

Russia's annexation of Crimea and intervention in eastern Ukraine are viewed by Western governments as a flagrant affront to the ideal of a rule-governed international order. This order depends fundamentally on rules governing the use of force. The wider clash of legal and normative positions over Russia's neighbourhood between Moscow and Western states has now become acute. It is polarised by Russia's breach in the post-Cold War territorial settlement, its violation of the basic prohibition against states reverting to wars of territory or the use of force to expand their territorial sphere. This prohibition is the bedrock of the architecture of the modern international law system, which has enabled a more developed system of rules to develop.

Moscow has justified this basic breach of what might be termed 'macro-legal' order by claims which lie outside the conceptual domain of international law of recent decades. In the wider frame Russia appears increasingly ready to reject outright the Western-led international human rights project which has gradually qualified post-Cold War exclusivist approaches to state sovereignty.¹ The unexpected election of President Trump has clearly reinforced this Russian challenge to liberal international order. Russian leaders have appeared hopeful since late 2016 that various justifications they have offered for their use of force in Ukraine and further afield may be tolerated by a Trump administration intent on a new transactional American-Russian relationship and even ready to concede Russian primacy over its CIS neighbouring states.

This article analyzes Russia's use of international legal arguments since 2014 and explores how they relate to the exercise of power. We examine two alternative interpretations. The first is *legal revisionism*. Is Russian legal rhetoric around the use of force and its assertion of broad entitlements to intervene in its neighbourhood a recognition of the international legal system, but an attempt to gain acceptance for a profoundly unsettling revisionist view of international law? If so, is this effort confined to the CIS region or aimed at rules for the wider international community? In recent years Russia has created some confusion in the wider international community of states through various claims in the grey areas of customary international law, through an unpersuasive interpretation of self-determination, including insistent reference to the flawed analogy of international recognition of Kosovo. However, since 2014 Russia has expanded on and augmented these with much more radical claims over its intervention in Ukraine.

The second interpretation is *realpolitik*. Do Russian legal arguments around the Ukraine crisis, just demonstrate law at the service of power? Is Russia moving into a realm beyond the operation of a modern rule-governed order? If so Russia's new claims over the use of force could express a greater determination to integrate legal language and strategy, with the overall goal of reconstituting the Post-Cold War European territorial settlement.

Given these questions, it appears paradoxical that Russia has long charged Western states themselves with being revisionist, of unravelling rules in the international system. Putin's criticism of different Western interventions certainly has some basis, viewed from Russia's narrow sovereignty and UN Security Charter focused 'restrictionist' interpretation of the lawful use of force by states, although this legal stance was contradicted by Russia's forceful dismemberment of the Georgian state in 2008.² Yet the acrimonious exchanges over conflicts from Kosovo in 1999 to Libya in 2011, were 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. The Western states themselves were divided at times, therefore, such as over American claims on the pre-emptive use of force in the early 2000s.

Earlier Russian-Western differences over the international legal order since President Yeltsin's leadership could reasonably be explained in terms of growing normative tensions, as well as the entitlements of UN Security Council membership. In the language of the English School of thinking on International Relations, Western 'solidarist' beliefs, sought a thicker, more human-focused, co-operative international society. This jarred with Russia's increasingly 'pluralist' insistence on a thinly regulated international society. Russia has linked international legitimacy to conduct which complies with a legally-structured constitutional order at the global level, as expressed through the UN Charter system. So the legitimacy of the use of force was about 'who gets to make the rules' and who defines the normative agenda. For Russia this required a focus on procedural rules, rather than basic values, which ultimately should lead to the UN Security Council.³ However, Moscow was also sensitive to changing structural power in the international system. Russia viewed respect for its veto in the Security Council as not only proper procedure, but it also as a reflection and measure of Russian international status and leverage, of its institutional power.

President Putin has been fully aware that the notion of a principled international order is contested. Many states in the West seek reassurance for a rule-governed order, while acknowledging 'legacy issues' of former US-led interventions. In addition Russia developed a forceful and crafted narrative opposing regime change to appeal to many post-colonial governments and to authoritarian leaderships preoccupied by regime security. Since the late 2000s and increasingly during Putin's third presidential term since 2012, Russia has sought support from this 'non-West' group of states, in seeking greater influence on rule-setting and in challenging the presumption that Washington has any right to present itself as the primary custodian of the international order.

Yet Russian intervention in Ukraine stands apart, compared to other fluid and contentious post-Cold War debates over the use of force. The closest analogy to Russian actions in 2014, since the UN Charter was approved, is the Iraqi invasion and attempted annexation of Kuwait in 1990. The prohibition against absorbing the territory of a neighbour state underpins contemporary states' sense of collective security and the regulation of power, regardless of their location in the international system.

In analysing Russian legal positions this article primarily relies largely on the discourse of President Putin, on foreign ministry statements, as well as evidence of how other states have reacted to Russian legal claims. This source selection reflects the hierarchical structure of the Russian political system, focused on the presidency.⁴ In recent years the circle of influence on key international law-related decisions in Russian foreign policy has probably extended no further than certain members of the Russian Security Council and key Putin loyalists in the presidential administration and other backchannels. However, we also refer to broad consensual positions signalled in high profile documents, such as the Russian Foreign Policy Concept of November 2016.⁵

This article initially exposes the inconsistency between Russia's traditional perspective on international order and law and its claims around intervention in Ukraine. Can this be explained by Russia's greatly enhanced sense of regional entitlements and a revisionist view of international legal order? We examine how other states have received these claims and how seriously Moscow has continued to pursue them. We then investigate the alternative explanation of Russian claims - the pursuit of an increasingly unrestrained *realpolitik*, merging law and strategy. This may be the default interpretation of seasoned Western diplomats, geopolitically minded journalists or realist IR scholars.⁶ But it is not self-evident that Russia would risk undermining the benefits of acting within a wider framework of regulated co-existence between states. It is necessary to consider what the compelling security policy logic for Russia may be in using legal discourse for *realpolitik* ends around Ukraine. We contrast this with Russia's favoured narrative on the illegitimacy of imposed regime

change. This forms the principal link between Moscow's rationale for its actions in Ukraine and its traditional statist view of international order. In conclusion, we summarise contradictions in the current Russian approach to international legal order and assess the worrying implications for the post-Cold War territorial settlement in Europe.

Russia traditional perspectives on the international legal order

In the post-Cold War period, Russia has championed a conservative approach to international legal order. The early 1990s was a partial exception, when universalist elements of Gorbachev's New Thinking on foreign policy spilled over to influence Yeltsin's leadership. But an important qualification should be borne in mind. Russia's traditional focus on territorial sovereignty, the 'statist' or 'restrictionist' core of its stance in the wider international system, has long been at odds with its foreign policy practice in the CIS region. Russian conduct towards its CIS neighbours has reflected a belief in hierarchy rather than sovereign equality. The novelty since 2014 is the extreme form in which this is expressed and the way it has been accompanied by claims which flatly contradict the statist principles still formally espoused by Russian diplomats.

An preliminary question is whether Russian foreign policy expresses a distinct international legal consciousness? This draws us back to Putin's discourse. The practice of international law is likely to be very significantly influenced by the individual consciousness and psychology of the national leader in such a highly centralized authoritarian state.⁷ This points to the strategic culture of the security services framing Putin's earlier career, which in various ways has been revived, especially in his third presidential term.⁸ However, in a more nuanced way constructivist scholars would argue that Putin also internalizes and reflects aspects of his wider social milieu, of the cultural and historical consciousness in Russia, including its Soviet heritage.⁹

In this respect a key element of continuity is how Russia's conception of international order has strongly reflected the priority of preserving its domestic structure of power. Since Tsarist years Russia has insisted on the primacy of order over justice domestically. For Russia the 'privileging of order over justice at the international level is in many respects an external projection of this internal preoccupation'.¹⁰ The emphasis in Russian political culture on domestic order, hierarchy and control has been reinforced since the mid-2000s, especially since 2012, as part of a new authoritarian consolidation. At the international level Russian leaders favour the goal of co-existence, rather than the goal of substantive cooperation in an international society favoured by Western liberal states. Moscow considers the latter risks bringing its domestic political structures under undesirable and intrusive scrutiny.¹¹ The Western-led human rights project is viewed askance and denigrated as cover for strategic designs.

