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Russian Revisionism, Legal Discourse and the 'Rules Based' International Order

The claim that Russia has a revisionist approach to international order has resounded in Western capitals since Crimea was annexed in 2014 – an act which overturned the basic prohibition against states reverting to wars of territory or the use of force to expand their territorial sphere. In such official language revisionism is defined as a challenge to a 'rules-based' approach to the international system. Since norms and rules are ultimately vested in international law, which is contested but still the foundation of global order, this leads to important questions for scholarly analysis about contemporary Russian attitudes to international law. Is Russia seeking to change certain fundamental rules of global order, a form of legal revisionism?, and what role has Russia assigned to discourse on international law since 2014? These questions are part of a broader enquiry whether Russia can be defined as revisionist in ways beyond rule-breaking or rule-making.

This article contributes to an evolving debate on these questions by reviewing the initial post-2014 scholarly findings about the Russian use of legal discourse and examining further Russian official views on the role of rules and international law during 2014-19. It assesses the ways in which and purposes to which Russia has deployed such legal language more specifically in continued clashes around the regional conflicts in Ukraine and Syria. It seeks to clarify the limits of Russian revisionism as an intellectual category related to international law and rules. The focus of study is on the rules governing the use or the threat of use of force in these conflicts, since these lie at the apex of a hierarchy of legal constraint on state conduct and have generated the most significant body of justificatory discourse, of claims and counter-claims by Russia and other states.

A premise of our analysis is that principles of international law and discourse around them matters. These principles, as expressed in foundational documents such as the UN Charter, interpretations of customary law and international judicial opinion, *opinio juris*, are central to the language of diplomacy and the way states interact. They constrain and enable state action, even if occasionally and controversially powerful states break rules. They provide a normative framework which regulates interstate competition.

However, rules and power are interrelated and legal discourse can be deployed for strategic ends. Arguably Western concern over Russian efforts to justify its post-2014 rule-breaking ultimately rests on a belief that these Russian claims are part of an effort to reorder the balance of structural power in Europe, the Middle East and more widely. It is this wider geopolitical or realist interpretation of revisionism, focused on the outcome and intentions of rule-breaking, which sustains the use of the term among Western officials and practitioners. Analysis of such structural logic lies beyond the main concerns of this article. However, we show how the strategic use of legal discourse by Russia, has become a significant component of statecraft.

Given the focus on rules determining the use of force, the primary cases studied are Russian intervention in Ukraine (Crimea and eastern Ukraine) and (by invitation of the Syrian government) in Syria. These are comparable as the major cases of recent Russian regional power projection, although Russia continues to deny its direct use of force in eastern Ukraine while it openly praises its military accomplishments in Syria.

The Ukrainian case is where the central controversy over the use and abuse of legal discourse lies. However, it is problematic to generalise from this one case about Russian approaches to legal discourse and international order at large. Previous research suggests that Russia has developed a dual track in its legal argumentation and normative expectations since the early 1990s. First, towards the post-Soviet region (where sovereignty, which is at the core of the legal personality of states, is qualified by Russia and Moscow has been able to project significant normative influence). Secondly, towards the wider international system (where the principle of sovereignty is absolutized in Russian legal rhetoric, but Russia exerts rather limited normative influence despite its UN Security Council membership). Moscow presents itself as law-bound for purposes of legitimacy in the wider international system of states (MacFarlane, 2003; Allison 2013, pp. 120-138, 213-16; Deyermond, 2016; Flavier, pp. 9-11). The Syrian case allows us to test further this dual track hypothesis.

The significance of our analysis has risen with the weakening of the Western commitment to a rules-based international order by President Trump's 'America first' rhetoric. This has shifted American policy further along a spectrum from the power of rules towards the rule of power - arguably always a strong underlying impulse in American foreign policy. However, despite much political rhetoric, in the period we study in practice Trump's retreat from the constraint of rules has focused *de facto* on trade regulation, rather than the core rules governing state sovereignty and the use of force in the crisis around Ukraine, as well as Syria (despite undertaking limited missile strikes in this case).

The primary data used for Russian legal discourse around the conflicts in Ukraine and Syria during 2014-19 takes the form of statements and interviews of Russian leaders and senior officials, especially President Putin, Foreign Minister Lavrov and other diplomats, including those in Russia's United Nations mission. This is derived mainly from searches on official websites and transcripts and the Russian media. We do not assess the discourse of Russian legal scholars, since the few experts who retain influence in public debate have tended to mirror official rhetoric (Issaeva, 2017, pp. 107-12). This entrenches a process whereby even before 2014 the Russian state 'selected the sort of legal doers it found convenient for itself', while the rest, including many highly professional experts, 'were gradually removed beyond the bounds of the state's legal activities'. There remains a specific Russian legal community with influence, comprised of officials 'in the field of law', such as judges, parliament members and law enforcement officers (Lukyanova, 2015, p. 15). But even they accede to rather than formulate international legal propositions

Content analysis of Russian official discourse is revealing, but we cannot expect it in itself to express underlying state objectives or leadership beliefs. In assessing texts we seek to draw a line between normatively contestable if unconvincing (normative) claims and more palpable *Realpolitik* (security policy/strategic assertion). This line is clearly crossed when arguments beyond the domain of international law are advanced. In searching for meaning in language patterns, we seek to distinguish also Russian claims aimed at other states from political rhetoric intended principally for Russian domestic audiences.

The argument is developed in the following steps. It reviews the growing scholarly literature on Russian revisionism and how this relates to Russian compliance with international law post-2014. It analyses Russian official discourse on the role of rules and legal principles – querying whether Russia has abandoned its occasional rhetoric demanding 'new rules'. It proceeds to an analysis of the purposes of Russian legal argumentation over Ukraine since 2014 and Ukraine's own use of legal counter claims. Is this best understood as the strategic leveraging of legal language? Then we assess the contrasting case - Russia's effort to counteract the revisionist paradigm through its role in the Syria crisis, as a state stabilizer and upholder of order and territorial integrity. In conclusion, we comment on how Russian legal discourse may influence international order, its failure to shift the global script in defining rules, but its continued impact as a major power in complicating the international legal landscape.

