



Problems of Post-Communism

ISSN: (Print) (Online) Journal homepage: <https://www.tandfonline.com/loi/mppc20>

Russia's Case for War against Ukraine: Legal Claims, Political Rhetoric, and Instrumentality in a Fracturing International Order

Roy Allison

To cite this article: Roy Allison (2023): Russia's Case for War against Ukraine: Legal Claims, Political Rhetoric, and Instrumentality in a Fracturing International Order, Problems of Post-Communism, DOI: [10.1080/10758216.2023.2254915](https://doi.org/10.1080/10758216.2023.2254915)

To link to this article: <https://doi.org/10.1080/10758216.2023.2254915>



© 2023 The Author(s). Published with license by Taylor & Francis Group, LLC.



Published online: 12 Sep 2023.



Submit your article to this journal [↗](#)



View related articles [↗](#)



View Crossmark data [↗](#)

Russia's Case for War against Ukraine: Legal Claims, Political Rhetoric, and Instrumentality in a Fracturing International Order

Roy Allison

Oxford School of Global and Area Studies, St Antony's College, Oxford, UK

ABSTRACT

In seeking to justify its war of aggression against Ukraine, Russia has presented a wide variety of legal, quasi-legal, and normative claims, alongside political rhetoric and transparent revanchism. Drawing on a qualitative content analysis of Russian speeches and texts concerning the war, this article deconstructs Russia's legal and political arguments and analyzes their rhetorical character as well as their intended audiences. It also assesses the instrumentality of Putin's irredentist claims on "historic Russian regions" in Ukraine. The article concludes that this abuse of legal and normative discourse to justify not only a full-scale invasion but also territorial annexation is a central threat to core global rules and norms.

Introduction: The Role of Norms and International Law

Russia has deployed normative, legal or quasi-legal, and extra-legal revanchist justifications for its decision to attack Ukraine in February 2022. A cursory study of these claims confirms them as wholly unpersuasive and offering little cover for egregious violations of the core legal principle of territorial integrity and the prohibition against territorial aggrandizement by force. However, it remains an important scholarly task to deconstruct and repudiate such claims, as well as to identify the intended audiences for such justifications. This is undertaken in the analysis that follows, as an initial step to enable further study on the core question of how far Russia's invasion of Ukraine degrades the United Nations (UN) Charter-based global legal order as well as established principles and norms of the European security order.

To pose this research question is to depart from a realist framing of international relations and international law. The presumption here is that norms and international law matter. Norms act as standards of appropriate conduct between states, while international law represents the language of diplomacy that mediates and regulates the inevitable contestation over norms. Contemporary norms and core principles of international law, consensually agreed, create the basis of predictability of state conduct in the international system and help avert a relapse to earlier eras of the brutal exercise of power between states.

To make this point, we do not even need to refer to the development of the expanding corpus of norms focused on human protection of the post-1991 *liberal* rule-based international order. Such norms have been emphasized and promoted by a predominantly Western group of states. It is sufficient to refer to the thin "pluralist" regulation of norms – identified by English School scholars already in the Cold War years – that

were enshrined in the global framework of the UN Charter system. These clearly proscribed aggressive war and annexation (Bull 1966). In the decades after the late Soviet period up to 2014, Moscow still adhered to a qualified pluralist stance regarding the possible and desirable solidarity between states over norms, rules, and institutions, including the core prohibition against annexation (Allison 2013).

In this sense, Russia's annexation of Crimea in 2014 was an open affront to the international system, and that challenge has been greatly reinforced with the full-scale invasion of Ukraine. "After World War II, the great powers endorsed a set of norms to prevent annexation and end colonization," which severely curtailed such efforts. Therefore permitting Russian seizure of more Ukrainian land after February 2022 "would not only radically undermine Ukrainian sovereignty, but it would also threaten to unravel the post-World War II international system more generally" (McFaul 2022). The UN Charter system depends on exposing gross violations of the UN Charter and associated efforts to distort norms of customary international law, especially by a prominent permanent member of the UN Security Council such as Russia. This is why deconstructing Russian legal claims over its invasion is so important. The intention is not just to confirm Russia's invasion as a major act of aggression. This might place it among a group of controversial, if less brutal, less extensive, and more ambiguous potential violations of post-Cold War territorial integrity. It is that such aggression in this case is inextricably linked to state aggrandizement through annexation. This is an affront to international order comparable in modern times only with Iraq's annexation of Kuwait in 1990, an act reversed with the political support of most of the global community of states.

This article will also assess the normative content of Russian justifications for attacking Ukraine since 2022. Some of these may reflect previous issues of normative contestation with

Western states. There may be at least a partial justificatory trail back to previous Russian military interventions or controversies over Western interventions. Alternatively, with the invasion of Ukraine, Russia may simply have opted to deploy normative language ad hoc and strategically, as an expression of statecraft. However, regardless of how we interpret such normative discourse, from a legal perspective Russian claims cannot displace the core prohibition against aggressive war and annexation. This remains an overriding peremptory legal obligation.

A second-level analytical question for this article is what motivated Russian claims and the role of instrumentality versus belief. On one hand, Russian claims may be part of a calculated effort to manage the domestic Russian audience and also to influence non-Western states seeking reasons to avoid a binary decision isolating Russia internationally. As such, they would be motivated by *realpolitik*, expediency rather than belief. On the other hand, certain Russian claims may have some *ideational* content and express belief, especially as internalized by President Vladimir Putin. The presence of ingrained belief in Russian claims would pose a more persistent and durable Russian challenge against not just a liberal rule-based international order but also, in the post-March 2022 context, against core globally accepted rules.

Methods and Materials

This article does not attempt a detailed discourse analysis of Russia's overall framing and rationale for its military action in Ukraine since February 2022. Rather it presents a qualitative content analysis of different types of Russian international legal claims as well as normative claims where these relate to legal debate – especially to disputed areas of customary international law. Therefore the discussion relies on broadly understood legal categories, points of reference, and uses of language. Within this framework the article uses an interpretative approach to sources, seeking patterns and themes among the claims made and assesses their legal standing, purposes, and audiences.

The material used is drawn from a careful reading of the major speeches, statements, and interviews of Russian leaders, above all Putin and Foreign Minister Sergey Lavrov, as well as the language of Russian treaties, related to the invasion up to spring 2023. In legal terms the justificatory content of terminology is particularly important immediately before and after the onset of Russian military action and the annexations of Ukrainian territory in 2022.

It is tempting to try to filter Russian claims through Putin's particular mind set and idiosyncratic forms of expression. However, my contention is that while Putin's individual leadership has led to significant continuity in state positions, his language, claims, and seeming obsessions, including on Ukraine, mostly reflect the thinking of a wider echelon of Russian state security officials of his generation, especially those he has empowered in recent years (Götz and Staun 2022).

In its structure, the article first studies Russia's core legal justifications for its full-scale attack, such as self-defense. Then it reviews claims that supposedly bear on the legal standing of

Russian actions, but which in fact are purely political. This is termed “political rhetoric,” with a distinct aspect that has more ideational content categorized as “civilizational rhetoric.” A separate body of claims, which are clearly incompatible with international law and appear to supplant core legal principles such as territorial integrity, are framed by Russia ethically as “historic justice.” Such claims are presented normatively, but unlike international norms they are intended largely for domestic Russian consumption. The final section of the article assesses claims under international humanitarian law. It also reviews the audiences of Russian justifications for the war. It outlines the serious implications of these Russian arguments and the actions they support for the international legal order and the global rule-based system.

Recognition of the Luhansk and Donetsk Separatist Regions and Russia's Initial Use of Force

The legal case Russia presented for recognition of the Luhansk and Donetsk republics as separate states in February 2022 was used as the political channel and trigger for the full-scale attack on Ukraine that followed. In fact this attack was an unusually transparent act of military aggression and violation of the prohibition on the use of force in Article 2 (4) of the UN Charter. It moved rapidly from the insertion of “peacekeepers” into the areas of Luhansk and Donetsk Oblasts that were outside Kyiv's control to a full-scale assault, but both elements amounted to aggression. It was preceded by troop movements around Ukrainian borders, linked to military exercises and demands for “security guarantees,” which in themselves amounted to an unlawful threat of the use of force.