These perspectives and aspects of Russian political culture have helped sustain a longstanding 'statist' tradition in Russian international legal scholarship; state sovereignty has been viewed as the foundational principle of international law in an idealized Westphalian system, whereby each state remains to the extent possible master in its own house.¹² A political spin-off, linking this to domestic controls was the Russian notion of 'sovereign democracy' in the mid-2000.¹³ But sovereignty was viewed not just as autonomy, but as a capacity. In foreign policy terms this placed Russia alongside such powerful states as China and India, which were deemed to possess 'real sovereignty'.¹⁴ Not surprisingly, despite Putin's recent call for 'new rules' (see below), Moscow would fervently resist any effort to displace the sovereignty principle through a form of 'new international law' by which the domestic practices of states should conform with emergent global norms of conduct.

For Moscow the liberal agenda of Western states, especially as it influences norms constraining the use of force, can be kept at bay through the levelling effect of the of the UN Charter system. This enshrined the central role of the USSR (now Russia), in the global power arrangements of 1945. Russian leaders constantly hark back to the institutional influence they are entitled to wield in the UNSC, especially its veto rights in codifying rules. This underlies Putin's claim that the 'geopolitical struggle...should be pursued on the basis of civilized rules' which must be 'clear, transparent, uniformly interpreted and controlled'.¹⁵ This interpretation, Moscow insists, essentially lies with the Security Council and efforts to bypass it, especially on matters related to international peace and security, are branded as heinous.¹⁶ Attempts to undermine the legitimacy of the UN, Putin warned in September 2015 lead to 'a collapse of the entire architecture of international organisations, and then indeed there would be no other rules left but the rule of force'.¹⁷

Moscow's desire for a restricted relationship of co-existence between states pre-2014 was expressed also in a preference to limit and control the evolution of customary international law. This surely reflected a realisation that customary international rules have been shaped primarily by the dominant states in the international system. This means the US and its allies in modern times. Russia is conscious that the gradual accretion of state practice and of justifications for actions taken, which encourage change in customary rules, can occur below the radar of Russia's Security Council membership. In its vision of a World Legal Order, therefore, Russia harks back to traditional UN principles, such as the basic principles of the UN General Assembly declaration of 24 October 1970.¹⁸

Russia accepts some constraints on sovereignty, that 'sovereignty cannot be used as a pretext for gross violations of human rights, ethnic cleansing, genocide, military crimes'. But it is adamant that the third pillar of the emerging Responsibility to Protect norm (collective action by the international community and potential use of force) depends on Security Council authorisation, as specified in the 2005 UN World Summit Outcome Document and a brief reference of the Security Council in April 2006: 'this issue is closed; the rules are agreed. It is consensus resolution'.¹⁹ Moreover, it is states that carry the primary responsibility for protecting their populations and they should prioritise political means to do so. The Russian Foreign Ministry rejects so-called 'liberal interpretations' and the idea that the rationale for military intervention set out in R2P has taken the form of 'conventional rules or ...a norm of customary law in this area'.²⁰

In its approach to R2P Russia has tried to retain both decision-making sovereignty (autonomy in the wider international setting) and territorial sovereignty (fearing other powers encroaching on its neighbourhood).²¹ Moscow seems instinctively to view R2P as a vehicle to advance a liberal, Western normative agenda, if not a Trojan Horse for Western powers' strategic designs. The 2016 Foreign Policy Concept notes the Russia intends to prevent military intervention or other forms of outside interference contrary to international law 'under the pretext of implementing' the R2P concept.²² This perspective remains despite Moscow's abusive references to R2P over its war with Georgia in 2008 and its skewed humanitarian narrative over Crimea and the crisis in eastern Ukraine since 2014. If Russia seeks 'new rules' they are certainly not ones to further empower R2P.

The Russian legal narrative over Crimea/Ukraine

The Russian legal case supporting its annexation of Crimea as well, as the controversy over Russia's continuing 'deniable intervention' in eastern Ukraine, have been exhaustively deconstructed by leading international lawyers, as well as specialists on the politics of international law. A systematic review of this copious scholarship and expertise confirms that Russian claims offer no credible

justification for the actions taken and it is not our purpose to add to this literature.²³ This juridical view is reflected in the reaction of Western states and international organizations, as well as many other states, which in the deliberate lexicon of diplomacy have defined Russian actions in Ukraine as aggression. The common Western stance was thrown in some doubt with the election of President Trump. But his administration's new ambassador to the United Nations, already in her first public remarks before the Security Council in February 2017, bluntly described Eastern Ukraine as 'suffering because of Russia's aggressive action'. She noted that the US 'continues to condemn and call for an immediate end to the Russian occupation of Crimea'. This language was soon reinforced by Trump in his characteristic unvarnished style on Twitter: 'Crimea was TAKEN by Russia during the Obama administration'.²⁴ Therefore *opinio juris* and Western state response are at one on the issue.

For context a few comments on Russian justifications over Crimea can be offered. Putin's central claim is very consistent. He has repeatedly referred to the right of self-determination, the 'will of the people', and used the analogy of Kosovo to bolster this claim (although Russia still does not recognise Kosovan statehood). This extrapolates earlier claims to justify the Russian recognition of the independence of South Ossetia and Abkhazia. However, according to the contested notion of remedial secession, which is the apparent point of reference, any such right to self-determination is only triggered by clear and compelling evidence of systematic oppression. The legacy of oppression, ethnic cleansing and of crimes against humanity – absent in Crimea – is a critical distinction between the case of Crimea and other exceptional cases which resulted in statehood – Kosovo, Timor-Leste and South Sudan. Moreover, the latter cases did not amount to annexation.²⁵ Putin also made much of the unacceptability of externally prompted regime change. Yet most other states were not convinced of Yanukovich's continued legitimacy as the Ukrainian head of state. Russia's threat and use of force anyway eclipsed concerns about the issue of recognition or precisely when Yanukovich ceased to represent the Ukrainian state, as we discuss further below.

Russia has advanced legal justifications over Crimea even when these are obviously weak (such as those related to self-defence, humanitarian emergency and self-determination) and used these to argue it is committed to the precepts of international law. This rhetorical campaign is unsurprising. It is puzzling and notable, however, that alongside arguable, if unpersuasive, claims we find 'an admixture of quasi-legal language, ethnic nationalism, territorial irredentism, and simmering grievance'.²⁶ Claims on Crimea based on 'historical justice' have been especially threatening to the European territorial order.²⁷ This has left anxiety and uncertainty over Russian intentions.

The views of Russian professional lawyers and legal specialists offer little enlightenment. They adhere with remarkable closeness to Moscow's official positions, often word-for-word. This is obvious in an appeal to the International Law Association by the President of the Russian Association of International Law, Professor Anatoly Kapustin in June 2014. It is also true of a conference in April 2014 on the international law aspects of Crimea's integration into Russia of the same Association together with the Russian Academy of Diplomacy.²⁸ The conference participants, in synchrony with Putin, referred to the restoration of Russia's 'historic rights' in Crimea, rather than just Crimean claims based on self-determination. They glossed over the option of internal self-determination for Crimea, claiming this would be impossible in 'pro-fascist' Ukraine. So they were quite ready to move beyond legal argumentation and it is difficult to discern the distinct traditional 'statist' approach which previously typified Russian legal scholarship. As in the Soviet past, truth is vested simply in the government (if not now the Party). Since 2014 a rupture seems to have occurred between international lawyers in Russia and other states; the former seem unable to engage in any substantive legal discussion of the claims being asserted.²⁹