Literature review

Scholarly references to Russian revisionism as a general category tend to favour or dispute the core claim of official Western statements that in some sense Russian foreign policy is regressing, even recidivist. In other words it has departed from some normative consensus about core principles and rules of international order and more specifically the post-Cold War European territorial settlement, in favour of reliance on force and coercive diplomacy. This claim is found, for example, in the 2015 National Military Strategy of the US Joint Chiefs of Staff identified Russia among 'revisionist states', which 'seek to revise key aspects of international order and to act in a way that threatens our security interests'.¹ Former US NATO deputy secretary general Alexander Vershbow expresses this charge concisely, in arguing that by annexing Crimea, waging an undeclared war in Eastern Ukraine and occupying regions of Georgia 'Putin's Russia has torn up the international rule book and firmly established itself as a revisionist power' (Vershbow 2018).

Different theoretical standpoints influence academic responses to this notion of revisionism. Assuming an unabashed neo-realist perspective, Mearsheimer refutes the assumption that Russia is at all regressive, rather it has just behaved the way great powers do when their core strategic interests are threatened - for Russia, this happened in Ukraine (Mearsheimer 2014). This position is refuted by liberal claims that regime survival and contesting democracy are the key rationale behind Russian foreign policy. This liberal perspective often coexists with the claim that if the only role Russia can conceive of is an imperial one, as a former empire 'then it is a revisionist threat to its neighbours' (Speck 2017, pp. 13-16).

Social constructivists, who emphasise the role of status, have argued on other lines. For Clunan (writing well before the Ukraine crisis) 'Russia is not a revisionist power seeking to challenge the United States and the West and create a non-Western international order'. Instead, 'Russia seeks to join the West but in a manner that allows its leaders to maintain national self-esteem in the eyes of Russian political elites, primarily through Russia's involvement in the management of global affairs' (Clunan 2009, p. 220). While the notion of Russia joining the West seems no longer persuasive for our period of study, a more recent constructivist study argues like Clunan that that 'accommodating Russia's status aspirations will not embolden it to pursue more radical revisionism'. It characterises Russia instead as a 'reactionary challenger', in the sense of seeking 'a return to the status quo ante'. Russia would like to see 'the return of multipolarity enshrined in a Great Power Concert', which would entrench Russia's position as one of the leading states in the international system – even as its relative power continues to decline' (Krickovic, 2018, pp. 5-6).

¹ National Military Strategy for 2015, as analysed by Naumov, 2015.

Constructivist claims that Russia is seeking an enhanced international role, although one associated with an earlier time period, share some ground with scholars who describe Russia's approach to international rules and law as 'neo-revisionism'. Sakwa adopts this term to argue that in Ukraine, Georgia and elsewhere, Russia has engaged in some selective revisionism, but is 'far from being a genuine revisionist power, dedicated to transforming the basis of world order'. For him Russia does not seek to change the principles of international law, but how it is practiced by Western states. Until 2012, he claims, Moscow's goal was to revise the system from within as a status quo power. After that, despite its neo-revisionism, Moscow still positioned itself as a 'norm-enforcer', rather than 'norm innovator', tilting against American 'hegemonism' and its practices. Sakwa claims Russia seeks to adhere to the existing UN-centred framework of international society 'while carving out space for its own normative world order at the regional level (Sakwa 2017, pp. 104, 128-31).

The Russian scholar Romanova applies the same neorevisionist label to Russian conduct. She argues that 'Russia seeks to transform the global order so it accommodates its views and concerns better, but does not attempt to replace it with a completely new set of rules'. Citing official Russian documents she claims that Russia justifies its actions with the existing order's normative frameworks, reproaches the West for inconsistency in observing the letter of international law and tries to become part of the governance structures with the same right to interpret core norms as the United States (Romanova, 2018, pp. 77-78, 81).

This neorevisionist argument - the image of Russia as a status quo power, drawn into qualified revisionist actions in reaction to the earlier Western practice of liberal interventionism and concerns about Moscow's agency in interpreting international law and norms - seems to depend on what emphasis is given to the crucial case of Crimea. Is a Russian effort to carve out space for a separate normative world at the regional level, as Sakwa suggests, a secondary issue in evaluating Russian attitudes to international order? Other scholars on the politics of international law emphasise instead the foundational challenge to post-war international order posed by Russian efforts to justify territorial annexation and enlargement through force. They argue that a core difference exists in terms of rules between the Ukraine crisis and earlier Russian-Western controversies - over Kosovo (1999), Iraq (2003) and Libya (2011) (Grant, 2015; Mälksoo, 2015, pp. 172-84).

For all their international controversy, the official debate round the latter was accompanied by a recognisable legal language and arguable justifications, often around developing if unconsolidated norms or efforts to stretch the bounds of customary international law. In contrast, much of the Russian justificatory discourse over Crimea moved quite beyond the legal domain, for example in citing 'historic justice' (Allison, 2014, pp. 1258-68; Grant,

2015). It is this, accompanied by some Russian calls for new rules, which has raised the question whether Russia has aimed to redefine core international legal principles, a form of legal revisionism. Taking into account the radical Russian quasi-legal rhetoric over Crimea, the notion has been proposed of the CIS region as a zone of legal exceptionalism in Russian thinking. This could be consistent then with Moscow's projection of itself as a stalwart defender of traditional rules on the use of force, 'old rules', around the Syrian conflict and in wider international relations (Allison, 2017, pp. 528-31, 536-40; Allison, 2013, pp. 120-49).

