international coalition of states formally endorsed the establishment of a Special Tribunal for the Crime of Aggression against Ukraine (https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1169, consulted on 12 May 2025). On 12 May 2025 the UN aviation council found Russia responsible for the drowning of Malaysia Airlines flight over Eastern Ukraine (<https://www.icao.int/Newsroom/Pages/Insert-Subject-Here.aspx>, consulted on 13 May 2025). And while rejecting the jurisdiction of the International Criminal Court over its conduct of the Gaza war, Israel chose to play by the rules, rather than ignore the court. On 12 May 2025 Israel has asked judges at the International Criminal Court to withdraw the arrest warrants against its prime minister and former defense minister (<https://www.haaretz.com/israel-news/2025-05-12/ty-article/.premium/israel-asks-icc-judges-to-withdraw-netanyahu-arrest-warrant/00000196-c41d-d2ce-abdf-eddd306c0000>, consulted on 14 May 2025).

It is, thus, premature to say goodbye to international law as we know it. It is premature, not least also because international law may have been thrown a lifeline from unexpected quarters, the Trump administration. Recently, we saw him busy repairing some of his biggest blunders, suspending customs duties, and striking commercial deals. On 8 May 2025, the USA and the UK reached an economic deal (<https://www.gov.uk/government/news/landmark-economic-deal-with-united-states-saves-thousands-of-jobs-for-british-car-makers-and-steel-industry>, consulted on 10 May 2025). On 12 May, an agreement between the USA and the People's Republic of China followed (<https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china/phase-one-trade-agreement/fact-sheets> consulted on 13 May 2025). The art of the bilateral deal as a response to international challenges, clearly a deviation from international law operating on a multilateral basis, may have an even greater impact with regard to violent conflicts. All the egregiousness, self-aggrandizement, embarrassment, venality, and ignorance of Trump and his entourage notwithstanding, there might be something to the transfer of the art of the deal from property development to international relations. After all, it is not only Trump, but also eminent international lawyers like the Austrian Bruno Simma who remind us of the simple, but basic fact, that through the ages, the deal, the reciprocal contract, has always been one, if not the pillar of international law. Although no predictions about the eventual results can be made, Trump has undoubtedly unleashed a new dynamic in several theatres of conflict by putting the deal at the centre of American negotiation efforts. On 6 May, Trump announced a deal to stop bombing

Houthis and have them end their shipping attacks in the Red Sea in return (<https://www.reuters.com/world/trump-says-us-will-stop-bombing-houthis-after-agreement-struck-2025-05-06/>, consulted on 10 May 2025). Although the American input is much disputed, the India-Pakistan truce appears to hold. On 13 May 2025, Hamas freed hostage Edan Alexander, who holds both US and Israeli citizenship, in a goodwill gesture to Trump [Hamas frees U.S. hostage Edan Alexander in goodwill gesture to Trump - The Washington Post](#), consulted on 14 May 2025).

Deals are frequently dirty, unsatisfactory from the vantage point of the moral high ground, yet often unavoidably so. The cessation of hostilities, the release of the hostages, taking and mistreating hostages being one of the most abominable single violations of international law in the present Middle East Conflict, getting on with life, securing peace, comes at a hefty price. We should always be and remain aware of the costs of a deal. The documentation of Russian war crimes, the Special Tribunal for the Crime of Aggression against Ukraine, the prosecutions of International Criminal Court, the documentation of the atrocities of Hamas at the Nova Music Festival, all these efforts, even if they will not bring any war criminal to justice, have a necessary role to play, for two reasons. They eternally remind us of the price we may have to be prepared to pay to reach a deal. At the same time, they are essential for exerting pressure on the perpetrating party.

So it seems the Gretchen question of international law, whether deals should be struck or rather not, is not an either-or question. To move on, we need to strike deals, even though we are aware of their imperfection and we need to uphold the law in the strict sense, even though we may not be in a position to enforce it. Ironically, Donald Trump, who started his administration with an assault on international law, has reminded us of the importance of the reciprocal contract as the backbone of international law. Clearly unimpressed by the academic refinements and subtleties of international law, he has, perhaps accidentally, hit on what, in the absence of a total military victory, respectively unconditional capitulation, is the basic premise of any agreement: The parties concerned have to talk to each other, i.e., recognize each other. And what he has also, perhaps intuitively understood, is that there is usually only a short window of opportunity to strike a deal. Although it is now clear that we won't see Putin in Istanbul today, he seems to have made some progress in convincing both Russia and Ukraine to resume direct negotiations. It remains to be seen, whether he, in concert with Qatar will be able to force not only Putin and Zelensky, but also Netanyahu and Hamas or a Palestinian equivalent to talk to each other. If the deal-driven approach pays dividends, will depend on the Trump administration's willingness to put enough pressure on the respective parties and to make sacrifices, in his language, to take risky investments. In the case of the Gaza war this might even mean American boots on the ground. If we should see Trump actually making these investments, Trump, the American president with the most isolationist agenda we have seen for decades will have made yet another ironic U-turn.

Executive order imposing sanctions on the International Criminal Court (<https://ofac.treasury.gov/recent-actions/20250213>, consulted on 10 May 2025),



<https://www.bbc.com/news/articles/cwypzzey425o> (consulted on 10 May 2025)



https://www.business-standard.com/world-news/donald-trump-signs-executive-order-rename-gulf-of-mexico-gulf-of-america-125021000097_1.html consulted on 10 May 2025



Trump meets Syria's al-Sharaa, eyes normalisation of ties with Damascus. US president urges Syria's interim president to establish ties with Israel, says US will drop 'all sanctions' on Damascus. Trump announces surprise end to Syria sanctions
<https://www.aljazeera.com/news/2025/5/14/trump-meets-syrias-al-sharaa-eyes-normalisation-of-ties-with-damascus> (consulted on 14 May 2025)

International Hydrographic Organization

Establishment of a Special Tribunal for the Crime of Aggression against Ukraine by the Council of Europe, Ukraine and the representatives of an international coalition of states

https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1169

The UN aviation council finds Russia responsible for the downing of Malaysia Airlines flight over Eastern Ukraine.

<https://news.un.org/en/story/2025/05/1163161>

<https://www.icao.int/Newsroom/Pages/Insert-Subject-Here.aspx>

Bruno Simma, Das Reziprozitätselement im Zustandekommen völkerrechtlicher Verträge. Gedanken zu einem Bauprinzip der internationalen Rechtsbeziehungen (Schriften zum Völkerrecht 23), Berlin: Duncker & Humblot, 1972.

US-UK Economic Agreement

<https://www.gov.uk/government/news/landmark-economic-deal-with-united-states-saves-thousands-of-jobs-for-british-car-makers-and-steel-industry>,

<https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china/phase-one-trade-agreement/fact-sheets>

Trump announces deal to stop bombing Houthis, end shipping attacks

(<https://www.reuters.com/world/trump-says-us-will-stop-bombing-houthis-after-agreement-struck-2025-05-06/>, consulted on 10 May 2025)

Hamas frees U.S. hostage Edan Alexander in goodwill gesture to Trump

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