A central aspect of Russia's legal narrative over Ukraine and the current disruption to the international legal order is the unusual degree of contestation over facts, indeed assertion of unfounded facts, over actions which threaten or violate state sovereignty and territorial integrity. Russia has used a policy of 'plausible deniability' to obscure conditions on the ground and divide the responses of other states. So in December 2013, when asked if Russia even hypothetically might defend the interests of Russian-speakers or citizens in Crimea by sending Russian troops to Ukraine, Putin dismissed the notion. He branded the idea 'that we intend to wave a sword and send there troops', as 'total nonsense and there...could not be anything like this'.³⁰ Putin then insisted that no Russian military personnel were involved in the takeover of Crimea in February-March 2014. Only after months of blunt denials did he admit that Russian armed forces were used to 'block Ukrainian units stationed in Crimea'.³¹ But despite multiple reports by journalists on the ground as well as credible visual images and some captured Russian soldiers he continued to claim 'outright and unequivocally that there are no Russian troops in Ukraine' (meaning beyond Crimea).³² Moscow admitted only that there have been 'Russian volunteers....fighting on both sides'.³³

The deliberate or inadvertent misuse of facts in claims to justify the use of force is hardly new (as with assertions over Iraq's military nuclear capability and delivery systems before the US-led invasion of Iraq in 2003). But in the modern era Russia has been especially effective in exploiting the strict standards of attribution in international law over non-state actors. This was used to deny responsibility for the actions of the unidentified militias in Crimea in spring 2014 and of various forces in Eastern Ukraine thereafter. States are required to have 'effective control' – a high threshold – of non-state actors in order for that state to incur legal responsibility.³⁴ This and Russia's readiness to use the slightest casualties among its armed personnel as a *casus belli* for a major war – on the grounds of self-defence, as when a few Russian peacekeepers died at the start of the Russian-Georgian conflict in 2008 – paralyzed effective international or Ukrainian responses during the Russian takeover of Crimea.³⁵

The way in which 'little green men' in Crimea (the Russian special forces deployed with no identification) could be represented as local 'self-defence' militias or at most Russian 'volunteers', continues to unnerve the Baltic States. In the European theatre Russia seems ready to calculatedly exploit this state of legal ambiguity to assert the right of self-defence, beyond the dissimulation over Crimea in spring 2014. So, Russia has inserted at times significant forces into Eastern Ukraine, yet flatly denied any such deployments, such as in the battle around Debaltseve in January-February 2015. Yet in August 2016 Putin claimed that even a minor skirmish in Crimea, supposedly with Ukrainian special forces leaving one Russian intelligence officer and a soldier dead, warranted 'serious' measures in retribution and he placed Russian forces on combat alert. His rhetoric fell just short of claiming a *casus belli* and led to an emergency UN Security Council meeting.³⁶

The question remains whether Putin, through his claims over Crimea/Ukraine, has been mounting a sustained challenge to a 'Western' international legal order, beyond his standard criticisms about the human rights project of liberal states. Is he seeking to reinterpret certain basic principles of international law, or threatening to step outside the rule-governed order as currently constituted if revisions on Russian terms are not accepted?. Putin described the scenario 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'.³⁷ Some months previously the deputy secretary of the Russian National Security Council expressly called for a global conference to rewrite international law, incorporating the interests of all major world powers, since 'there are no agreed rules and the world may become an increasingly unruly place'.³⁸

Russia and rules for the CIS regional order

This appeal for new rules is grandiose and universalist. However, since 1991 Russia appeared to have conceived of two distinct domains. One is the global system of international law, underwritten by the legal and institutional authority of the Security Council. Another is Russia's view of legal and normative entitlements in its particular regional zone of influence. How Russia expresses these regional entitlements has varied since the end of the Cold War. However, since 2014 one notion has become far more influential: the civilizationist image of a 'Russian world', centred in the post-Soviet region. In this vein, Putin highlights the risks of violent conflict 'when we talk about nations located at the intersections of major states' geopolitical interests, or on the border of cultural, historical, and economic civilizational continents'.³⁹ He insists, therefore, that in Ukraine 'we cannot abandon those people who live in the southeast of the country, not just Russians but also the Russian-speaking population that aligns itself with Russia'.⁴⁰ This broad commitment to support ethnic Russians, Russian-speakers, Russian citizens (of however recent citizenship) or loosely Russian compatriots – in other words open-ended extra-territorial assistance by the Russian state for its 'kindred peoples' – provides fertile ground for legal 'breakout'.

How might we conceive of such regional level legal claims? An intriguing approach, developed as a critique of efforts to find universal norms, claims that there exist competing conceptions of 'world public order'. An overarching unified global system, it is suggested, co-exists with regional public orders. This includes a Russian regional order encompassing much of post-Soviet Eurasia. At this regional level, it is argued, the normative content of international law is determined by the dominant state in this sub-system. Russia seeks to shape and define prevailing norms in its regional order, but within this order 'the indeterminacy of international law is used to provide leeway for hegemonic action'.⁴¹ As the dominant state Russia might sometimes try to use international law to regulate and stabilize its dominance. However, in some instances, it is argued, powerful states 'faced with the hurdles of equality and stability that international law erects' tend to withdraw from it. Such dominant states 'oscillate' then between instrumentalizing and withdrawing from international law.⁴² Russia seems to exercise both approaches in the crisis over Ukraine.

This view of power and norms at the regional level could account for persistent normative friction between Russia (with its self-prescribed regional order) and Western states, especially along the borderlands of a more legalistic and institution-oriented EU regional order (such as Ukraine).⁴³ Indeed it could be argued that, with Russia's promotion of the Eurasian Economic Union (its basic treaty was signed in May 2014 and the Union began to operate in January 2015) the tendency and objective over recent years has been 'towards regionalization of international law, to create a parallel geopolitical and economic world to the EU and the West in Eurasia'.⁴⁴

Russia's instrumentalization of legal discourse at the regional is apparent before 2014, especially during the 2008 Russia-Georgia war.⁴⁵ In such a Russia-centred regional public order, law is not simply at the service of power (unrestrained *realpolitik*). Russian actions in this order could depend on how far it hopes to transform perceptions of its dominance over time into legitimate influence, hence *authority*, and how it values its wider reputation and relations in the international system. Ultimately, however, much depends on how Russia defines its interests in this zone and in recent years especially how it has pursued its declarations to protect those inhabitants of the 'Russian world' beyond Russian borders. Since at least the Russia-Georgia war of 2008, these declarations, and associated definitions of self-determination and sovereignty, have been particularly divisive, especially for states increasingly influenced by the EU regional order, Ukraine and Georgia.

The concept of regional public orders is similar to the claim that a multi-hub legal order is in formation. The leading American international lawyer, Burke-White, claims that 'diffusion, disaggregation, and issue-specific asymmetries in the distribution of power are giving rise to a multi-hub structure for international law'. This increases pluralism within the international legal system and 'creates downward pressure on international legal processes to migrate from the global level towards a number of flexible, issue-specific subsystems', including ones centred around Russia and China, which seek to turn back to the Westphalian origins of the international legal system.⁴⁶

From this perspective the Russian assertion of the Crimean right of self-determination, for example, is not merely an attempt to justify the annexation, but a claim for the country's status as a proto-hub in this new emerging regionally diffused international legal order. It may express 'a revisionist conception of international law' to validate a Russian sphere of influence and broad rights of intervention within it. This would have domestic political resonance in Russia. Outside Russia such legal revisionism might be expected to appeal to Russian minorities in the former USSR and to 'like-minded states that have been "outsiders" to the mainstream of international law', especially in the 'non-West'.⁴⁷ The core assumption is that Russia has been consciously interested in crafting new rules, even if this fails to modify the canon of customary law in the near or medium-term.

This argument is plausible but problematic. The notion of a Russia-centred hub could well be expressed in Russia's general and long-standing sovereignty-oriented critique of Western policies, which is shared by many other CIS states. However, it is inconsistent with the Crimean breach of the territorial settlement. This extreme action confronts traditional sovereignty norms and even powerful states struggle to advance claims which operate at the expense of basic principles of state sovereignty and non-intervention. As shown below, states at large have been loath to concede Russia extended rights to 'protect' its co-ethnics, compatriots etc. Secondly, Russia has opted not to rely on some international or regional standard. Its ultimate reference has been Russia's own unique national culture, traditions, history and norms, extended through the notion of a Russian world, notably the historic justice of 'repatriating' Crimea. Such *national exceptionalism* is much starker than the exceptionalism expressed in American foreign policy, vocally criticised by Putin since the mid-2000s. Russia's support for irredentism encourages a clash of national narratives between major states in future claims around conflicts in the wider international system.