In fact preliminary research, as elaborated below, indicates that there has been no sustainable post-2014 Russian effort to develop new legal interpretations over Crimea. Moscow has not seriously tried to shift understandings of customary international law more generally, nor have other states been at all ready to accede to such changes (Allison, 2017, pp. 531-4, 542). This article seeks first to confirm such previous research on the Russian approach to rules, by examining the period 2016-19. This period was defined by the continuation of low-intensity conflict involving Russia (despite its denials) in eastern Ukraine, but also by the American presidency of Trump, whose concern about Russia's rule-breaking has been uncertain. Secondly, it seeks to substantiate and elaborate a previous research proposition that a major function of contemporary Russian legal discourse is to instrumentalize such normative language. This strategic effort is broadly captured by the concept of lawfare (Allison, 2017, 534-5; Kittrie, 2016).

Rule-making and revisionism in official Russian discourse

Russian legal discourse is expressed in the context of various officially endorsed narratives which predate the acute controversy since 2014. First, Moscow has long levelled charges that Western states are the ones revising and unravelling rules in the international system. Putin has repeatedly criticised Western interventions, citing Russia's traditional UN Security Charter-focused 'restrictionist' interpretation of the lawful use of force by states (despite Russia's forceful dismemberment of the Georgian state in 2008).² Secondly, and crucially, narrative Western influence it is claimed was augmented unjustly at Moscow's expense during a period of temporary Russian weakness in the 1990s. For Moscow, Western states and the 'hegemonic' order they have pursued in the post-Cold War era are revisionist and Russia in contrast, increasingly championing the 'non-West', is the fulcrum of international stability. Russia regards its determination to progressively restore aspects of the *status quo ante* (though not the full scope of Soviet influence) not as revisionist, but as recovering a

² Restrictionists, sometimes termed international legal positivists, claim that only unilateral and collective self-defence and Security Council enforcement action under Chapter VII of the UN Charter can form exceptions to the Charter's general prohibition on the use of force.

natural balance in Russian power relations in a concert of several major powers. It reaffirms Russia's rightful trajectory of power in the wider system of states, codified all along by Moscow's continued UN Security Council membership. It also reinvigorates Russia's underlying, preordained role in Europe - an expression of Russia's enduring great power status. In this way a core structural claim, bolstered by an identity narrative, underpins the dictum favoured in Moscow that Russia is a 'rule-maker rather than a rule-taker'.

So Foreign Minister Lavrov has scorned the 'discourse on "revisionism"' as based 'on the simple and even primitive logic that only Washington can set the tune in world affairs'. He rejects those 'who believe that Russia is doomed to drag behind, trying to catch up with the West and forced to bend to other players' rules'. This inference of 'Western rules' accompanies claims by Lavrov about the declining influence of the 'historical West', and Russia's shared approaches with 'most countries of the world, including our Chinese partners, other BRICS and SCO nations, and our friends in the EAEU, the CSTO, and the CIS' (Lavrov, 2016). This portrays Russia as a stabilising pole at the centre of a strong normative and political coalition of states.

This brings us to Russian discourse more specifically on rule-making. Has Russia aimed since 2014 at legal revisionism – that is an attempt to sustain a campaign against a 'Western' international legal order, beyond the standard Russian criticisms about the human rights project of liberal states and a longstanding controversy over unconsolidated norms on humanitarian intervention?.

In the aftermath of the Crimean annexation Putin implied that Russia was indeed ready to tolerate, or even sustain, significant disruption in the international legal order. He described the choice of living 'without any rules at all' as 'entirely possible' at the Valdai Club session in October 2014, which had taken the theme 'The World Order: New Rules or a Game without Rules'.³ However, no other major state would support such legal nihilism. Perhaps anticipating this, the formal Russian position since 2014 has been to cast itself as an indispensable 'rule-maker', rather than anarchic influence on international legal regulation or general disrupter. Putin has even been tempted to grandstand against the West under a legal banner, claiming 'if there is an area where Russia could be a leader – it is in asserting the norms of international law'.⁴

In this spirit Lavrov quoted the Russian philosopher Ivan Ilyin that 'a great power is the one which...introduces a creative and meaningful legal idea to the entire assembly of the nations, the entire "concert" of the peoples and

³ Meeting of the Valdai International Discussion Club, 24 Oct. 2014, available at <http://eng.news.kremlin.ru/news/23137>, accessed 5 Nov. 2014.

⁴ *Ibid.*

states'. In agreement, Lavrov portrayed Russia as a potential pioneer in crafting international law (Lavrov 2016). This kept the door open for some effort a legal revisionism. However, since 2014 Russia has failed to advance any such big legal idea to the international community since 2014. It has not even sustained an effort to revise customary international law to support the various weak arguments it offered to justify the annexation of Crimea (see below). Moscow retreated instead to core principles associated with legal positivism. So the Russian Foreign Policy concept approved in December 2016 enjoins Russia to uphold generally recognised rules of international law embodied in the UN Charter ⁵(Likhachev, 2017, pp. 157-9). In line with this Russian legal analysts reinforced a highly traditional focus on sovereignty, one which well precedes the Charter. In the words of one, 'it is necessary to establish order and restore the principles existing since the Peace of Westphalia', that 'international law should serve the interests of equal sovereign states'⁶

This resurgence of traditionalism does not fit an image of Russia as the standard-bearer of new rules. Indeed, when asked specifically at the end of 2017 whether Russia should develop new rules to regulate the emerging 'multipolar world order', Lavrov affirmed that 'this does not seem to me to be necessary'. In his view this multipolar order, in the form of the G-20, the BRICS states or Putin's Greater Eurasia project, would develop through 'natural processes'.⁷ However, this position was accompanied by uneasiness that the legal basis of a new multipolarity was slow in coming. The Chairman of the Russian Constitutional Court, Valery Zorkin, described law as playing an important role 'in building a unipolar world order', arguing that 'gradually, through the efforts of an enterprising and aggressive leader (the United States), a system of norms, rules of thumb and priorities emerges, which can hardly be called "the law"'. Therefore Zorkin has been at the forefront of efforts in Moscow in 2015 at judicial change (see below) to prevent the subordination of Russian national laws, let alone the Russian constitution, to international laws (Klishin, 2016).