In this case, the *realpolitik* core of Russian legal argumentation around its use of force is exposed by several points. First, it appears that Putin had prepared plans to attack Ukraine, failing Ukrainian and US (NATO) capitulation to his demands, well before tensions (through Russian artifice) peaked in February 2022. In retrospect, it seems that all along Putin had not conceived of only a limited operation in the Donbas. This left the Russian Foreign Ministry with the task of concocting claims in readiness for a given point of diplomatic failure and the deployment of Russian forces into Luhansk, Donetsk, and beyond.

Second, Moscow was aware that even in the more confused context (although still clear in its legal essentials) of the Crimean annexation, the overwhelming majority of international opinion had not accepted Russian legal claims (as recorded in UN General Assembly resolution 66/262 in April 2014). So a highly skeptical global response to Russian justifications could be anticipated, beyond the obvious condemnation of the attack by Western states. At the same time, the Russian option of manufacturing a pretext, a supposed Ukrainian attack through a “false flag” operation, was undermined by the American public release of detailed intelligence on such plans. Also the option of inciting any significant opposition to Kyiv outside the Donbas regions controlled by Moscow, through “deniable” regular forces (the “little green men” in Crimea of 2014), was unrealistic given the greater effectiveness of the Ukrainian security services.

In these circumstances Moscow fell back on an obviously confected justificatory line for its planned attack centered on Russia's preparatory recognition of the separatist republics in Donbas (rebranded as the Donetsk People's Republic and the Luhansk People's Republic, DPR and LPR) as states. The pseudo-legal trail was set in motion when the Russian Communist Party floated the issue of such recognition in the State Duma, leading to a resolution of the Duma on February 15, 2022. This called on the Russian president to recognize the DPR and LPR and was followed by the appeal of the de facto leaders of these territories to Putin for recognition on February 21. Then, immediately after Putin offered this recognition, Russia signed and ratified ten-year "agreements" of friendship, cooperation, and mutual assistance with the new "states" (Putin 2022a; for background and analysis, see Moscow Times 2022). In the final step, Russia responded to an "appeal" by the supposed new states for collective self-defense against Ukraine, a legal option enabled by their "statehood."

This resembles, but with an intensely compressed time line, Russia's treaty-based approach to South Ossetia and Abkhazia after their recognition as separate states in 2008. However, on February 22, 2022, Putin claimed that this state recognition applied to the borders of the pre-2014 Donetsk and Luhansk Oblasts (considerably more extensive than the DPR and LPR separatist regions outside Kyiv's control at this point) – at a stroke revealing his expansive territorial claims against Ukraine (Putin 2022b). In contrast, Russia's 2008 recognitions at the expense of the Georgian state were unconnected to any territorial extension beyond the line of separatist control.

This choice of claims clearly had certain audiences in mind. Most obviously, it was directed first at the Russian domestic audience, which was already responsive to political and historical narratives we will examine later. Secondly, Russian claims targeted a receptive population in the separatist regions that Russia controlled, a large proportion of whom had received Russian citizenship. It could gain some support in these regions for its characterization of the annexation as a supposedly ordered process (responding to appeals, including ratification by the Russian legislature). This loosely matched Russia's broader and consistent state narrative about the legitimacy derived from "constitutional order," even if this domestic order claim cannot override the principle of territorial integrity. Third, as a stratagem, it was probably also intended to encourage ambiguity in identity and citizenship among the population of the much wider Donbas territory which Kyiv controlled, in anticipation of the effort at military control and then political subordination to follow.

In the wider international setting, Russia could hope that leaders and elites of some members of the Commonwealth of Independent States (CIS) would accede to some of the legal fiction in order to avoid an outright clash with Moscow. The Putin leadership might have expected other CIS states would at least follow the precedent of their responses to Russia's earlier recognition of South Ossetia and Abkhazia – which was non-recognition but also non-condemnation of Russian actions officially.

In addition, Moscow may have expected that condemnation of Russian actions might be limited among many non-Western

and former colonial states by the deliberate referencing of the self-determination of peoples. In fact, the latter introduced confusion over the legal exception that self-determination offers for the independence of a "people" in *colonies and overseas territories* occupied by another state. In the UN Charter era, it is the latter that has offered a path for separation from central state authority without the approval of that state. In contrast, the Minsk accords, now swept aside, had been directed at "internal" self-determination for the contested regions in the Donbas. In reality, Russian claims around the DPR and LPR represented an empowerment of separatism and a dilution of the criteria of statehood (the so-called classical criteria of Article 1 of the Montevideo Convention). This was received poorly even among a large number of non-Western states, with their fragile statehood and separatist concerns.

The pretense of manufactured statehood, as necessary to invoke the subsequent claim of self-defense, offered no more than a shadow of legality to cloak the Russian invasion. For a start, it is difficult to argue that those parts of the Donetsk and Luhansk Oblasts outside Kyiv's control satisfied the requirement of independence, since they remained wholly dependent on Russia for their security, economic affairs, and "foreign" relations. Moreover, the two territories controlled only about one third of their supposed state territory at the time Russia recognized them (this pertains to the legal criterion of "effective control" for a state over a defined territory). Overriding all this, however, Russia had sustained the separatist regions with arms, logistical support, and troops (through armed intervention, a grave violation of law) since 2014. So the illegality of creating new states from these entities arises from the violation of the norm prohibiting the use of force – a peremptory norm of international law. Ultimately, for other states, "the obligation not to recognise the fruits of a serious violation is a firm part of the international constitutional order" and no territorial acquisition resulting from the threat or use of force can be recognized as legal (Weller 2022).

Spurious Collective and Individual Self-Defense

These points about the new "states" demolish Russia's chain of legal justification. This occurs even before it is necessary to judge whether the incidents of sabotage and other acts that Russia alleged Ukraine had committed in the separatist regions in February 2022, and cited as the grounds for subsequent action based on collective self-defense, really existed (and there is no evidence that they did). Or whether such limited incidents, had they existed, amounted to grave forms of the use of force justifying self-defense under international law, a threshold requirement (very arguable). Or whether the large-scale invasion of Ukrainian territory with armed forces of 150,000–200,000 met the legal criteria of necessity and proportionality, which are integral to the doctrine of self-defense for such supposed incidents (not at all).

Therefore, it seems superfluous for the legal case to emphasize that Russia also clearly breached the Budapest Memorandum of December 1994 offering guarantees for Ukraine's sovereignty and territorial integrity. It also flagrantly violated the Minsk agreements endorsed by UN Security

Council Resolution 2202 of February 2015, intended to help resolve the conflict in Donbas (Minsk Agreement 2015; for background and discussion, see Åtland 2020).

It follows that Russia's claim that its invasion was an act of collective self-defense in response to a request from the states of the DPR and LPR cannot stand. But even had these territories acquired statehood, the requirement of an armed attack (beyond the threshold of skirmishes) by the Ukrainian state remains, which factually had no basis in any action in February 2022. Assuming DPR and LPR statehood, Putin's claim that the Ukrainian military were perpetrating "genocide" against the people of these states might be viewed as an armed attack. But this claim, which we consider below, was patently untrue.

Taking a different angle, two weeks after the Russian attack the Russian Ministry of Defense claimed that in the course of the operations underway Russia had "uncovered" secret documents confirming that Ukraine was covertly preparing a significant military operation in the Donbas region in March 2022. But even taking this at face value (which we cannot seriously), a possible Russian claim that it preempted such an imminent attack by committing its forces (drawing on the legal notion of imminence for self-defense) makes no sense, since neither Moscow nor the separatist regions could have known this supposed attack was imminent in February (Green, Henderson, and Ruys 2022, 19–20).

A core legal claim by Putin and Russia's UN envoy was that Russia acted also on the basis of individual self-defense. This only merits brief consideration in this section, since it was clearly aimed at domestic political mobilization and some foreign policy grandstanding in the aftermath of Russia's failed effort at coercive diplomacy in late 2021 to roll back the NATO presence in Eastern Europe. It did not offer a serious case for international state and juridical opinion, although it was offered in the UN Security Council. Yet a year after Russia's invasion began, Putin still insisted to Russian Federation legislators that "they were the ones who started this war, while we used force and are using it to stop the war" (President of the Russian Federation 2023). The claim took three forms: first, responding to a threat by NATO's eastward enlargement; second, responding to a threat from Ukraine to Russian state territory; and third, protecting Russian "people" abroad, presumably in the first instance Russian passport holders in Ukrainian territory.¹

The wider NATO aspect was directed at future threats Russia argued it felt compelled to respond against. But no evidence was presented of an imminent NATO threat in February 2022, so this did not invoke anticipatory self-defense (if that rather fluid and highly contested notion is credited with some legal basis). For example, the claim that Ukraine was hosting numerous NATO/US-funded biological weapons development facilities could be shown as false (UN inspection found no evidence of this claim).