The international response to Russian claims

In assessing the prospect for Russian legal claims, if they are revisionist in intent, the response of other states is crucial. A new rule needs to be 'generally accepted', whether this concerns some reinterpretation of the UN Charter, or the emergence of new customary law which provides for new rules side-lining established Charter provisions.⁴⁸ There is enough evidence of a 'pushback' by states since 2014 to confirm that there is no general support for Russian interpretations.

This applies clearly to two key aspects: Russia's challenge to interpretations of the doctrine of intervention by invitation, and the extremely broad interpretation Moscow claimed of the concept of self-determination, as practiced in the Crimea referendum. Most explicitly, Russian claims were rejected in the draft Security Council resolution on 15 March 2014, supported by thirteen members of the Council, with China abstaining and Russia wielding its veto. It declared 'that this referendum can have no validity, and cannot form the basis for any alteration of the status of Crimea'.⁴⁹ This vote has continued to reflect wider opinion among state over Russia's breach of the post-Cold War territorial settlement. Even those states that have been silent or non-committal in the public debate,

'i.e who did not expressly state the illegality of Russia's actions, cannot be understood to have acquiesced in Russia's interpretation of the law as there is no indication of silent approval', rather there were various political and diplomatic causes for this reticence.⁵⁰

In the wider international community there remains something of a grey area, some room for states to shift their positions. This is indicated by the 82 states (40 per cent of the UN membership) that abstained or did not take part in the important vote on 24 March 2014 over UN General Assembly Resolution 68/282.⁵¹ This vote, on the legality of Russian actions over Crimea, was the most explicit expression of opinion on the issue among the global community of states. Eleven countries supported Russia in rejecting the resolution (though tellingly they included no state in Russia's favoured groupings of the BRICS and the Shanghai Cooperation Organisation). Moscow claimed the abstentions revealed wider latent support for Russia among states.⁵² In another test in November 2016 the UN General Assembly's Human Rights Committee, in its first action on Crimea, adopted a resolution drafted by Ukraine, which recognised Russia as an occupying power and the city of Sevastopol as a temporarily occupied territory. This time 23 states voted against, including powers such as China, India and South Africa (which had abstained in the vote in 2014)

, 76 abstained, while 41 states co-sponsored the resolution. A few more states peeled away to the Russian side when the resolution was formally approved next month at the plenary of the General Assembly.⁵³

Do these votes offer some evidence for the view that Russia may come to lead a hub in a multi-hub structure, affecting the substantive development of international legal rules?⁵⁴ In the wider context there may well be growing diversity between major states over the broad interpretation of state sovereignty. However, it has been persuasively argued that 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'.⁵⁵ Therefore Moscow's claims over Ukraine muddled the waters rather than established a set of principles to attract follower states.

There is little evidence of a CIS sub-system forming, on the basis of the contested claims around Crimea and Ukraine. The Central Asian CIS states, Belarus and Azerbaijan share the broad Russian statist approach to sovereignty. But it is precisely this which has caused them deep unease about Russian violations of Ukrainian sovereignty and the privileging of separatism, just as it had in 2008 when Russia ruptured Georgian sovereignty by recognising South Ossetia and Abkhazia as states. The Ukrainian case is an unusually explicit test of the readiness of states in Russia's regional zone of 'entitlement' to resist Russian preferences on legal claims, despite Russia's vigorously perhaps even coercively expressed opinions.⁵⁶ Besides Russia no CIS state formally recognised the annexation of Crimea, despite some acceptance of the representativeness of the local referendum.

Certain CIS states hedged their responses. Kazakhstan defined the Crimean referendum 'as a free expression of the will of the Autonomous Republic's population' and the Russian action that followed was even 'regarded with understanding'.⁵⁷ However, Kazakhstani officials stressed that they neither recognised the referendum nor the annexation, that while they understood Russia's position and concerns, they never said they agreed with them. . With its long land border with Russia, Kazakhstan certainly did not wish to imply that Russia had the right to redraw national borders unilaterally or by force.⁵⁸ The Kyrgyz Foreign Ministry similarly accepted that the Crimean referendum results were 'the expression of will of the majority of population'. But this followed a scathing condemnation of the ousted Ukrainian leader Yanukovich: 'a president who has lost the

trust of his people and, de-facto, his presidential powers, and moreover who has fled, cannot be legitimate'.⁵⁹ Armenia in turn had no choice but to support the Russian view on the Crimean referendum as 'the people's right to self-determination', given the need to justify its retention of the Nagorno-Karabakh region.

In contrast Uzbekistan, a strategically central state of the Eurasian heartland, offered no hint of recognising a nations' right to self-determination through the Crimea referendum, or even that Crimea was de facto part of Russia. President Karimov deplored actions 'that contradict the UN charter and international norms', specifying 'sovereignty, territorial integrity and political independence of a country'.⁶⁰ This remains Tashkent's position after Karimov's death in 2016. Azerbaijan also emphasised the centrality of territorial integrity (reflecting its position on the Nagorno-Karabakh region) and parted from Russia in supporting General Assembly Resolution 68/282. Most damaging for Russia, Belarus, a partner in the 'Russia-Belarus Union State',⁶¹ avoided all language of 'understanding' Russian actions in Crimea. President Lukashenko derided Viktor Yanukovich's presidential pretensions after he fled Kiev.⁶² Lukashenko proceeded to develop cordial relations with Ukrainian President Poroshenko and has implied that Belarus would strongly resist any potential Russian encroachments on its territory.

All this offers very little support for Russian claims, based on its actions in Crimea, over the doctrine of intervention by invitation, over an expansive concept of self-determination, let alone still more radical and dubious justifications linked to Russian civilization or historic justice. Nor are these claims supported by any obvious Russian effort to lead an effort to modify the theory of international law in the wider frame. Lavrov reveals this when asked if Russia should propose that the UN establish a decade of international law, to 'develop national and international systems of perfecting the globally accepted order'. He downplayed Russia's role, observing technically that the UN International Law Commission has a role in the progressive development of international law.⁶³ The Director of the Russian Foreign Ministry Department of Policy Planning similarly retreated into generalities in autumn 2016 when asked about Russian plans to expedite some new international legal order.⁶⁴ Overall, there is little evidence so far that Russia has tried to flesh out the Valdai Club's call in 2014 for 'new rules or a game without rules' with substantive revisionist legal proposals.

***Realpolitik* and the European territorial order**

Should Russia's legal narrative be interpreted then more simply as a function of *realpolitik*? Here we could defer to the claims by IR realists about how major powers, especially self-assertive powers challenging US dominance in the international system, deploy legal claims. In this sense Russia makes *strategic* use of normative and standard legal arguments in particular crises, even selectively mimicking Western humanitarian discourse. It is an instrumentalization of international law, crafted to appeal to different audiences – domestic public opinion, CIS state elites, Western states and the wider community of states. This approach was rehearsed during and after the war with Georgia in 2008, when Russia released a diplomatic barrage of claims from humanitarian to self-defence, expecting some perhaps to gain traction.

Russian discourse has become less veiled in indicating such *realpolitik*, the right of force over the force of rights as well as proclaiming the reality of Russia's growing military weight. For example, the Russian Foreign Policy Concept of 2013 still pronounced that Russia 'consistently advocates reducing the role of force in international relations', a reference to US military predominance. After Russia's intervention in Ukraine this key passage vanished in the 'strengthening international security' section of the most recent Concept, despite continued talk of reinforcing the 'rule of law in international relations'.⁶⁵

Recent research has popularised the strategic leveraging of law as ‘lawfare’. Lawfare may be offensive or defensive and is understood as an increasingly effective instrument in the global security landscape.⁶⁶ In terms of this notion Russian conduct around Ukraine is not at the soft end of lawfare, such as the use of litigation against other states. Rather, claims known to be false were deployed in an effort to reduce the diplomatic costs of military intervention. In a still harder form of lawfare, Russia also practiced plausible deniability of the use of force, to support Russian military-strategic policies. This could be viewed as a component of ‘hybrid warfare’, as rather loosely discussed by Western commentators since 2014.⁶⁷ It is the reverse image of the official Russian narrative that Western states’ legal and normative claims over regime change and colour revolutions are harnessed to preparations for eventual military actions against Russia itself.⁶⁸ Such Russian claims of lawfare conducted by Western leaders are greatly inflated. Certainly American conservatives have argued, observing the Russian practice of lawfare, that the US should at least deploy all legal means to challenge the Russian annexation of Crimea.⁶⁹ But this is far from promoting a legal rationale to support efforts at regime change in Russia itself.