Whatever the benefits Putin may have hoped from a Trump presidency, Russian rhetoric on the theme of Western manipulation of the rules continued unabated. If anything it took on more vigour, as Trump showed growing disdain with his America first rhetoric for constraints on American sovereignty. For example, in early 2019 the Russian Foreign Ministry accused Washington of 'steps to dismantle the system of international law

⁵ *Russian Foreign Policy Concept*, 1 December 2016, available at <http://www.mid.ru>, accessed 20 December 2016.

⁶ Lawyer and political analyst Oleg Denisov, <http://www.politanalitiki.ru>, available at <http://rethinkingrussia.ru>, 8 December 2016, accessed 5 March 2017.

⁷ Interview of Foreign Minister Sergei Lavrov, RT, 25 December 2017, available at 27 December 2017, <http://www.mid.ru>, accessed 5 January 2018.

and to force a certain rules-based order on the world, formulated by them in accordance with their immediate foreign policy needs'.⁸ Here rules-based is contrasted to the operation of law; by implication if Russia disavows such rules it rejects their binding quality. Later that year, just before a G20 summit, Putin lamented that during the Cold War 'there were at least some rules that all participants in international communication more or less adhered to or tried to follow', but 'now it seems there are no rules at all'.⁹ This reprised his rhetoric at Valdai almost five years previously. This cynical approach leaves the question what Russia has expected from its extensive discourse of legal argumentation since 2014.

Legal discourse over Crimea and lawfare

If we consider the specific legal justifications Russian leaders advanced over Crimea, (such as those related to self-defence, humanitarian emergency and self-determination) these have obviously been weak. Their shallow content has been examined exhaustively by international lawyers and scholars on the politics of international law (for example, Grant 2015, chs 1 & 2; German Law Journal 2013, pp. 350-712; Peters 2014; Oxford Public International Law 2016; Allison 2014, pp. 1258-68; Marxsen 2016, pp. 2-11; Dubinsky and Rutland, forthcoming). Some of these justifications represent a U-turn on self-determination and indeed on formal support for sovereignty. In addition, alongside arguable, if unpersuasive, claims Russian officials offered 'an admixture of quasi-legal language, ethnic nationalism, territorial irredentism, and simmering grievance' (Borgen 2016; Allison 2014, pp. 1282-9). Claims based on 'historical justice' clearly did not suggest an effort to revise general legal principles.¹⁰ They seemed to reflect a regional zone of exception outside the global system of international law or the operation of the UN Charter. This has been accompanied by a narrative on Russian civilization and within it the needs of Russian 'compatriots', loosely defined.¹¹

In the case of Ukraine Russia did not really try in legal terms to clearly establish state practice, nor suggest clear interpretations that other states could relate to. Rather 'it pursued a strategy of ambiguity, invoking concepts, but not fully spelling them out; claiming hypothetical justifications for actions that Russia denied to have carried out, only to admit them later on' (Marxsen 2016, pp. 13, 22). This was no resurgence of Westphalian principles or reinforcement of traditional sovereignty norms, although there were ways Russia might have attempted this

⁸ Russian Foreign Ministry statement, *Tass*, 1 February 2019.

⁹ Interview with *The Financial Times*, 27 June 2019, <http://en.kremlin.ru/events/president/news/60836>

¹⁰ Address by Putin 18 March 2014, available at <http://eng.news.kremlin.ru/transcripts/6889/print>, accessed 18 Oct. 2014; 9 May 2014, <http://www.eng.news.kremlin.ru/transcripts/7159/print>, accessed 18 Oct. 2014.

¹¹ See interview of Putin in Rossiya 1 TV film 'World Order', 20 December 2015, available at *BBC Monitoring* online, accessed 30 December 2015.

(Shevchenko, 2015). To the contrary it unsettled them. There was no sustained effort during 2014-19 to attract follower states with new claims, so in the way we have defined it this was not a campaign of legal revisionism.

So how then to interpret this extensive and continuing discursive campaign? It is posited here that Russia has engaged in a vigorous instrumentalization of legal and extra-legal discourse primarily for political and strategic ends around Ukraine. The diversity of the messaging is explained by the political need to devise claims to reach different audiences - CIS state elites, Western states, influential states in the 'non-West', and especially domestic elites and public opinion (see Borgen, 2015, pp. 271-7; Allison, 2017, pp. 531-4). Such strategic leveraging of law, can be formulated as the highest state to state expression of the concept of 'lawfare'.

Scholarship has shown this to be an increasingly effective instrument in the global security landscape (Kittrie 2016). Another way of viewing this is a determination by Russia to add legal influence to its other hard power techniques. It is a form of 'normative expansion', one study of Russian normative influence in Ukraine and Belarus claims, which 'consists in the imposition, by means of more or less explicit coercion, of a legal rule on third parties' (Flavier, 2015, p. 10). Lawfare then emphasises the coercion in this relationship.

Russia appears to engage in the full spectrum of actions covered by lawfare, which may be offensive or defensive in purpose. This includes the vigorous assertion of claims known to be untrue, intended in this case to reduce the diplomatic costs for Russia of the Crimean annexation and military engagement in Eastern Ukraine. Lawfare also describes the clearly offensive approach of the plausible deniability of the use of force in Crimea and eastern Ukraine. For example, in the case of the various militias in these zones, this use of legal discourse takes advantage of the requirement that a state has 'effective control' over non-state actors for that state to incur legal responsibility for the latter – a high threshold of proof (Gillich, 2015; Allison, 2017, pp. 527-8). All this generates copious legal rhetoric by Russia and Ukraine, both in the form of denial and assertion.