Unable to present evidence (and with false-flag operations exposed), Russia used language in February 2022 that essentially implied a need to take preemptive military action. However, it was only in September, on moving to annex Ukrainian regions, that Putin explicitly stated that "the decision to start a pre-emptive military operation was necessary

and the only option . . . to liberate the whole of Donbas." This was supposedly to preempt a Ukrainian offensive in Donbas that "would be inevitably followed by an attack on Russia's Crimea, that is, on Russia" (President of the Russian Federation 2022a, 2023). Again, no evidence was adduced, and anyway "pre-emptive defense" has no standing in contemporary international law or juridical opinion.

The notion of preemption is expanded at times into the broad notion of a preventive war, which implies a pre-UN Charter broad permissive environment for state aggression. Thus, for example, Putin's claim that Western states "have always been seeking the dissolution of our country" and "we launched our special military operation to prevent events from taking this turn." These states, he continued, "have always been seeking to create an anti-Russia enclave and rock the boat, threaten Russia from this direction," and "in essence our main goal is to prevent such developments" (President of the Russian Federation 2022b).

The claim that Russia acted to protect its citizens in Ukraine merges with political rhetoric. At a stretch, however, it connects to a controversial legal argument occasionally made for the "protection of nationals" (really intended for limited rescue missions). It extends Russian claims when intervening in Georgia in 2008 and Crimea in 2014 and dovetails with what has become a Russian state practice of mass passportization in separatist regions (Nagashima 2019). It might be interpreted as an effort by Russia to enforce acceptance of a norm in a zone of "legal exceptionalism" (given doubts about the legality of such passportization) comprising CIS zones on the Russian periphery. However, quite apart from the matter of evidence that any real Ukrainian threat existed to those in Donbas, a self-defense claim founded on the need to protect a large number of nationals who had lacked such citizenship until recently, is not convincing. If the legal requirements of necessity and proportionality are added, this basis for Russia's invasion collapses further.

Nevertheless, alongside the recognition of the DPR and LPR, the "defense of Russians" claim is calculated to elicit political and social support within Russia itself and to firm up support in the separatist regions, so it remains a fixed item in Russian discourse. Yet it is highly divisive for Russian relations with other CIS states. More than ever before, it now connects Russian territorial, indeed revanchist, demands with not just the location of ethnic Russian diaspora populations, but potentially to Russian "compatriots" or those living on "historic Russian lands," which comprise the territories of the former USSR and even those of imperial Russia.

Despite this challenge to the sovereignty of Russia's neighbor states, one particular audience for Russia's claims is the state of Belarus, or more specifically the Lukashenka leadership. Moscow has expected and received some rare approval for its claims as Lukashenka accepts a role for Belarus effectively as a Russian client state. Belarus has complied with Russia's large-scale military access to its territory, allowed Russian troops to cross its border into Ukraine, and logistically supported this movement. Minsk has refrained from direct engagement in hostilities with Ukraine, but under the rules of state responsibility, Belarus appears responsible for its

complicity in Russia's unlawful use of force, as understood in customary international law. Indeed, this assistance to Russia could qualify the Belarusian involvement as an act of aggression. It has attracted international opprobrium and punitive sanctions (Reetz 2022).

Given the hollowness of these Russian arguments, it is unsurprising that the UN General Assembly resolution of March 2, 2022, deploring Russian aggression and its recognition of the DPR and LPR as a violation of the territorial integrity and sovereignty of Ukraine, was sponsored by no less than 93 states and received 141 votes in its favor and only 5 against (with 35 abstentions). This was evidence that Russia's legal claims had limited traction in persuading states in the wider international system. Overall, these justifications could be defined as expedient with no basis in cognitive belief. Moscow formally conceded that international law should retain its role as the language of diplomacy. However, in its policy pertaining to Ukraine it had no intention of complying with the framework of accepted rules and instead served up an instrumental chain of reasoning to support the state's military planning.

Russia could not expect state leaders to believe it was not engaged in high-intensity warfare in Ukraine; its insistence that it was engaged in a "special military operation" rather than a war reflected sensitivity to the domestic Russian audience. The use of such specious terminology makes no difference in international law, which is concerned with the actual military acts undertaken, not their description by their perpetrator. But the illusion of non-warfare was intended to help sustain an illusion of normality and to limit potential political and social reverberations within Russia of this unprecedented post-Cold War military commitment.

Political Rhetoric

A large part of the corpus of justification and argumentation Putin and his leadership coterie have used around the attack on Ukraine falls outside recognizable legal debate, even if it is presented as bearing on the legality of Russian actions. It gives the sense that Putin has tired of the need to present Russian actions within such constraints, although Foreign Minister Lavrov often tries to do so as the external face of the Russian state. As with Russia's past interventions, the intention seems to be to present an assortment of claims to different audiences, a scattergun approach, hoping some will gain traction, even offer a pseudo-legal facade. But there is little effort to provide factual support for many of these arguments. Their appeal is intended to operate largely on an emotional or psychological plane and they are linked to broader Russian state narratives on political legitimacy and historic justice (see below).

A broad claim, that Russia had paid scant attention to previously but became a staple of Russia's coercive diplomacy in autumn 2021 and early 2022, was that the Western states' relationship with Ukraine violated the principle of the "indivisibility of security" (Lavrov 2022a; Putin 2022a). This principle enjoined states not to increase their security at the expense of another and was specified in a number of post-Cold War agreements signed by Russia and Western countries. Moscow never spelled out how its subjective interpretation of this

abstract, holistic view of security policy could override the legal architecture around the use of force or possess any separate legal character. As for its normative standing, Russia's interpretation of the indivisibility of security set it at odds with a core principle of the post-Cold War European order, namely that states had the freedom to choose their preferred security arrangements. In its diplomatic campaign before attacking Ukraine Moscow was dismissive of this principle. Anyway, Russia's own doctrine on foreign policy sovereignty as well as its actions, most notably the annexation of Crimea and post-2014 incursion into eastern Ukraine, displayed no attachment to the self-limiting constraints of indivisible security.

Turning to the more specific Russian justifications for its invasion, an initial claim used the language of humanitarian necessity, indeed the urgent need to prevent "genocide" committed by Ukrainian forces in Donbas (Putin 2022a, 2022b). For Moscow, the recognition of the DPR and LPR also had been done "primarily on humanitarian grounds and to protect civilians" since Kyiv's past actions already had been "nothing short of a genocide against Ukraine's own people" (Russian Ministry of Foreign Affairs 2022).² This reprised a similar claim against the Georgian state during the 2008 war and rhetoric at various points during Russia's intervention in Ukraine in 2014.

The recourse to this claim is ironic, given Moscow's progressive resistance over many years to the extension of the norms of the post-Cold War international human rights project. Moscow has derided this as a globally unrepresentative liberal artifact of Western states. It has tended to fall back on arguments about the order-managing rights of great powers. Moreover, since Moscow's claim of genocide against Russians/Russian speakers in the Donbas was so patently false, it was not intended to stoke the liberal conscience of Western leaders or publics. Its purpose, as in 2008, was for immediate political mobilization in Russia itself, to justify extreme action at the point of war, and served as a short-lived item of rhetoric.