If Russian ‘lawtalk’ over Ukraine is more about *realpolitik* than law, then the revisionism it expresses is also not in the domain of law or emerging norms. Rather it is a Russian assertion of territorial entitlements as a component of security policy. It covers a determination to force through a new territorial settlement in Europe, a new security dispensation, of which Crimea is just a part. This is implied by a well-placed Russian specialist’s view that Moscow expects the US to adopt specific new rules of the game: America should accept Russia’s ‘right to its own regional integration and security projects and full-fledged participation in international regulation’. Ukraine’s neutral status should be guaranteed and its close ties to Russia ensured. Washington (and presumably the EU) should ‘recognise de facto the right of global centres to regional hegemony in a multipolar world, which is a norm for this international order’.⁷⁰ Another analyst with long-standing Kremlin connections proposes that new rules of the game in Europe, established by Putin and Trump, include an agreement to make Ukraine and ‘other similar states permanently neutral’.⁷¹

Such thinking reinforces the concerns of senior Western officials. In October 2014 the NATO deputy secretary-general Alexander Vershbow contrasted the late 1980s, when the USSR was interested in ‘strengthening the rules-based system...trying to create a stable status quo’, with Putin’s actions as ‘a revisionist leader’, who does not accept the rules in Europe and seeks to ‘roll back the post-Cold War settlement...to re-establish spheres of influence’. The contrast is stark: ‘our model is Helsinki [the accords of the 1975 CSCE conference Helsinki Final Act]; their model is Yalta’.⁷² If Putin is driven by this *realpolitik* outlook, he envisages hard spheres of regional influence, an updated version of the division of Europe agreed at the 1945 Yalta Conference, with the de facto zone of Russian (then Soviet) influence transferred geographically further east.

Indeed, since 2014 Russian officials have praised the ‘Yalta principles’ of 1945 for keeping the peace in Europe.⁷³ ‘International law as it was evolved since 1945, as a component of the Yalta-Potsdam system’, a leading specialist argues, remains ‘the benchmark to judge the legitimacy of states’ actions’.⁷⁴ A focus on such principles deflects attention from the post-1991 territorial order, which codified the aftermath of the Soviet Union. Moreover, for Putin the key matter is the right of power rather than the power of rights. Therefore, he argues, the Yalta Conference ‘fixed the real balance of forces’ and ‘built a system that was consistent with the alignment of forces at the time’.⁷⁵ Principles were undergirded by power relations. Putin has spoken approvingly of the 1939 Molotov-Ribbentrop Pact, by which the USSR and Germany carved up the territories of Eastern Europe. His ideal outcome, a quarter of a century after the dissolution of the Soviet Union, which reflects his belief in Russia’s increased structural power in the Eurasian regional system and indeed globally, could well

be some new Yalta-II agreement, recognising Russian special rights in Ukraine and the wider CIS region.

Regime change and regime legitimacy

It is revealing to consider more closely one aspect of Russia's torturous legal logic over intervention in Ukraine, which inserts its earlier traditionalist, statist legal stance - the condemnation of regime change. Since February 2014 an evolving Russian narrative has crystallized into a rigid form and is ever present in Russian diplomatic rhetoric. It presents a unified chain of events, a new domino theory, linking the coloured revolutions in CIS states, American policies for regime change, the Arab Spring (with some qualification), the overthrow of Qaddafi in Libya, the 2012 Bolotnaya Square protests in Moscow and the Maidan revolution in Ukraine. All are denounced as externally inspired efforts, led by the US for strategic ends, to transform the domestic order of states through mass unrest. The process, it is claimed, ultimately threatens Russia itself. At the root of this *idée fixe* lies Putin's deep antipathy, in common with his political coterie, in linking the notion of regime legitimacy to any external enforcement action.

It is a narrative played not only to domestic audiences in Russia, but to illiberal or ex-colonial state leaderships in the wider international community where Russia seeks support. The core concerns are shared not only by China and many other states where regime security is prized over human security, but also by those who simply distrust the strong to impose justice as *they* understand it, a sentiment which dovetails with the Russian critique of US 'hegemonic' policies.

The notion of 'colour revolution' acts both as a metaphor and mobilising concept, therefore, to justify and solidify the priority of 'order' over justice within Russia as well as in various conflicts in the wider system of states. It acts as a bridge between Russian discourse on order in the CIS region and in this wider system. Putin rails against 'colour revolution technology' aimed 'to provoke civil conflict and strike a blow at our country's constitutional foundations, and ultimately even at our sovereignty'.⁷⁶ At the regional level Nikolai Patrushev, the Secretary of the Russian Security Council reveals an American strategy to redesign the post-Soviet region in US interests, culminating in 'the coup in Kiev', which ostensibly 'conformed to a classical model worked out in Latin America, Africa and the Middle East'.⁷⁷ In the Collective Security Treaty Organisation, which Russia leads, it castigates 'outside forces' for their use of democratizing slogans to replace undesired governments with regimes controlled from abroad.⁷⁸ This is an attempt to rally CSTO state leaders around a 'regime security' agenda, despite their unwillingness to endorse the Russian annexation of Crimea.

States further afield receive the same message from Moscow, to enlist their support in the clash with Western powers. In autumn 2014, for example, ASEAN countries' defence chiefs were warned of a 'mix of recipes for "colour revolutions" and terrorist cells' that could blow up the situation in the Asia-Pacific region 'at any moment', and protests that year in Hong Kong were described as similar 'in terms of how they were choreographed' to Ukraine's Maidan.⁷⁹ All these accusations also have a harder edge. The spectre of coloured revolutions is being integrated into Russian military defence planning. It has been presented as part of a 'Western hybrid warfare'. In the torturous logic that ensues, Russia then needs to respond by developing its own hybrid counter-colour counterrevolution capabilities.⁸⁰

At the core of Russian antagonism over 'colour revolutions' is the Western interest in linking regime legitimacy with democratic process. This has personal implications for Putin. It draws attention to the political legitimacy of particular leaders and to the domestic political structures they preside

over. However, Putin is correct in viewing the liberal notion of democratic legitimacy as normative rather than legal. 'It is all very easy to declare that this or that leader of this or that country is illegitimate' Putin asserts, 'but what are the criteria of this illegitimacy, who has thought them up and who decides this?'. He scorns 'a kind of "supra-legal" legitimacy', used to justify illegal intervention or 'toppling inconvenient regimes'.⁸¹ The well-aired debate over humanitarian emergencies, resuscitated by the intervention in Libya, is essentially now placed by Putin in this category of supra-legality.⁸²

The controversy over democratic legitimacy, was boosted in the 2000s by neo-conservative thinking under President George W Bush, but in various forms it has continued to influence the thinking of many Western politicians. Some jurists have also pitched in. One claim, at polar odds with Russia's statist outlook, is that the sovereignty protected by non-intervention norms no longer involves the abstract prerogatives of a fictional state. It has been replaced, supposedly, by the popular sovereignty vested in a state's citizenry. So a non-democratic government that invokes sovereignty in order to shield its defiance of popular will, such as a refusal to leave office after losing an election, turns the idea of a sovereign prerogative on its head. Such a regime then loses authority to speak for the state and has no standing to object to an external intervention designed to restore a democratic regime to power. However, this remains a minority view in Western legal scholarship and there exists almost no jurisprudence to support a right of pro-democratic intervention.⁸³