Indeed Russia has itself faced a variety of legal actions and rulings, many initiated by Ukraine, which might be defined as a defensive use of lawfare. These at the least help prevent Russian claims around the crisis from becoming embedded or accepted *de facto* by other states with further strategic consequences. These actions have used a wide variety of venues to rally international juridical opinion, *opinio juris*, against unlawful Russian conduct. In response Russia has sought to deflect external legal challenges by increasingly emphasising its state sovereignty that no international court can decide matters against Russia's sovereign will. In July 2015 the Russian Constitutional Court declared that the judgments of the European Court of Human Rights could not be implemented in Russia if they contradicted the Russian Constitution. In December that year the Russian Duma

passed a law allowing the Constitution Court to declare international court order unenforceable if they went against the constitution.

A particular site of legal discourse is the International Criminal Court (ICC). In November 2016 Russia decided to withdraw formally from the ICC (although it had never actually ratified the Rome Statute of the ICC and had been cooperating with it in the status of observer) after the court's lead prosecutor and an ICC report said that the simmering conflict in Ukraine should be considered as an international armed conflict between Russia and Ukraine, that Russian forces were fighting in Eastern Ukraine.¹² In January 2017 Ukraine filed a case against Russia at another high profile legal venue, the United Nations' highest court between states, the International Court of Justice. Moscow was accused of illegally annexing Crimea and 'intervening militarily in Ukraine, financing acts of terrorism, and violating the human rights of millions of Ukraine's citizens'.¹³ The court's rulings are final and binding, however it lacks any means of enforcement and Russia has refused to 'legitimise' its actions by arguing its case before the ICJ, simply stating its actions are consistent with international law and that the ICJ lacks jurisdiction in the case involved (Baggiani 2017)¹⁴.

The United Nations is an especially important discursive site for legal wrangling, as heated debates over Crimea in 2014 in the Security Council showed. While Russia could veto Security Council resolutions, in December 2018 the UN General Assembly adopted a (non-binding) Ukraine-initiated resolution (66 states in favour, 19 opposed and 72 abstentions), which for the first time in this forum urged Russia 'as the occupying power, to withdraw its military forces from Crimea and to end its temporary occupation of Ukraine's territory without delay'. It expressed non-recognition of the annexation of Crimea and grave concern about the progressive militarisation of the peninsula and adjacent marine areas.¹⁵ This followed a serious Russian-Ukrainian naval clash in the Kerch Straits, which highlights a new front also in the legal confrontation of the two sides.

Already in September 2016 Kiev had filed a case in before the Permanent Court of Arbitration under the UN Convention of the Law of the Sea, accusing Russia of usurping Ukraine's maritime rights, energy resources and

¹² *Wall Street Journal*, 16 November 2018; 'Russia ponders International Criminal Court pullout'; *BBC Monitoring* online, 17 November 2018, accessed 25 November 2018; *Moskovsky komsomolets*, 17 November 2018.

¹³ *The Washington Post*, 17 January 2017; 'State TV show talks Ukraine's lawsuit against Russia', available at *BBC Monitoring* online, 13 March 2017, accessed 25 March 2017.

¹⁴ 'Russia Rejects Ukraine's Case Over Separatist Support in UN Court', *RadioFreeEurope RadioLiberty*, 3 June 2019, <https://www.rferl.org/a/russia-rebuffs-ukraine-s-case-over-separatist-support-in-un-court/29979360.html>

¹⁵ *Ukrinform*, 18 December 2018, <https://www.ukrinform.net/rubric-polytics/2603191-un-general-assembly-adopts-resolution-on-crimea.html>

fisheries, and blocking access through the Kerch Strait. However, Russia made no concessions to Ukraine over these deprivations and in opening its new bridge across the Kerch Strait in summer 2018 physically reasserted its claim to sovereignty over Crimea and projected power further into a largely unregulated maritime legal environment. In claiming the Crimean port of Kerch with its adjoining waters, backed up by naval force, Russia has *de facto* if not *de jure* annexed the Kerch Straits. Russia claimed that the legal status of the enclosed Azov Sea and the Kerch Strait had been codified by a bilateral Russian-Ukrainian treaty signed in December 2003.¹⁶ But by annexing Crimea and changing borders Russia overturned the previously agreed basis for interpreting and applying this treaty, and indeed put itself in breach of the treaty (and others such as the 1997 interstate treaty between Moscow and Kiev). Kiev is litigating this case on the basis of the UN Convention on the Law of the Sea (UNCLOS). However, international lawyers have debated whether the naval clash should come under peacetime rules of the law of the sea or the law of naval warfare (if it is part of a continuing aggression by Russia against Ukraine), which applies to international armed conflicts (Kraska, 2018).

Russia seeks to close down the legal argumentation on this volatile issue and insists that it cannot be presented for international jurisdiction or arbitration, rather it is to be resolved on a bilateral basis under the 2003 treaty. Yet this approach lacks credibility while the foundations of Russian-Ukrainian legal relations and Ukrainian territorial integrity are in dispute. When the Treaty of Friendship and Cooperation between Russia and Ukraine (which had been ratified by Moscow in 1998 and expired in 2018) was terminated by Ukraine in 2019, it was described by Russian commentators as having been the legal basis for bilateral relations and also for Ukraine's lawsuits against Russia in international courts.¹⁷ Yet while the treaty was force Russia had blatantly infringed its key article on the mutual respect of the parties for each other's territorial integrity, over Crimea and eastern Ukraine, given especially that the treaty referred to the boundaries that existed in 1998. Asked about the termination of the treaty, Lavrov blithely noted that 'at a political level we continue to respect the territorial integrity of Ukraine within the boundaries that took shape after the referendum in Crimea and its reunification with the Russian Federation'.¹⁸ He refers to the integrity of a forcibly truncated Ukrainian state.

In the eastern portions of Ukraine's Donetsk and Luhansk provinces Russian official legal discourse has not raised the option of boundary changes. But since 2014 Ukraine has faced a full spectrum Russian use of lawfare to relativize and undermine its sovereignty here, even seeking to create new legal rights/obligations. In this vein

¹⁶ For the treaty text, see *Diplomaticheskii Vestnik*, 2004: 1.

¹⁷ *Kommersant*, 18 September 2018.