In March 2022, the tables were turned when Ukraine submitted a case against Russia in the International Court of Justice (ICJ), referring to rights under the Genocide Convention. Russia then denied that the ICJ has jurisdiction over any use of force issues and asserted that these fall outside the scope of the Genocide Convention. The ICJ rejected this view and proceeded to reject Russia's genocide claims and demand that it cease its military actions (ICJ 2022). Responding to Ukraine's case to the ICJ, Moscow then shifted its position to deny that its allegations of genocide against Russians/Russian speakers had any link to its use of force against Ukraine – a matter it now said was firmly based on self-defense. This concluded any possible Russian effort to present a humanitarian intervention-type argument, which as noted had been a staple of Russian criticism of Western military interventions. The issue was reinforced by the growing focus of international genocide discourse on the violations by Russian forces in Ukraine.³

The most consistent Russian exercise of political rhetoric on its invasion has been its call for "denazification" of Ukraine (Putin 2022c).⁴ This amounts to a determination to enforce regime change and the political subjugation of the Ukrainian

state. Russia had long denounced American efforts at regime change in the Middle East as well as a Western tendency to apply democratic standards of political legitimacy to the political structure of states. But Putin claimed now that the Kyiv government had lost legitimacy, that “the people of Ukraine have become hostages of the Kiev regime and its Western handlers who have occupied that country” to promote an “anti-Russia project” (President of the Russian Federation 2023). This Russian position had nothing in common with the notion of sovereign democracy developed in earlier Putin administrations – effectively the sovereign right of states to determine their own standards and definition of democracy. Instead Putin claimed that the political beneficiaries of the Maidan Revolution “coup” could not represent the Ukrainian state and that their “Nazi” political ideology effectively justified their replacement by external force.

On one level, this may be interpreted as a rather extreme form of the kind of rhetoric of delegitimization of adversaries to which invading states are prone, to create a sense of political and moral righteousness in the homeland. Accordingly, Russia uses Nazi imagery to conjure up the fervor against the enemy in the Russian population associated with military campaigns during the Great Patriotic War. Moreover, Russia may have hoped optimistically to divide Ukrainian resistance through such polarizing language by reinvigorating the domestic political cleavages expressed during and after the Maidan Revolution. The political demonization of the Kyiv administration was also targeted at residents of the Donbas regions and regions of southern Ukraine that Russia was intent on annexing and integrating.

Historic Justice and Revanchism

Alongside such political rhetoric, Putin has used an increasingly fervent “civilizational” rhetoric, with more ideational content, which frames and distorts the Russian politics of international law (Mälksoo and Simon 2022). This essentializes Russia as a historic culture and territory encompassing the territorial space of earlier periods, significantly including, in various manifestations, at first part and now generally all of contemporary Ukraine.

The notion of *historic justice*, which Putin invoked to justify the annexation of Crimea in 2014, has moved to the core of Russia’s rhetoric to legitimize its actions in Ukraine. It undermines the standing of the state and the international treaties defining contemporary Ukraine, and it expresses a central myth that Ukraine has always lacked “real statehood.” This clashes with the core principle of the sovereign equality of UN member states as defined in the UN Charter. In fact, Ukraine kept its membership in the UN when the USSR dissolved, having been a founding UN member as the Ukrainian Soviet Socialist Republic. However, Moscow presents the rhetorical claim that a clique in Kyiv beholden to Western states is illegitimately drawing Ukraine away from its genuine and historically established civilizational space (Mälksoo and Simon 2022).

Putin’s historical claims were fully aired in his much-cited essay “On the Historical Unity of Russians and Ukrainians” in July 2021. This was dressed up as a factual account: “analytical

material based on historical facts, events and historical documents” (Putin 2021a, 2021b).⁵ The essay reinforces Putin’s previous claims that Russians and Ukrainians should be regarded as “one people” (that is Ukrainians are Russians, not the other way round). But it went further to challenge Ukraine’s right to separate existence with different ideological-political standpoints than Russia’s, to affirm that “the true sovereignty of Ukraine is possible precisely in partnership with Russia” and that contemporary Ukraine occupies Russia’s historical lands, which it describes as a robbery. Commenting on his essay Putin deplored that the law in Ukraine “declares Russian people living on historical Russian territories to be aliens” (Putin 2021b). The essay ends with a rhetorical flourish: “Russia has never been and will never be ‘anti-Ukraine,’” and “what Ukraine will be – it is up to its citizens to decide” (Putin 2021a). Such deception (as confirmed by events in 2022) and some other discursive ambiguity in the essay fail to counteract its revanchist pseudo-historical core message.

Putin’s essay has become part of the required curriculum for all members of the Russian armed services, including those currently in combat in Ukraine. This potently expresses its function within Russia, especially among those working for the coercive branches of the Russian state, of ingraining a narrative of an imagined common people and *territory* centered on the notion of historic Russian lands, now being regathered. It presents an extensive territorial ambition, well beyond previously proclaimed commitments to protect ethnic Russians, Russian citizens, or the loose category of compatriots, since tsarist-era Russian territories extended further than USSR borders. In his essay Putin reinforced his previous disparagement of the territorial dispensation of past treaties dividing the “Russian world” with a call to revise the Belovezh Accords, which annulled the USSR. He cited approvingly an opinion that the founding republics of the USSR should return to the borders within which they entered it in 1922.

Putin’s speech recognizing the LPR and DPR on February 21, 2022, was replete with terminology that flowed from this. Ukraine for him was “an inalienable part of our own history, culture and spiritual space,” with “people living in the south-west of what has historically been Russian land,” but Ukraine itself “never had stable traditions of real statehood.” Some days later, in launching the Russian invasion, Putin claimed that in such “historical land a hostile ‘anti-Russia’ is taking shape” (Putin 2022a, 2022b).

Russia’s historical mission in such narratives clearly overrides international law. Since attacking Ukraine Putin has compared the prevailing situation to Tsar Peter the Great’s capture of territory from Sweden in the eighteenth century, an achievement that, like the Ukraine offensive, was termed “returning and reinforcing” Russian lands. “We are returning what is ours,” Putin affirms, “historically of course . . . let us say the entire Black Sea region,” before noting magnanimously “we are not actually laying claims to its entirety,” although “Novorossiia” in his view has “nothing to do” with Ukraine (President of the Russian Federation 2022c). In Putin-speak, by the end of 2022, despite Russian territorial setbacks in the war, by annexing Ukrainian regions “newly incorporated

territories have appeared” for Russia. Putin highlighted that “the sea of Azov has become an inland sea in the Russian Federation” and noted, as a point of legitimation, that “in his time Peter the Great fought to reach the Sea of Azov” (President of the Russian Federation 2022d).

What emerges from this emulation of Peter the Great’s conquests is an implicit “doctrine under which Russia can ‘claim back’ all the territories that sometime belonged to it or were included in its sphere of influence” (Zorin 2022). As the American envoy in the UN Security Council, Linda Thomas-Greenfield, put it just before Russia’s attack, this assertion of Russia’s rightful claim to wide-ranging territories of the former Russian Empire revealed Putin’s wish for “the world to travel back in time – to a time before the United Nations; to a time when empires ruled the world.” The UN “was founded on the principle of decolonization not recolonization” she stated pithily (United Nations 2022a).

Given Putin’s unapologetic revanchist discourse, this distinction is relevant. In another mental frame, he distinguishes a true state like Russia from “colonies.” He accuses Ukraine of being “reduced to a colony with a puppet regime,” with a government that “no longer acts in a national capacity” and by implication lacks any rights (Putin 2022a). This claim would resonate among domestic nationalist supporters of a greater Russia, but can be viewed by the leaders of other post-Soviet states as an open challenge to their sovereignty and statehood. The claim that Ukraine has been forcibly colonized by Western forces, that the Kyiv administration lacks sovereign authority as a “political clique,” is a fiction that could equally be applied to other post-Soviet states that have close relations with the West. Above all this means Georgia, Moldova, and possibly the Baltic states.

The irredentist essence of Russian use of the notion of historic justice also challenges the core role of treaties in international public law, although this has been exactly the aspect of international law traditionally emphasized by Russia (and previously the USSR). Putin’s contradictory position is seen in his claim on attacking Ukraine that “the old treaties and agreements are no longer effective.” Yet months later he asserted that “there is only one rule that must be obeyed – international public law,” that is, “agreements between countries that are a sort of compromise, which are signed by the respective states” (President of the Russian Federation 2022c; Putin 2022c). In fact, state treaties between Moscow and Kyiv – manifestations of international public law – formally recognized Ukraine’s state borders with Russia, although Russia had been in no hurry to reach agreement on such legal instruments after 1991. These treaties are now openly flouted, which throws into question future Russian treaty recognition of frontiers in other directions, for example Russia’s southern border with Kazakhstan.