On the matter of support for 'legitimate' governments in control of their territory, therefore, whatever the normative debate, Russia remains on rather solid ground in championing traditional legal principles. It can muster support from many states in what it sometimes describes as the 'non-West' and present itself as resisting potential Western revisionism. It derides Western powers for applying 'standards of legitimacy' to other states and uses the ousting of the Qaddafi regime in Libya as a central part of this critique. Russia (under President Medvedev) and China abstained in the vote over UN Security Council Resolution 1973, which allowed it to pass and authorised military intervention in Libya. Putin later charged Western powers of abusing this UN authorisation for purposes of regime change. However, at the outset of the Libyan crisis the Russian leadership appeared quite conscious of the escalatory potential of the resolution it chose not to veto. By May 2011, after a G8 summit, Medvedev even specified that the G8 leaders were unanimous that Qaddafi's regime 'has lost legitimacy and he must leave'.⁸⁴

Despite this, as the focus of international concern shifted from Libya to Syria, Putin reinforced his vehement position that 'no effort should be spared in strengthening legitimate governments' in the Middle East and North Africa.⁸⁵ He has praised the autocratic Egyptian president Abdel Fattah el-Sisi for avoiding the 'Libyan scenario' in Egypt through 'fortitude' in bringing the country under control. Most seriously for regional order, Putin's core mantra in the Middle East has become 'we do not want the Libyan or Iraqi scenario to be repeated in Syria' and his military intervention in Syria has been a dramatic expression of his determination to prevent regime collapse in that state.⁸⁶

Putin's privileging of 'constitutional order' within states reflects Russia's broader statist outlook, the priority of support for authoritarian CIS leaders, such as in Belarus and Central Asia, and crucially his domestic political agenda in Russia. But it is expedient also in another way. It allows adroit diplomatic shifts, unconstrained by liberal concerns about domestic repression within states. So Putin expressed immediate solidarity after the Turkish president Recep Erdogan overcame a coup attempt in August 2016. He had only just begun to restore normal relations with Turkey after a serious standoff. He now told Erdogan of the Russian 'position of principle that we always stand up against any attempts at unconstitutional actions'. Putin called for a rapid restoration of 'order and

constitutional legality' in Turkey, even as Western states expressed dismay at the growing repressive response in domestic Turkish politics.⁸⁷

Defending the hard shell of state sovereignty Russia seeks to rally support against coups as well as 'coloured revolutions' as a threat to incumbent regimes. In September 2014 Lavrov called on the UN General Assembly to adopt a declaration on the 'non-recognition of coup d'états as a method of the change of power'.⁸⁸ Russian government lawyers talked of building language banning such coups and regime change by force into a revised version of the General Assembly's longstanding definition of aggression. However, this diplomatic effort has gained little traction. It has been undermined by Russia's insistence that Western states conspired to prepare a coup d'état to overthrow President Yanukovych in Kiev in February 2014, which has failed to convince most states.⁸⁹

In shifting back to the Ukraine crisis Russia's wider position of principle unravels, since it draws attention to the Russian military action in Crimea. Russia claimed that Yanukovych as head of state could invite Russian troops into Ukraine after fleeing the capital. But towards the end of February 2014 only a small number of states took some symbolic steps to indicate support for the deposed president. By and large states did not recognise him as the head of government any more or deal with him as if he were.⁹⁰ In essence international law permits governments in *effective control* of their territory, i.e. capable of governing their states, to request outside intervention to put down rebellions. However, Yanukovych was not in this position on fleeing Kiev. In the post-Cold War period, states have tended to deal with and recognise the effective government of a state and only take a view about the mechanism of governmental transition in extreme cases.⁹¹ At the core, a government as disenfranchised by its own population as Yanukovych's, is not legally entitled to maintain itself in power through external armed intervention.⁹²

Conclusion

Russia is the major power and Security Council P5 member most truculently striving for greater influence on international rule-making. As Russian-Western relations have plummeted since the annexation of Crimea, the extent of Moscow's ambitions have been unclear. Does Putin expect to modify substantively the contemporary international legal order? He proclaims grandiloquently that 'if there is an area where Russia could be a leader – it is in asserting the norms of international law'.⁹³ On the one hand norms may indeed be involved. Putin bids for the mantle of international champion for those states seeking to resist any further erosion of traditional UN Charter focused sovereignty, especially the encroachments of the Western-led humanitarian project of recent decades. Viewed in this way, Russia accedes to international law as a system of mutual constraint which regulates the coexistence and competition of states. In practical diplomacy Russia then seeks to gather support among normatively like-minded states, to build coalitions, to project a traditionalist and counter-revisionist legal agenda.

On the other hand, in the mind-set of the Kremlin leadership there seems to be a constant reinforcement of a longstanding focus on relative power and global rankings among states. For Russia, a prominent commentator claims, this means that international law is 'a means of curbing the ambitions of NATO and the US', so 'in this way, a temporarily weakened world power appeals to the law to contain the actions of a rival that is, at least for now, more powerful'.⁹⁴ In this sense sovereignty is a shield to deploy instrumentally and strategically, for example in defending the Syrian regime, or in bandwagoning with China and BRICS states to promote a non-Western power bloc. Instrumentalism also operates at the level of domestic politics. Moscow's growing preoccupation with regime change reflects a long-standing relationship between domestic political order and

international rule-making: order trumps justice in both domains. Sovereignty then denotes a capacity as well as a means to avert feared extra-territorial intrusions.

This traditional Russian approach to international legal order, whether we interpret it as shaped more by norms, power or domestic views of the state, has characterised most of the post-Cold War period. It was a discourse always in tension with aspects of Russian policy in the CIS regional order, most notably Russian actions leading to the fragmentation of Georgia in 2008. However, it was only in 2014 with Russia's overt challenge to the post-Cold War territorial settlement that the credibility of Russian commitment to traditional sovereignty norms collapsed. Despite bitter controversies in the modern international legal system, over Western-led interventions or the long process towards Kosovan statehood, no major power has breached the prohibition against states reverting to wars of territory or the use of force to expand their territorial sphere, nor sought to justify it, among other claims, on such irredentist grounds as 'historic justice'. The effect of this on the international legal order exceeds and compounds the earlier shock of the 2003 Iraq War, which was so vehemently criticised by Russia (among other major states). Two outcomes deserve special attention.

First, as a legal scholar emphasised in 2003, 'deviant acts affect the international legal system with singular power because the still-principal subjects of its norms, i.e. states, are also their creators and interpreters', that 'every great power that deviates from established interpretations of the law carries with it the potential to shape a new interpretation'.⁹⁵ In this sense Russian actions potentially dilute the inhibition on changing boundaries by internationally unlawful means and destabilise the wider international system.

Secondly, Russian actions in Crimea/Ukraine harm the function of collective legitimization offered by the UN and this affects real-world policy making. Since 2014, states have been worried, as they were in 2003, that if the UN Charter's rule on the use of force is viewed as very weak or non-existent as a tool for restraining state action then state leaders cannot rely on the Charter rule as providing meaningful protection against aggression. This encourages a slide from the power of rules to the rule of power, or at least to greater dependence on multilateral alliances. In this sense the growing containment Russia now complains of becomes a self-inflicted wound.

Putin may still hope to carve out a new relationship with President Trump based on at least tacit respect between major powers and potential interest-based transactions. But Russia remains a truculent and far weaker party in its effort to gain recognition as a co-equal manager of conflicts on the global stage, while President Trump's commitment to unilaterally augmenting US military power is hardly music to Putin's ears. So any such future concordat is likely to be fragile at best. Moreover, if the US is encouraged by Security Council inactivity over Ukraine and Syria to bypass any Russian Security Council veto, this will be reinforced by the Trump administration's more dismissive and critical view of the role of the UN overall.⁹⁶

This article examined the possibility that Russia has a substantive revisionist international legal agenda behind its claims in the crisis around Crimea/Ukraine. There is little evidence that Moscow is seriously promoting such an agenda. Nor is there evidence that Russia is mustering support among the wider community of states for its claims, for example that the 'will of the people' permits external self-determination so as to justify the 'repatriation' of Crimea to Russia. Elites in Russia itself do accept Russian actions in Ukraine as legally valid.⁹⁷ However, Russia has not tried to establish a practice based on its actions in Crimea, let alone Eastern Ukraine. Nor has it set out clear interpretations of legal principles that other states can relate to. Actions are surrounded by contested facts and deniability. Russia asserts a claim to a form of legal exceptionalism in a regional zone of entitlements, formed of most of the post-Soviet CIS neighbourhood. In this region the

principles Russia defends in the wider international system seem fungible or simply non-applicable. Despite this Russia is failing to develop a leadership role for a CIS hub in a more diversified international legal order.