¹⁸ News conference, 15 January 2018; 16 January 2018, <http://www.mid.ru>

in April 2019 Putin issued a decree offering Russian citizenship *en masse* to residents of the ‘people’s republics’ in those Russian-supported breakaway regions (sometimes described in the West as ‘passportization’). The offer could even extend further into Ukraine: ‘Russia will give its passports to Russians in Ukraine as well as those Ukrainians who feel that their ties with Russia are unbreakable’, Putin declared (Socor, 2019). At the least this blurs the difference in Russian legal discourse between these Donbas regions and Crimea as regards citizenship and to some extent status. Ukraine condemned these Russian steps as ‘legally void’ and the EU threatened not to recognise Russian passport obtained through what it denounced as an illegal method.¹⁹ However, this certainly expands the scope of legal contestation around conflict in Ukraine, although passportization is not a novel dimension of Russian statecraft (Littlefield, 2009; Allison, 2013, pp. 153-5).

Russian defence of the status quo: the case of Syria

The Syrian conflict has offered Putin a high-profile opportunity to try to reassert its dominant legal image before-2014 as supporter of the hard shell of state sovereignty (despite the inconsistency of this with various Russian actions in the CIS region in these earlier years). Russia has accused the US and other Western states of legal violations in this conflict, cast in term of traditional UN-Charter focused legal principles, even as the furore over the annexation of Crimea persists.

This is part of an entrenched Russian narrative, by which Western states challenge the status quo and stability in the international order through efforts to transform the domestic order of states. This is done by inciting mass unrest for strategic ends. In the Middle Eastern context this narrative fuses the Arab Spring uprisings (with some qualification)²⁰ with the overthrow of Qaddafi in Libya in 2011 and the civil war in Syria (as well as the 2014 Maidan revolution in Ukraine). Putin is virulently opposed to states (or the UN Security Council) applying judgments about regime legitimacy to justify any external enforcement action. On this issue he seeks to bond with many illiberal states, including China where regime security is prized over human security as well as with various ex-colonial states. This is a central component of Russia’s critique of US ‘hegemonic’ policies. Putin

¹⁹ ‘Russia Begins Handing out Passports to Ukrainians from Conflict Zone’, *RadioFreeEurope Radio Liberty*, 14 June 2019.

²⁰ The Russian response to the Arab Spring uprisings varied, despite the cruder colour revolution depiction of them after 2012; Dannreuther 2015, pp. 79-93.

knows that the liberal notion of democratic legitimacy is not grounded in international law and has scorned ‘a kind of “supra-legal” legitimacy’, used to justify illegal intervention or ‘toppling inconvenient regimes’.²¹

As the civil uprising of spring 2011 in Syria escalated into civil war, Russia used its Security Council veto to shield the Syrian regime of Bashar al-Assad. Moscow proceeded to reject a series of Security Council draft resolutions, claiming these could prepare the ground for a Chapter 7 authorisation of force against Syria, even if their language remained muted over such intervention. At the same time Russia continued to arm the Syrian regime. Putin justified this as cooperation ‘with a legitimate government without violating any rules of international law’, since the UN had imposed no restrictions on weapons supplies to Syria.²²

A polarisation over the principle of sovereignty developed in September 2013 when the US threatened military strikes against Assad for the apparent use of chemical weapons by his regime against civilians. Putin dismissed any humanitarian justification for an attack bypassing the Security Council. He presented Russia as taking the high ground in upholding the use of force ‘only within the existing international order, international rules and international law’.²³ Writing to an American audience, he emphasised this meant that the use of force except in self-defence or under the UN Charter would be an act of aggression (Putin 2013).²⁴

Moscow’s ‘restrictionist’ legal position gained the tacit or explicit support of many influential states. The Russian-led Collective Security Treaty Organisation bloc on this occasion (unlike soon after over Crimea) worked in tandem with Russia on the legality of any intervention in Syria bypassing the Security Council.²⁵ Putin used a G20 meeting in St. Petersburg in early September 2013 to rally opposition to ‘the use of force against a sovereign state’. He listed a group of other G20 states firmly opposed to a military operation against Damascus - China, India, Indonesia, Argentina, Brazil, South Africa and Italy.²⁶ He revelled in fronting this

²¹ Interview of Putin for Rossiya 1 TV film ‘World order’, 20 December 2015, *BBC Monitoring* online, accessed 30 December 2015; Putin at Meeting of the Valdai International Discussion Club, 24 October 2014, available at <http://eng.news.kremlin.ru/news/23137>, accessed 5 November 2014.

²² Interview of Putin to Channel One and Associated Press, 3 Sept. 2013, available at <http://eng.news.kremlin.ru/news/5935>, accessed 4 Sept. 2013.

²³ Interview of Putin to Channel One and Associated Press. 3 Sept 2013. .

²⁴ For President Obama’s case for military action against Syria, see his Address to the Nation on Syria, 10 Sept. 2013, available at <http://www.npr.org/2013/09/10/221186456/transcript-president-obamas-address-to-the-nation-on-syria>, accessed 12 Sept. 2013. Obama does not offer specific legal justifications for force against the Syrian regime, though observes that chemical attacks on civilians were a violation of international (humanitarian) law.

²⁵ Meeting of CSTO in Sochi, Interfax-AVN military news agency, Moscow, 23 Sept. 2013, *BBC Summary of World Broadcasts*, 23 September 2013, available at <https://web.lexis-nexis.com/universe>, accessed 1 October 2013.

²⁶ Putin at press conference following G20 summit, 6 Sept. 2013, available at <http://en.kremlin.ru/events/president/news/19168>, accessed 4 Nov. 2016.

opposition bloc and in averting the US strike through enabling the agreement which was reached to destroy Syria's chemical weapons.