The challenge to other post-Soviet states became more acute with Russia’s annexation of Ukrainian regions (the provinces of Donetsk, Luhansk, Kherson, and Zaporizhzhia in September 2022), with explicit reference to revanchist claims. As with the case of Crimea in 2014, rushed fraudulent referenda under coercive conditions in these regions were claimed to represent the “will of the people” and their choice to join Russia on the basis of self-determination. Putin then signed

treaties of accession of the regions to the Russian Federation, praising the people of these regions for “their determination to return to their true historical homeland,” a choice supposedly denied them in 1991 (President of the Russian Federation 2022a, 2022e).

The treaties were duly approved by Russia’s Federal Assembly while the Russian Constitutional Court, in a series of rulings, “repeated and developed the Kremlin’s preposterous delusion about self-defense and self-determination and fallacious versions of the Ukrainian past and present.” It displayed “imperial thinking deeply embedded in the judicial reasoning” (Masol 2022). In essence Russia distorted the legal basis of self-determination, as well as its factual context in Ukraine, to trump and devalue state sovereignty. This is apparent in Lavrov’s specious assertion that “we must respect the territorial integrity of states representing the entire population of their countries” (Russian Ministry of Foreign Affairs 2023).

A distinguishing feature of this revanchist discourse is the thinly veiled terminology of conquest, which surfaced openly in Putin’s talk of returning and reinforcing Russian lands. In his New Year’s address to the nation at the end of 2022, he proclaimed “moral and historical truth” to lie on Russia’s side in “protecting our people in our historical territories in the new regions of the Russian Federation,” which is a matter of “building and creating” (President of the Russian Federation 2022f). Conquest was explicit also in the territorial definition of the new “constituent entities” of Russia, matching what Russia expected in September 2022 that it could militarily seize and hold. This included the Donetsk and Luhansk People’s Republics as defined more extensively by the “2014 borders,” the borders of Kherson and Zaporizhzhia regions after “consulting” residents of those regions (as Russia only had partial control there), but perhaps also a small part of Ukraine’s Mykolaiv Region, which borders the Kherson Region, that Russian forces controlled (RT 2002; TASS 2022). Conquest and annexation were closely interlinked.

After these annexations, reinforcing measures taken during the previous months of occupation, Russia sought to enforce a full Russification of these regions. In legal terms, the effort to embed this was clearest in the distribution of Russian passports in Kherson Region – as had long been done in the DPR and LPR (BBC 2022) – although Russia lost control of the city of Kherson in November 2022. But, already in July 2022, Putin had signed a Presidential Executive Order that extended to all the citizens of Ukraine a simplified procedure (a fast-track scheme) for obtaining Russian citizenship, regardless of whether they resided in areas under Russian military occupation. This contrasted with previous Russian policies on “passportization,” as noted before. These were possibly illegal but had involved citizenship granted only to those who reside in disputed areas in CIS states, who in principle might otherwise be deprived of any recognized citizenship (Barbirotto 2022). Russian citizens with passports are necessary for the Kremlin’s “forever Russian” narrative about the annexed regions, but Moscow has already signaled that in its thinking all Ukrainians are potentially Russian citizens.

The longer-term significance of these claims about historic justice and Russian historic regions, including how they trump international law, will depend on how far beyond Putin this

thinking is or comes to be shared among Russian elites and public opinion. Broader support could sustain a persistent Russian challenge on these grounds for the years ahead. Putin himself is clearly pitching for widespread support of the kind he received for the annexation of Crimea. But it is not at all clear that the Russian commitment to “Novorossiya,” the southern annexed regions, or even the Donbas beyond the regions controlled by the DPR and LPR at the time of Russia’s attack in February 2022, resonates in Russia in a similar way, especially in conditions of a protracted and ever more costly military struggle with Kyiv. Beyond the control of the media and information outlets, mental frames can be influenced, to be sure, through socialization or indeed indoctrination in Russian school and university teaching. This is happening, but will take time to become more embedded, while Russian effective control of the annexed regions remains precarious.

Challenging the Rules-Based International Order

These Russian justifications for all-out war against Ukraine move manifestly beyond arguable legal language and the contested post–Cold War discourse on international norms and international customary law over the use of force. Moscow’s rehearsal of its past positions on self-determination and the protection of imperiled Russian communities had little resonance outside Russia. Any effort to take advantage of gray areas in legal debate has been eclipsed by the patently false nature of Russia’s self-defense claims, with self-defense as the only potential legal recourse for such warfare. Most claims we have studied appear devised primarily for the audiences of Russia’s domestic public and elites, although a secondary targeted audience is in Ukraine, especially in regions believed to be natural constituencies for the “Russian world.”

A third-level audience, however, toward which Russia has directed its political rhetoric instrumentally as its campaign in Ukraine extended, is non-Western states in the wider international community that tend to have critical perspectives on Western powers. Making Russia’s case for war, Putin has played to this gallery with his open disdain for “rules” supposedly defined by the “collective West.” The operation in Ukraine is supposedly contributing to the liberation of the world from the neo-colonial oppression of the West. These themes were ramped up in Putin’s major speech on the Russian annexations in September 2022, which is littered with accusations of Western powers as colonizers, exercising hegemony characterized by “despotism, apartheid and racism.” In contrast, Russia is positioned against such hegemony in an emerging “essentially emancipatory anti-colonial movement” (President of the Russian Federation 2022a). The pitch to limit global, non-Western criticism of what in reality has amounted to a Russian effort at recolonization, indeed subjugation of Ukraine, is clear.

With respect to challenging rules, Putin’s rationale for military action in terms of historic justice is more serious. It expresses a fixation on Russia’s mission in Ukraine to reestablish a territorial space encompassing the Soviet and imperial past. This supports a *realpolitik* strategic ambition of reclaiming military and strategic dominance in Eastern Europe. However, it also appears to express some ideational content

and belief: Putin and prominent figures in Russia’s security policy elite have been developing a sense of collective entitlement to “historic Russian regions.” Since Putin’s claims over Crimea in 2014, and especially by the end of that decade, this leadership group has come to accept, or even become convinced of, a distorted revanchist rendering of history that justifies the use of military means to redress supposed past wrongs. Stripped of its civilizationist and historical trappings, Russian claims represent an open violation of the UN Charter’s prohibition of the use of force, Article 2 (4).

Here we should acknowledge the broader point that major powers have occasionally infringed this ban on the use or threat of use of force, or used dubious arguments to circumvent it and to sidestep the UN Security Council. This includes Western intervention in Kosovo in 1999 and the highly controversial intervention in Iraq in 2003 (Allison 2013). These are cases that Russia has incessantly referred to, including in key speeches, seeking to relativize its 2022 invasion (Putin 2022c). That effort has had some purchase among non-Western audiences shocked and affronted by the post-2003 turmoil in Iraq. These cases of military intervention without a UN Security Council mandate, although rare and perhaps *sui generis*, arguably had a deleterious effect on the binding quality of the core prohibition against the use of force of the UN Charter.

With the resonance of this legacy in mind, some scholars characterized Russia’s approach to international rules and law in the years after the annexation of Crimea, but before the full-scale invasion of Ukraine, as “neo-revisionism.” Russia did not seek to change the principles of international law, it was claimed, but only how it is practiced by Western states. It is suggested that Moscow has positioned itself as a “norm-enforcer” rather than “norm innovator,” seeking to adhere to the UN-centered framework of international society, albeit “carving out space for its own normative world at the regional level,” such as toward Ukraine (Sakwa 2017; see also Romanova 2018).

However, this underplays the extent to which Russia’s efforts to justify its annexation of Crimea, including its early rehearsal of “historic justice” claims, even before 2022 challenged core globally accepted legal principles (Allison 2020; Grant 2015). Also the effort to establish some separate normative zone had been accompanied by increasing Russian assertions of regional entitlements in the European security order. This was an effort at disruption of the status quo, which surfaced most graphically in Putin’s far-reaching demands for change in East European security arrangements in autumn 2021 just as Russian troops massed on Ukraine’s borders.

The particularly egregious quality of Russian action in 2022, which enters another dimension, is its breach of a foundational post–World War II norm against territorial conquest, the use of force for territorial expansion. This norm expressed a recognition by the UN Charter founders that most previous conflicts had been driven by territorial acquisition. This explains the shocking quality of Russia’s initial annexation of Crimea in 2014, which was greatly compounded in 2022 and starkly contrasts with post–Cold War Western military interventions.