All this leaves an alternative explanation of Russian 'lawtalk' around Ukraine, as discourse determined by more unabashed *realpolitik* motivations. In this sense Russia is indeed revisionist, but in a way that moves outside the domain of law or norms into security policy. Russian claims assume the form of asserting a new territorial settlement in Europe, a codified regional hegemony in much if not all the CIS region, currently centred on but not limited to its actions in Ukraine. In this region then the desired rules are not the foundational legal principles of the UN Charter - the principles so relied on by Russia in Syria or in keeping at bay regime legitimacy claims more widely. For Putin they should be instead the bare minimum to avoid dangerous conflict: 'a clear system of mutual commitments and agreements...and mechanisms for managing and resolving crisis situations'.⁹⁸ The call is for old-style crisis management, with the focus initially on Ukraine, to empower and enshrine Russian influence in that state and by degrees in the wider region of Russian entitlements. The objective of a new Yalta-2 agreement, or European Charter confirming the new power dispensation seems to lie behind Putin's reverence for the principles of the 1945 Yalta Conference.

This article does not discuss the configuration of such a new division of power or how far Russian territorial ambitions might extend in its neighbourhood. Putin has suggested that the ideal arrangement in the transitional year of 1990 would have been for all of Central Europe to have formed a separate alliance with the participation of both the USSR and the US, rather than NATO extending to this region.⁹⁹ Decades later this vision of Europe without NATO, with Russia as a co-equal security influence with the US in Central Europe can only be viewed as nostalgic. But the Russian leadership is unlikely to abandon a determination to compel Ukraine to accept a neutral status between Russia and NATO and very likely will continue to aspire to a formal agreement with the Trump presidency to proscribe further steps by any CIS state towards NATO accession. Russia will continue to view its near neighbourhood, with its fragile states or protectorates (like Abkhazia), as a zone of legal exception. Therefore, as before, future Russian actions in this zone will contradict the way it relies on and uses international law in the wider international system.

¹ Thomas D. Grant, *Aggression against Ukraine: Territory, Responsibility and International Law* (Basingstoke: Palgrave Macmillan, 2015), pp. 165-7.

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.

³ For discussion of the role of constitutionality understood in this way, see Ian Clark, *Legitimacy in international society* (Oxford: Oxford University Press, 2005), pp. 207-9, 252-6. For the expression of this in Russian thinking see Roy Allison, *Russia, the West and military intervention* (Oxford: Oxford University Press, 2013), pp. 10-12.

⁴ Expertise is found in the Russian presidential administration, especially the Foreign Policy Directorate (under its Chief, Alexander Manzhosin); in the Russian Foreign Ministry Department of International Organisation (under Mikhail Afanasiev) and Legal Department (under Anatolievich Kolodin); as well as in the Russian Mission at the United Nations (with Vitaly Churkin as Permanent Representative).

⁵ *Foreign Policy Concept of the Russian Federation*, approved by Putin on 30 November 2016, http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCk8B6BZ29/content/id/2542248, accessed 10 Jan. 2017. See especially sections 23-6, 45, 72.

⁶ For the most cited stark realist assessment of the precursor Ukraine crisis, see John J. Mearsheimer, 'Why the Ukraine crisis is the West's fault', *Foreign Affairs*, vol. 93, no. 5, September/October 2014, pp. 77-89.

⁷ Lauri Mälksoo, *Russian approaches to international law* (Oxford: Oxford Univ. Press, 2015), p. 148.

⁸ Mette Skak, 'Russian strategic culture: the role of today's *chekisty*', *Contemporary Politics*, 22:3, 2016, pp. 1-15.

⁹ See Anna L. Clunan, *The social construction of Russia's resurgence: aspirations, identity and security interests* (Baltimore: John Hopkins Univ. Press, 2009). For the issue of strategic legacies, see Robert Legvold, *Russian foreign policy in the 21st Century and the shadow of the past* (New York: Columbia Univ. Press, 2007).

¹⁰ S. Neil Macfarlane, 'Russian perspectives on order and justice', in Rosemary Foot, John Gaddis and Andrew Hurrell (eds), *Order and justice in international relations* (Oxford: Oxford University Press, 2003), pp. 184-5; 206. See also Allison, *Russia, the West and military intervention*, pp. 217-220.

¹¹ Allison, *Russia, the West and military intervention*, pp. 15-21; Mälksoo, *Russian approaches to international law*, pp. 172-189.

¹² Mälksoo, *Russian approaches to international law*, pp. 98-104.

¹³ The representation of sovereign democracy as a distinct expression of Russian political culture, propagated in particular by Vladislav Surkov, has been extensively discussed, but is more about domestic order than international order. See Charles E. Ziegler, 'Conceptualizing sovereignty in Russian foreign policy: Realist and constructivist perspectives', *International Politics*, 49: 4, 2012, pp. 406-7.

¹⁴ For an intellectual formulation of this notion, see Andrei Kokoshin, *Real'nyy suverenitet* (Moscow: Evropa, 2006), pp. 63-97.

¹⁵ Interview of Putin in Rossiya 1 TV film 'World Order', 20 Dec. 2015, BBC Monitoring Online, <http://www.bbc.monitoringonline.com> (henceforth BBC), Mon FS1 FsuPol iu/va/ibg, accessed 25 Dec. 2015.

¹⁶ For example, Sergei Lavrov, 'Making the world stable and safe', *International Affairs* (Moscow) 61:6, 2015, p. 2. See *Foreign Policy Concept of the Russian Federation*, 2016, section 24.

¹⁷ Speech as transcribed in *The Washington Post*, 28 Sept. 2015, <https://www.washingtonpost.com/news/worldviews/wp/2015/09/28/read-putins-u-n-g-speech>, accessed 30 September 2015.

¹⁸ Anatoly Gromyko, 'World order or world legal order', *International Affairs* (Moscow) 58:3, 2012, pp. 25-7.

¹⁹ Sergei Lavrov interview, 29 April 2013, <http://www.mid.ru>

²⁰ 'The concept of the Responsibility to Protect', *International Affairs*, 59:5, 2013, p. 200. This provides a full discussion of the concept by the International Law Council of the Foreign Ministry.

²¹ For the former, see Derek Averre, 'Russia, humanitarian intervention and the Responsibility to Protect: the case of Syria', *International Affairs* 91:4, 2015, pp. 817-831; Vladimir Kotlyar, '"Responsibility while protecting" and the "Arab Spring"', *International Affairs* (Moscow) 58:6, pp. 111-124. For the latter, see, Vladimir Baranovsky and Anatoly Mateiko, 'Responsibility to Protect: Russia's approaches', *The International Spectator* 51:2, 2016, pp. 61-66.

²² *Foreign Policy Concept of the Russian Federation*, 2016, section 26c.

²³ See in the first instance Grant, *Aggression against Ukraine*, especially chs 1 & 2; 'The crisis in Ukraine', special issue, *German Law Journal*, 16: 3, July 2013, pp. 350-712; Anne Peters, 'The Crimean vote of March 2104 as an abuse of the institution of the territorial referendum', July 2014, Max Planck Institute for Comparative Public and International Law, <http://ssrn.com/abstract=2463536>; 'Debate map: Ukraine use of force', Oxford Public International Law, <http://opil.ouplaw.com/page/ukraine-use-of-force-debate-map>, accessed 17 Oct. 2016; Also Roy Allison, 'Russian "deniable intervention" in Ukraine: how and why Russia broke the rules', *International Affairs*, 90:6, Nov. 2014, p. 1258-68; Christian Marxsen, 'International law in crisis: Russia's struggle for recognition', *Max Planck Institute Research Paper Series*, 5, 2016, p. 3-11.