As the Syrian civil war ground on, however, Russia sought to play on this division between the world's major states to press home the claim that the use of US airpower to strike at ISIS position in Syria after September 2014 was similarly unlawful. The US claimed that forcible action in relation to ISIS, in areas in Syria beyond the control of the Syrian regime, can be lawfully undertaken by exercising the right of collective self-defence on behalf of Iraq, to the extent that this has been necessary to secure Iraqi borders from ISIS attacks. It is action at the request and with the consent of the Iraqi Government, which invoked Article 51 of the UN Charter. This position has some ambiguity, especially over the extent of possible military action in Syria, but has been defended by Western international lawyers (Weller 2014; Sliney 2015, pp. 19-22).

Russia asserts, however, that bombing sovereign states, whether or not 'conducted under the pretext of destroying terrorist groups', is illegal 'without the consent of the state in question or a direct sanction of the UN Security Council'.²⁷ Putin reaffirmed this position in September 2015 after a spectacular ISIS attack in Paris, condemning combat strikes by Australian and French as well as US air forces against ISIS on Syrian territory (France invoked the right of direct self-defence). Meanwhile he Putin accepted no prohibition to Russian military assistance to Syria 'provided exclusively to a legitimate government of one country or another, upon its consent or request'. In contrast, he claimed, military support to 'illegal structures runs counter to the principles of modern international law'.²⁸ These arguments sidestep the problem which arises if states openly disagree over who is the effective or legitimate government in a particular case.

Russia took advantage of the unclear position in international law about the possible response when an armed attack comes from a 'non-state actor' such as ISIS, based in a state that is 'unwilling or unable' to prevent the attack. Security Council Resolution 2249 in November 2015, which 'calls upon', states to take 'all necessary measures' in compliance with international law against terrorist groups in Syria and Iraq, went some way to provide legitimacy for the military actions taken against ISIS by giving the Council's imprimatur to such

²⁷ Foreign Minister Lavrov at annual news conference, 21 Jan. 2015, <http://www.mid.ru>, 22 Jan 2015, accessed 30 Jan. 2015.

²⁸ Interview of Putin after 70th session of the UN General Assembly, 29 September 2015, available at <http://en.kremlin.ru/events/president/news/50394>, accessed 20 October 2015; interview to US TV channel CBS and PBS, available at <http://en.kremlin.ru/events/president/news/50380>, accessed 29 Sept. 2015.

measures.²⁹ However, for all its creative ambiguity, the resolution does not authorise all necessary measures or provide any new stand-alone legal basis for the use of force against ISIS in Syria or Iraq (Scahrf 2016, pp. 1-54; Lang 2015, pp. 3-21). For its part Russia explicitly stated that Resolution 2249 ‘is a political appeal, rather than a change to the legal principles underlying the fight against terrorism’.³⁰

For Moscow the importance of asserting clear legal distinctions between Western and Russian military actions/aid to Syria intensified when the Russian air force became a direct and extensive participant in the civil war in the country from September 2015. Just before launching the Russian air campaign, Putin sought the high ground in the UN General Assembly by calling for a ‘broad international coalition against terrorism...on the basis of international law’, which in practice meant one aligned with Damascus.³¹ The legal basis Russia offered for this unprecedented post-Cold War Russian use of force outside the CIS region was intervention by invitation of the Syrian government. There is no rule prohibiting an intervention by invitation in a civil war if the invitation comes from the government, a point emphasised in this case since Assad’s regime also continued to retain control over the strategic core territory of the state (Visser 2016). Moscow has justified legally its support for the Assad regime, for ‘constitutional order’, on these grounds.

In April 2018, as in September 2013, Russia placed itself as the upholder of the UN Charter and norms of international law, when President Trump ordered airstrikes against military and civilian targets in Syria in response to an apparent regime use of chemical weapons.³² The US, UK and France, which conducted the strikes argued that there was no prospect of obtaining a mandate from the UN Security Council to confront chemical weapons used by Syria and claimed to fulfil ‘an international public order function of defending the credibility of the prohibition of the use of chemical weapons in general and enforcing Syria’s obligation in particular’ (Weller 2018).³³ However, in the event Russia gained little from opposing this rather weak legal

²⁹ Resolution 2249, adopted on 20 Nov. 2015, available at <http://www.un.org/en/sc/documents/resolutions/2015.shtml>, accessed 15 Aug. 2016. The resolution was adopted 15-0-0.

³⁰ Vitaly Churkin at Security Council 7565th meeting, 20 Nov. 2015, available at <http://www.un.org/en/sc/meetings/SIPV.7565records/2015.shtml>, accessed 20 August 2016.

³¹ Putin’s address to U.N. General Assembly, *Washington Post*, 28 September 2015, available at <https://www.washingtonpost.com/news/worldviews/wp/2015/09/28/read-putins-u-n-general-assembly-speech>, accessed 29 September 2015.

³² Statement by Putin, 14 April 2018, available at <http://en.kremlin.ru/events/president/news/57257>, accessed 14 April 2018.

³³ However, the UK Government presented a detailed legal position based on the grounds of ‘overwhelming humanitarian necessity’, ‘Syria action – UK government legal position’, available at <https://www.gov.uk/government/publications/syria-action-uk-government-legal-position>, accessed 20 April 2018.

claim. Moscow's draft Security Council resolution seeking to condemn the attack as an act of aggression attracted only three votes in its favour and eight states voted positively against (Chan, 2018).

From another perspective, however, the Syrian conflict has graphically illustrated Russian resistance to the notion of humans as subjects of international law (despite its abusive use of humanitarian claims over Crimea). Moscow's rigid focus on Syrian sovereignty, has accompanied its dismissal of egregious violations of international humanitarian law (IHL) by Damascus (including evidence of regime complicity in the use of chemical arms). Indeed Russia contributed to those violations through its own bombing campaign in Aleppo and other Syrian regions inhabited by civilians. Russian officials have criticised 'the politicization of human rights and humanitarian topics' in Syria, over 'alleged' civilian deaths as a result of strikes by Russian forces.³⁴

After Moscow had repeatedly blocked efforts in the Security Council to prosecute alleged war crimes in Syria, at the end of 2016 the UN General Assembly finally voted, over strenuous objections from Russia and Syria, to establish a panel to prepare cases involving war crimes and human rights abuses in Syria. The resolution was adopted by 105 to 15, with 52 abstentions.³⁵ This offers some measure of the acceptability to the international community at large of Russia's attempt to resist developing norms on state responsibility for human rights, as well as to ignore outright violations of IHL and dispute the factual record in the Syrian conflict, on the grounds of defence of state sovereignty.