Moscow’s offensive against Ukraine since February 2022 seems to have been aimed at the destruction of Ukrainian sovereign independence and statehood itself. If such an outcome, what might be termed “state death,” were acceded to

by the rest of the world, it is difficult to envisage the principle of territorial integrity acting further as an effective constraint against the forceful resolution of territorial disputes and the goal of territorial conquest (Fazal 2022). It would also offer bleak prospects for the continued independence of small post-Soviet states outside alliances that seek to avoid close alignment with Russian political and security policy preferences.

This scenario is if anything made more likely by Russia's disturbing effort to bond with China as supposed co-creators of contemporary international order, playing on China's confrontation with the United States over the future of Taiwan as a means to avert Chinese criticism of Russia's war of aggression. Meeting his Chinese counterpart in August 2022, Foreign Minister Lavrov described their strategic partnership as "one of the pillars of the movement for the triumph of international law" in contrast to rules "invented" by the United States and "its satellites." Surreally, he referred to working with China in "the recently established Group of Friends of the UN Charter," which given Russia's invasion of Ukraine offers an alternative reality to the UN Charter system as it is recognized in most juridical opinion (Lavrov 2022b).

The UN system, nonetheless, has remained a central site for "discursive power" in international communications over the war. Effective action by the UN Security Council, to be sure, has been hamstrung by Russia's veto power. Russia has blocked Security Council condemnations of its actions as well as a referral of its actions against Ukraine for the crime of aggression to the International Criminal Court – leaving it to other legal bodies to try to address this crime. On the other hand, by recourse to the Uniting for Peace mechanism, the UN General Assembly condemned the Russian invasion on March 2, 2022, in explicit and categorical terms. A great majority of states voted in favor of the resolution. In October 2022, another large majority of the states in the General Assembly demanded that Moscow reverse course on its "attempted illegal annexation." A further vote in February 2023, demanding that Russia completely and unconditionally withdraw its forces from Ukraine according to its internationally recognized borders, was adopted by 141 states in favor, 7 against, and 32 abstentions (GA/12492 2023).

These votes are only demonstrative, since there is no process to enforce General Assembly opinion on states. But they express a firm rejection by much of the globe (if not China and India, which abstained) of Russia's principal justifications as presented in this article. They indicate that Moscow's effort to turn the tables and argue that it is itself a victim of US and NATO hegemonic designs, or even an imperialist war, has little appeal. However, the view that Russia is intent in essence on a "European" annexation and that Western powers are embroiled in a conflict with Russia over principles of international order in a regional European context has wider support, including among major G-20 states. A significant number of non-Western states seem reluctant to accept that the unraveling of core rules in the European theater represents a threat in other world regions – whether for regions potentially vulnerable to the future Chinese use of force or to other territorial conflicts.

International Humanitarian Law

A significant concern is the effect of Russian legal discourse, other forms of rhetoric, and actions in the Security Council and courts related to its campaign in Ukraine, on the operation and constraining role of international humanitarian law (IHL). In considering the rule-bound international order, especially its more recent development, it is notable how Russia has sought in these respects to lean on Chinese differences with Western states over human rights. It is also engaged in an effort to bond with non-Western states, suggesting regional alternatives to "Western" liberal conceptions of human rights. For example, at the end of 2022 Putin cited approvingly the former African Charter on Human and People's Rights and the Cairo Declaration on Human Rights in Islam as examples of "democratic diversity" (President of the Russian Federation 2022g). However, core crimes under IHL should be viewed in a different domain to differences between Western solidarist and wider pluralist conceptions of human rights.

One issue is accountability for core crimes against IHL and the crime of aggression itself, whether through investigation of the International Criminal Court (ICC), a separate *ad hoc* international tribunal, or another dedicated investigative institution, for example the UN General Assembly or Human Rights Council. A series of investigations into Russia's actions in Ukraine are underway. But these options all suffer in the face of obstruction by Russia as a Security Council member and other limitations – for example, neither Russia nor Ukraine is an ICC State Party and Russia was suspended from the UN Human Rights Council in April 2022, so it will not engage with this body. In June 2002, Russia also resolved to end the jurisdiction of the European Court of Human Rights in the country (RFE/RL 2022). Russian defiance of these bodies' investigations became unrelenting once the ICC issued an arrest warrant for Putin in March 2023 for war crimes – specifically, the unlawful deportation of Ukrainian children to Russia.

Russia's actions in Ukraine, extreme as they have been, repeat a systematic effort by Moscow over many years to evade the restrictions that IHL imposes on warfare (Riepl 2022). This has taken different forms, but in Ukraine it amounts mainly to a simple denial of the facts that form the basis of the allegations made, even when Moscow accepts that IHL applies *de jure*. Russia has failed to engage in discourse on the law, such as offering counterarguments; "it rather resorted to a policy of denying irrefutable facts, thus stalling any legal debate" (von Gall 2022). Moscow even sought to invert events in Ukraine by sponsoring a Security Council resolution (with Belarus, North Korea, and Syria) in March 2022, condemning attacks against civilians in Ukraine and demanding respect for IHL and human rights law. Effectively it was asking the international community to solve a crisis that Russia alone had created (United Nations 2022b).

Overall, Russian actions under IHL and responses to allegations of crimes in Ukraine threaten the deterrent quality of IHL at large. This reinforces the challenge to foundational UN principles referred to above. However, given the strong statements by many world leaders condemning Russia's violations, arguably "the war in Ukraine has also revealed the strength of

IHL accountability processes, spawning a multi-layered range of investigative and prosecutorial efforts” (Sloss and Dickinson 2022, 802–803). The issue has a particular reverberation in Europe, since the last European war on this scale, in which the USSR itself was subjected to grave and very extensive human rights violations, had given rise to contemporary understandings about criminal responsibility for wartime acts and the evolution of norms around this.

The matter is further complicated since one of Russia’s approaches to charges of IHL transgressions had been to blur the lines between war and peace and so avoid responding by denying that IHL applies in the first place, as with Russia’s wars in Chechnya. This has taken other forms with Russian “deniable” operations in Crimea and the Donbas since 2014, fueling Western anxieties about Russian hybrid warfare, operating below the threshold of formal military aggression that could trigger individual or collective self-defense (or indeed NATO Article 5 commitments). To be sure, Russia’s major military operations in Ukraine since its attack in 2022 are by no means such limited hybrid activities. However, the escalation risk of “deniable” Russian military acts on the Ukrainian–NATO borders that could cause civilian casualties is likely to be a persistent concern.

State Parties to the War

Finally, we should note that legal claims and very significant security policy interests over the war interact in one especially dangerous area. Since the launch of its attack, Russia has warned Western states against any level of involvement in the operations unfolding in Ukraine and soon started using loose language to accuse the West of participation in a proxy war with Russia through Ukraine. This has raised sensitive questions: On what grounds might Moscow claim that Western states, through their provision of military support to Ukraine, formally are transformed into *parties* to the military conflict? What would that imply? Several points deserve emphasis.

First, the longstanding law of neutrality is no obstacle to such support, since it cannot prevent third countries from intervening in favor of a state that has been unlawfully attacked. This is a consequence of the collective right to self-defense within the meaning of Article 51 of the UN Charter. Hence, other states can lawfully assist Ukraine against Russia’s armed attack, provided they act according to necessity and proportionality. Second, even if Western states become party to this international armed conflict alongside Ukraine, that does not entitle Russia to use force against them. This is since all use of force against as well as by them must be assessed against the prohibition of the use of force (in legal terms governed by the *jus ad bellum*) with the exception of self-defense, in relation to Russia’s initial attack. We might note also that parties to the conflict assume central obligations under IHL as regards the means and methods of warfare and the protection of individuals (Wentker 2022).

This can be argued legally. However, in practice the category of being party to the conflict is geopolitically highly sensitive, because of acute concerns about the risks of

escalation of military involvement by Western states if they are party to the conflict to a point that Russia deems itself as *de facto* in belligerencies with the United States or a NATO state. Politicians’ talk of red lines is to try to avert this scenario and the United States has sought to avoid becoming a party to the conflict. There are gray areas, especially around the sharing of Western intelligence with Ukraine that could offer direct targeting support. However, the threshold to becoming a party to the war appears to center around the notion of Ukraine and its Western partners closely coordinating their military operations (Wentker 2022).