However, since Russian officials have made no credible attempt in their discourse to revise the interpretation of IHL over Syria, but rather have cynically tolerated or ruthlessly engaged in abuses in this field of law, the Russian stance is not legally revisionist. In the case of the April 2018 strikes Russia also resisted creative and controversial new interpretations for the limited use of force, which were not embedded in customary international law. Despite these points, in a broader sense Russian legal discourse over the Syrian conflict reflects Putin's wish to revert to an earlier era of clear dominance of state sovereignty over international justice, an underlying theme in the Russian approach to international order (MacFarlane, 2003). Ironically, President Trump's indifference to the post-Cold War liberal human rights project at large (despite his concerns over the small-scale use of chemical munitions in Syria) has made it easier for Putin to envisage such a world.

³⁴ Safronkov at UN Security Council 7560th meeting, 16 Nov. 2015, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7560, accessed 5 November 2016.

³⁵ *RadioFreeEurope Radio Liberty*, <http://www.rferl.org/a-un-creates-body-prepare-syria-war-crimes-cases-over-russian-objections/28190272.html>.

Conclusion

This study considers the balance between revisionist and status quo policies in Russian diplomacy during 2014-19, as expressed in its international legal discourse around the conflicts in Ukraine and Syria, especially in relations to the use of force. It examines evidence that Russia is seeking legal revisionism, a normative aspiration. This is done by assessing whether Russia expects its justifications and claims to gain wider traction among states and judicial opinion, perhaps even encouraging modification in legal understandings. We confirm that there is no evidence of that this has been happening in the case of Russia's contentious and radical claims over Ukraine or that Russia has even sustained a serious effort for such legal revisionism. In contrast, in the Syrian case Russian discourse does not raise a similar question about legal revisionism. Here Moscow has presented itself as a stalwart supporter of traditional sovereignty norms, a staunch advocate of the status quo in defending the incumbent regime. This variance in normative language substantiates previous research which has argued that for Moscow most of the CIS region forms a zone of legal exceptionalism. In this zone Russia has long asserted specific entitlements as an adjacent power, which just took more extreme forms and justifications in 2014. In the wider international system, such as the Middle East, on the other hand, Moscow falls back on traditional UN Charter principles and deploys them to constrain Western power.

These findings on legal revisionism, show that Russia quite soon accepted the reality that it could not shift global interpretations of core legal principles in the case of Ukraine, but realised that in focusing on such principles it had a stronger case to argue over Syria. This does not mean that the Russian approach to international order since 2014 lacks a wider revisionist impulse, as implied by the qualified term of 'neo-revisionism', which portrays Russia as just pushing back against US-led interventionist and hegemonic policies. First, Russia has an international order narrative about the inevitable diffusion of power from the West to other states, fronted by Russia and China, and this is accompanied by clear expectations of major change in 'who makes the rules'. Secondly, it is difficult to dispute that various challenging Russian claims around Ukraine have been intended to have a wider resonance on the issue of how far strong sovereign states should be rule-bound.

On the latter point Putin may have hoped to extract concessions from President Trump, out of Trump's disdain for rules and constraints on the exercise of power. Yet the US State Department has very explicitly confirmed that America will 'not recognise Russia's "referendum" of March 16 2014 [on Crimea], nor its attempted

annexation of Crimea and continued violation of international law'.³⁶ After Trump's first summit meeting with Putin in July 2018, a formal US policy was announced reaffirming 'its refusal to recognise the Kremlin's claims of sovereignty over territory seized by force in contravention of international law' (Najarian 2018).

This article argues that, lacking a sustained effort to change international legal principles and attract follower states, Russian legal discourse since 2014 has primarily been instrumental, a strategic assertion of norms and normative language, which is an important aspect of the concept of lawfare. We reveal how lawfare, both offensive and defensive, continued unabated as part of the conflictual Russian-Ukrainian relationship. This dimension of Russian policy has to be taken into account in any wider assessment of contemporary Russian statecraft.

Although it is beyond the scope of this study, the research raises the important issue whether this behaviour expresses Russia's assertion of much increased regional entitlements in the European security order. Russian legal discourse then becomes a means to question established security policy principles, where Moscow seeks disruption not stabilization of the status quo – a structural form of revisionism. The desired outcome for Europe by this logic would be a reversion back to spheres of influence, which would demarcate the scope of security alignments, memberships of core institutions as well as the respective legal zones (the CIS region at least falling under Russian patronage). Already in 2014 Putin envisaged this could leave a bare, pragmatic minimum of rules to avoid dangerous conflict: 'a clear system of mutual commitments and agreements...and mechanisms for managing and resolving crisis situations'.³⁷

Such a scenario has fuelled Western concerns that Moscow seeks revision of the post-1991 territorial settlement and even the long-standing principles of the 1975 CSCE conference Helsinki Final Act, which codified respect for borders, territorial integrity and means to constrain military actions. A revision of the Helsinki Final Act, centred on Ukraine, Russian experts have proposed optimistically, could modify 'the previously understood framework and "rules of the game"' (Petrovsky, 2018, p. 19). However, any such agreement, which seems improbable, would be the expression of power arrangements rather than normative alignment.

³⁶ See <http://www.reuters.com/article/us-usa-trump-russia-ukraine-idUSBN15UOUO>, accessed 16 February 2017; 'U.S denounces Russia's Crimea Annexation on Referendum Anniversary', *RadioFreeEurope Radio Liberty*, 16 March 2017,

³⁷ Meeting of the Valdai International Discussion Club, 24 October 2014, available at <http://eng.news.kremlin.ru/news/23137>, accessed 5 November 2014.

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