Therefore, supplying arms to Ukraine may not require the operational coordination to cross this threshold, while using force against Russian aircraft to enforce a no-fly zone over Ukraine would. There is also the escalatory risk of engaging Russian territory more directly. As Russian Deputy Foreign Minister Sergey Ryabkov has argued, for the United States “to flood Ukraine with weapons . . . effectively puts itself in a state close to what can be described as a party to the conflict” (Ryabkov, as cited in Isachenkov 2022). He has warned more specifically against “deliveries of longer-range and more devastating weapons” that Ukraine could use to hit areas deep inside Russia. This is an example of a gray area of interaction between legal language and strategic thinking.

Conclusion

The debates analyzed show that Russia’s use of legal claims around its war on Ukraine and its use of force clash with many dimensions of Western states’ understanding of the rules-based international order. Ukraine represents the core site of the fracturing of this order, at least in the sense of trying to maintain minimal pluralist rules about accepted state conduct and the use of force, as codified in the UN Charter. In other words, this is about violation of core global rules – not “liberal” rules.

This raises to a new level a phenomenon that has been evident for many years: Russia’s strategic leveraging of law, deploying the language of principles and norms for purposes of statecraft. This activity has been categorized by scholars as lawfare and has taken both offensive and defensive forms (Kittrie 2016). Ukraine has responded, especially since the Crimea annexation, through its own defensive recourse to legal actions and court proceedings as an act of state resistance (Allison 2020).

Such leveraging of law has continued unabated as part of the wider conflictual Russian–Ukrainian relationship. In the context of the new invasion, Ukraine’s effort at defensive lawfare is expressed, for example, in the controversy over genocide claims as well as in a major effort to document and engage international scrutiny of Russian war crimes under IHL. Elements of this strategic deployment of legal argumentation have become entrenched in the wider competitive international environment (Férey 2022).

In the context of the war against Ukraine, as emphasized in this article, the new dimension is Russia’s persistent recourse to uninhibitedly revanchist, indeed irredentist claims, to justify its exertion of the full spectrum of state power against its neighbor. This overshadows Moscow’s efforts to project

pseudo-legal claims. As the rhetoric of a major power and UN Security Council member, this has especially worrying implications for global international order, including for China's future global role. This demands serious attention but lies outside the scope of this study. However, in conclusion, several questions about the serious consequences of Russian claims more specifically for the regional European security order should be raised.

First, are the principles of key post-Cold War agreements such as the Paris Charter and of bodies like the Organization for Security and Co-operation in Europe (OSCE) beyond recovery as constraints on future Russian conduct? Indeed, what standing remains of the fundamental principles of the 1975 Conference on Security and Cooperation in Europe's Helsinki Final Act, which codified respect for borders, territorial integrity, and means to limit military actions? Already before Russia's large-scale attack on Ukraine, Russian experts had proposed a revision of the Helsinki Final Act, centered on Ukraine, which in their words could modify "the previously understood framework and 'rules of the game'" (Petrovsky 2018, 19).

If these foundational treaties lose their force, it suggests that states will need to rely instead on older, adversarial forms of constraint centered on deterrence and containment. Moreover, it becomes difficult to conceive of a new settlement to re-enshrine those core principles on European security that does not also rely on Western defense guarantees to deter their renewed violation.

As for international legal categories, we may ask whether for the medium term the definition of state "aggression" has lost its constraining effect on Russian conduct in the post-Soviet region or perhaps further afield as Russia advances principles of territorial revanchism? Further, crucially, how can an eventual political and diplomatic settlement of the Russia-Ukraine war be achieved in treaty language and sustained, if trust in Russia's commitment to agreements and its acceptance of Ukrainian statehood has collapsed? This again suggests that deterrence and Western guarantees will need to underpin legal instruments and principles.

Overall, the discourse and rhetoric Russia uses in seeking to justify its invasion of Ukraine has been profoundly polarizing. It has shattered remaining hopes among Western states of working collectively with Russia in Europe in the medium term based on a narrow but substantive common understanding of core norms and international legal principles. A normative basis for the European security order, in the sense of a shared understanding of standards of appropriate state conduct in matters related to security, may be sustained in Western and Central Europe. But it will long be absent from the West's relationship with Russia.

Notes

1. These claims are systematically deconstructed as false in Green, Henderson, and Ruys (2022, 8–16).
2. On the falsity of these claims, see Green, Henderson, and Ruys (2022, 23–27).
3. See the submission received by the International Court of Justice from Russia in the *Ukraine v. Russia* genocide case (ICJ 2022), and analysis on this in Milanovic (2022).
4. The goal to "denazify" Ukraine is often presented in tandem with the goal to "demilitarize" the state.

5. For a critique of Putin's essay, see Reid (2022, 54–60); also see Hill and Stent (2022).

Disclosure Statement

No potential conflict of interest was reported by the author(s).

References

- Allison, R. 2013. *Russia, the West and Military Intervention*. Oxford: Oxford University Press.
- Allison, R. 2020. "Russian Revisionism, Legal Discourse and the 'Rules-Based' International Order." *Europe-Asia Studies* 72 (6): 976–995. <https://doi.org/10.1080/09668136.2020.1773406>.
- Åtland, K. 2020. "Destined for Deadlock? Russia, Ukraine and the Unfulfilled Minsk Agreements." *Post-Soviet Affairs* 2 (3): 122–139. <https://doi.org/10.1080/1060586X.2020.1720443>.
- Barbirotto, P. 2022. "The Russian Citizenship Law in Ukraine and International Law." *Opinio Juris*, October 6. <http://opiniojuris.org/author/patricio-barbirotto/>.
- BBC. 2022. "Russian Hands Out Passports in Occupied Ukraine Cities." *BBC News*, May 11. <https://www.bbc.co.uk/news/world-61338617>.
- Bull, H. 1966. "The Grotian Conception of International Society." In *Diplomatic Investigations*, edited by H. Butterfield and M. Wight, 51–74. London: Allen and Unwin.
- Fazal, T. M. 2022. "The Return of Conquest? Why the Future of Global Order Hinges on Ukraine." *Foreign Affairs* 101 (1): 20–27.
- Férey, A. 2022. "Vers une guerre des normes? Du lawfare aux opérations juridiques." *Études de l'IFRI*, No. 108. https://www.ifri.org/sites/default/files/atoms/files/ferrey_lawfare_2022_.pdf.
- GA/12492. February 23, 2023. "Hours before Ukraine Conflict Enters Second Year, General Assembly Adopts Resolution Demanding Russian Federation Withdraw Military Forces, Adjourning Emergency Session." <https://press.un.org/en/2023/ga12492.doc.htm>.
- Götz, E., and J. Staun. 2022. "Why Russia Attacked Ukraine: Strategic Culture and Radicalized Narratives." *Contemporary Security Policy* 43 (3): 482–497. <https://doi.org/10.1080/13523260.2022.2082633>.
- Grant, T. D. 2015. *Aggression against Ukraine: Territory, Responsibility and International Law*. Basingstoke, UK: Palgrave.
- Green, J. A., C. Henderson, and T. Ruys. 2022. "Russia's Attack on Ukraine and the *jus ad bellum*." *Journal on the Use of Force and International Law* 9 (1): 4–30. <https://doi.org/10.1080/20531702.2022.2056803>.
- Hill, F., and A. Stent. 2022. "The World Putin Wants: How Distortions about the Past Feed Delusions about the Future." *Foreign Affairs* 101 (5): 108–122.
- ICJ. 2022. "Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)." International Court of Justice. <https://www.icj-cij.org/en/case/182>.
- Isachenkov, V. 2022. "Russia Warns US off Sending Long-Range Weapons to Ukraine." *AP News*, September 2. <https://apnews.com/article/russia-ukraine-nuclear-weapons-government-and-politics-c43d68369418ed2507f5432074d89932>.
- Kittrie, O. F. 2016. *Lawfare: Law as a Weapon of War*. Oxford: Oxford University Press.
- Lavrov, S. 2022a. "Text of Minister of Foreign Affairs of Russia Mr Sergey Lavrov's Written Message on Indivisibility of Security Addressed to the Heads of Foreign/External Affairs Ministers/Secretaries of the US, Canada and Several European Countries." https://mid.ru/en/foreign_policy/news/1796679/.
- Lavrov, S. 2022b. "Foreign Minister Sergey Lavrov's Opening Remarks at a Meeting with Foreign Minister of the People's Republic of China Wang Yi, Phnom Penh." August 5. https://www.mid.ru/en/press_service/minister_speeches/1825122/.
- Mälksoo, L., and H. Simon. 2022. "Aggression and the 'Civilizational Turn' in Russian Politics of International Law: An Interview with Lauri Mälksoo." *Völkerrechtsblog*, February 25. <https://voelkerrechts>

- blog.org/aggression-and-the-civilizational-turn-in-russian-politics-of-international-law.
- Masol, S. 2022. "Orwellian Rulings of the Russian Constitutional Court on the Donetsk, Kherson, Luhansk and Zaporizhzhia Provinces of Ukraine." *EJIL Talk!*, *Blog of the European Journal of International Law*, October 25. <https://www.ejiltalk.org/orwellian-rulings-of-the-russian-constitutional-court-on-the-donetsk-kherson-luhansk-and-zaporizhzhia-provinces-of-ukraine/>.
- McFaul, M. 2022. "Realists' Have It Wrong: Putin, Not Zelensky, Is the One Who Can End the War." *Washington Post*, August 5. <https://www.washingtonpost.com/opinions/2022/08/04/putin-zelensky-mcfaul-ukraine-war-ends/>.
- Milanovic, M. 2022. "Russia's Submission to the ICJ in the Genocide Case." *EJIL Talk!*, *Blog of the European Journal of International Law*, March 11. www.ejiltalk.org/russias-submission-to-the-icj-in-the-genocide-case-russias-withdrawal-from-the-council-of-europe.
- Minsk Agreement. 2015. "Minsk Agreement (Full Text in English)." February 12. <https://www.unian.info/politics/1043394-minsk-agreement-full-text-in-english.html>.
- Moscow Times. 2022. "Takeaways from Russia's Treaties with Eastern Ukrainian Republics." February 22. <https://www.themoscowtimes.com/2022/02/22/donetsk-and-kyiv-react-after-russias-separatist-recognition-a76524>.
- Nagashima, T. 2019. "Russia's Passportization Policy Toward Unrecognized Republics." *Problems of Post-Communism* 66 (3): 186–199. <https://doi.org/10.1080/10758216.2017.1388182>.
- Petrovsky, V. 2018. "A New Helsinki Process: Pros and Cons." *International Affairs (Moscow)* 64 (2): 14–20. <https://doi.org/10.21557/IAF.52465453>.
- President of the Russian Federation. 2022a. "Signing of Treaties on Accession of Donetsk and Lugansk People's Republics and Zaporozhye and Kherson Regions to Russia." September 30. <http://en.kremlin.ru/events/president/transcripts/69465>.
- President of the Russian Federation. 2022b. "News Conference following Visit to Uzbekistan." September 16. <http://en.kremlin.ru/events/president/news/69366>.
- President of the Russian Federation. 2022c. "St. Petersburg International Economic Forum Plenary Session." June 17. <http://en.kremlin.ru/events/president/news/68669>.
- President of the Russian Federation. 2022d. "Council for Civil Society and Human Rights Meeting." December 7. <http://en.kremlin.ru/events/president/transcripts/70046>.
- President of the Russian Federation. 2022e. "People's Choice: Together Forever Concert Rally." September 30. <http://en.kremlin.ru/events/president/transcripts/69470>.
- President of the Russian Federation. 2022f. "New Year Address to the Nation." December 31. <http://en.kremlin.ru/events/president/news/70315>.
- President of the Russian Federation. 2022g. "Council for Civil Society and Human Rights Meeting." December 7. <http://en.kremlin.ru/events/president/news/70046>.
- President of the Russian Federation. 2023. "Presidential Address to Federal Assembly." February 21. <http://en.kremlin.ru/events/president/news/70565>.
- Putin, V. 2021a. "Article by Vladimir Putin 'On the Historical Unity of Russians and Ukrainians.'" July 12. <http://en.kremlin.ru/events/president/news/66181>.
- Putin, V. 2021b. "Vladimir Putin Answered Questions on the Article 'On the Historical Unity of Russians and Ukrainians.'" July 13. <http://en.kremlin.ru/catalog/countries/UA/events/66191>.
- Putin, V. 2022a. "Address by the President of the Russian Federation." February 21. <http://en.kremlin.ru/events/president/news/67828>.
- Putin, V. 2022b. "Vladimir Putin Answered Media Questions." February 22. <http://en.kremlin.ru/events/president/news/67838>.
- Putin, V. 2022c. "Address by the President of the Russian Federation." February 24. <http://en.kremlin.ru/events/president/news/67843>.
- Reetz, N. 2022. "Belarus Is Complicit in Russia's War of Aggression." *EJIL Talk!*, *Blog of the European Journal of International Law*, March 1. <https://www.ejiltalk.org/belarus-is-complicit-in-russias-war-of-aggression/>.
- Reid, A. 2022. "Putin's War on History: The Thousand-Year Struggle over Ukraine." *Foreign Affairs* 101 (3): 54–63.
- RFE/RL. 2022. "Russian State Duma Votes to Quit European Court of Human Rights." *Radio Free Europe/Radio Liberty*, June 7. <https://www.rferl.org/a/russian-duma-votes-to-quit-european-court-human-rights/31887853.html>.
- Riepl, M. 2022. *Russian Contributions to International Humanitarian Law*. Baden-Baden, Germany: Nomos.
- Romanova, T. 2018. "Russia's Neorevisionist Challenge to the Liberal International Order." *The International Spectator* 53 (1): 77–81. <https://doi.org/10.1080/03932729.2018.1406761>.
- RT. 2002. "Kremlin Comments on Borders of New Territories." RT, October 3. <https://www.rt.com/russia/563959-kherson-zaporozhye-border-peksov/>.
- Russian Ministry of Foreign Affairs. 2022. "Foreign Ministry Statement on Recognizing the Independence of the Donetsk and Lugansk People's Republics." February 22. https://mid.ru/ru/foreign_policy/news/1799883/?lang=en&clear_cache=Y.
- Russian Ministry of Foreign Affairs. 2023. "Foreign Minister Sergey Lavrov's Remarks and Answers to Media Questions at the News Conference on the Performance of Russian Diplomacy in 2022, January 18." https://mid.ru/en/press_service/video/posledniye_dobavleniye/1848395/.
- Sakwa, R. 2017. *Russia against the Rest: The Post-Cold War Crisis of World Order*. Cambridge, UK: Cambridge University Press.
- Sloss, D. L., and L. Dickinson. 2022. "The Russia-Ukraine War and the Seeds of a New Liberal Plurilateral Order." *American Journal of International Law* 116 (4): 798–809. <https://doi.org/10.1017/ajil.2022.55>.
- TASS. 2022. "State Duma Passes Laws on Accepting DPR, LPR, Kherson and Zaporozhye Regions into Russia." TASS Russian News Agency, October 3. <https://tass.com/politics/1517183>.
- United Nations. 2022a. "Belarus, Democratic People's Republic of Korea, Russian Federation and Syrian Arab Republic: Draft Resolution." *UN Documents*, March 23. <https://www.securitycouncilreport.org/un-documents/document/s-2022-231-php>.
- United Nations. 2022b. "Ukraine: Security Council, 8970th Meeting." *UN Web Tv*, February 21. <https://media.un.org/en/asset/k1e/k1epflppn0>.
- von Gall, C. 2022. "Russian Approaches to International Humanitarian Law." *Völkerrechtsblog*, April 13. <https://voelkerrechtsblog.org/russias-approaches-to-international-humanitarian-law>.
- Weller, M. 2022. "Russia's Recognition of the 'Separatist Republics' in Ukraine Was Manifestly Unlawful." *EJIL Talk!*, *Blog of the European Journal of International Law*, March 9. <https://www.ejiltalk.org/russias-recognition-of-the-separatist-republics-in-ukraine-was-manifestly-unlawful/>.
- Wentker, A. 2022. "At War: When Do States Supporting Ukraine or Russia Become Parties to the Conflict and What Would That Mean?" *EJIL Talk!*, *Blog of the European Journal of International Law*, March 14. www.ejiltalk.org/at-war-when-do-states-supporting-ukraine-or-russia-become-parties-to-the-conflict-and-what-would-that-mean.
- Zorin, A. 2022. "Why Putin Needs Peter the Great." *Russia Matters*, June 23. <https://www.russiamatters.org/analysis/why-putin-needs-peter-the-great>.