²³ UNSC, UN Doc.S/2014/189, 15 Mar. 2014, as cited in *ibid*, p. 10.

²⁴ Ambassador Nikki Haley, 2 February 2017, <http://www.rferl.org/a/Ukraine-un-ambassador-haley-condemns-russia/28275953.html>, accessed 12 Feb. 2017; <https://twitter.com/realdonaldtrump/status/831846101179314177?lang=en>, accessed 12 Feb. 2107.

²⁵ For a detailed examination of self-determination in this case and the relevance of claims based on remedial secession, see Grant, *Aggression against Ukraine*, pp. 23-33. For a critique of the Russian claim that Western intervention in Kosovo in 1999 and recognition of Kosovo in 2008 excuse a new breach of international law or change the law in favour of the revision that Russia seeks, see Grant, *Aggression against Ukraine*, pp. 171-83.

²⁶ Chris Borgen, 'Kosovo, South Ossetia, and Crimea: the legal rhetoric of intervention, recognition and annexation', <http://www.opiniojuris.org/2014/04/02/Kosovo-south-ossetia-crimea-legal-rhetoric-intervention-recognition-annexation>, accessed 12 Aug. 2016. Allison, 'Russian "deniable intervention" in Ukraine', pp. 1282-9.

²⁷ Address by Putin 18 March 2014, <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.

²⁸ For the appeal in the form of an open letter, <http://www.ilarb.ru/html/news/2014/5062014.pdf>, accessed 12 August 2016; for the conference, see Ivan Kotlyarov, 'Vooruzhenny konflikt v Ukraine', *Nezavisimaya gazeta*, 8 August 2014, ng.ru/ideas/2014-08-05_conflict.html, accessed 12 August 2016. For views of other specialists with links to the Russian Foreign Ministry see A. Moiseev, 'Some international legal positions on the Ukrainian question', *International Affairs* (Moscow), 4, 2014, pp. 84-95; V. Kotlyar, 'Who is waging "hybrid warfare" in Ukraine?', *International Affairs* (Moscow), 61: 5, 2015, pp. 77-89. For a proposed doctrine of Russian international law, see O. Khlestov, 'The rule of international and intrastate relations and Russia's doctrine of international law', *International Affairs* (Moscow), 1, 2014, pp. 178-188.

²⁹ This seriously compounds other problems inhibiting the engagement of Russian legal scholars with the wider international legal community and raises the question of the following article: Maria Issaeva, 'Does "Russian international law" have an international academic future?', www.ejiltalk.org/does-russian-international-law-have-an-international-academic-future/, accessed 18 Aug. 2016.

³⁰ News conference on Rossiya 1 TV, 19 Dec. 2013, BBC Mon Alert FS1 FsuPol iu, accessed 5 Jan. 2014.

³¹ Putin at Valdai Club, 24 Oct. 2014, <http://eng.news.kremlin.ru/news/23137>, accessed 5 Sept. 14.

³² Direct Line with Putin on multiple TV channels, Apr. 16 2015, <http://en.kremlin.ru/events/president/news/49261>, accessed 25 Apr. 2015.

³³ Russian Ministry of Foreign Affairs, 29 Aug. 2014, <http://www.mid.ru>, accessed 2 Sept. 2014. This glosses over an apparent mix of units of the Russian Special Forces, Federal Security Service, retired servicemen, Cossacks, Chechen fighters and mercenaries.

³⁴ This stems from a 1984 International Court of Justice standard. As noted by William W. Burke-White, 'Crimea and the international legal order', University of Pennsylvania Law School, 2014, pp. 12-13, <http://scholarship.law.upenn.edu/faculty-scholarship/1360>, accessed 20 July 2016.

³⁵ The US advised Ukraine to avoid any military confrontation with Moscow in Crimea, to prevent any justification to launch a greater military intervention in Ukraine (which occurred anyway), see 'U.S told Ukraine to stand down as Putin invaded', <http://www.bloombergvew.com/articles/2015-08-21/u-s-told-ukraine-to-stand-down-as-putin-invaded>, accessed 25 Aug. 15.

³⁶ See Simon Saradzhyan, 'Does Russia want war with Ukraine? Not really – or not yet', *The National Interest*, 18 Aug. 2016; Media roundup on 11 Aug. 2015, BBC Mon KVU nm/yl/db.

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

³⁸ Eugenie Lukyanov, in July 2014, cited in Allison, 'Russian "deniable intervention" in Ukraine', p. 1267.

³⁹ Meeting of the Valdai International Discussion Club, 2014.

⁴⁰ Interview of Putin in Rossiya 1 TV film 'World Order'.

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- ⁴¹ Christopher J. Borgen, 'Whose public, whose order? Imperium, region and normative friction', *Yale Journal of International Law*, 32, 2007, p. 342, 350-3. See also
- ⁴² Nico Krisch, 'International law in times of hegemony: unequal power and the shaping of the international legal order', *European Journal of International Law*, 369, 371, 379, as cited in *ibid.*
- ⁴³ Borgen, 'Whose public whose order?', pp. 348-50.
- ⁴⁴ Mälksoo, *Russian approaches to international law*, p. 183.
- ⁴⁵ Roy Allison, 'The Russian case for military intervention in Georgia: International law, norms and political calculation', *European Security*, 18:2, 2009, pp. 173-200.
- ⁴⁶ William W. Burke-White, 'Power shifts in international law: structural realignment and substantive pluralism', *Harvard International Law Journal*, 56: 1, winter 2015, p. 49, 50-53, 76-79. For a summary argument focused on Russia, Burke-White, 'Crimea and the international legal order', pp. 1-14.
- ⁴⁷ As a strategy used earlier by Russia see Christopher J. Borgen. 'The language of law and the practice of politics: great powers and the rhetoric of self-determination in the cases of Kosovo and South Ossetia', *Chicago Journal of International Law*, 10: 1, summer 2009, pp. 12-13.
- ⁴⁸ Marxsen, 'International law in crisis', p. 3.
- ⁴⁹ UNSC, UN Doc.S/2014/189, 15 Mar. 2014, as cited in *ibid.*, p. 10.
- ⁵⁰ Marxsen, 'International law in crisis', p. 11.
- ⁵¹ UN General Assembly 68th session, 24 Mar. 2014, http://www.un.org/ga/search/view_doc.asp?symbol=A/68/L.39, accessed 18 Oct. 2014. 58 states abstained; 24 states, perhaps intentionally, were absent for the vote; 99 states, including all EU and NATO states, supported the resolution.
- ⁵² Russian foreign ministry statement, 28 Mar. 2014, <http://www.mid.ru>, accessed 5 Apr. 2014.
- ⁵³ Resolution on 15 Nov. 2016, <http://www.unian.info/politics/1626272-un-panel-condemns-rights-abuses-in-crimea-call-for-monitoring.html>; resolution on 19 Dec. 2016, <http://www.unian.info/politics/1687011-un-general-assembly-votes-for-resolution-on-human-rights-in-crimea.html>
- ⁵⁴ Burke-White, 'Power shifts in international law', pp. 76-8; 'Crimea and the international legal order', p. 9-10. However, of the 11 states that voted against the GA Resolution, only two were CIS states, Armenia (for its specific reasons related to the Nagorno-Karabakh region) and Belarus.
- ⁵⁵ Marxsen, 'International law in crisis', pp. 13, 22.
- ⁵⁶ For a compilation of CIS states positions on the crisis, see Arkadiy Dubnov, 'Skeletons of the "Slav cupboard"', on Gazeta.ru website, 30 Mar. and 1 Apr. 2016, BBC Mon FS1 MCU 060514 prt/evg, BBC Mon FS1 MCU 060514 at/prt, accessed 20 Apr. 2016.
- ⁵⁷ Statement by Kazakh Foreign Ministry, 18 Mar. 2014, <http://mfa.gov.kz/en#!/news/article/13803>, accessed 16 May 2014; Khabar Television, Almaty, 18 Mar. 2014, BBC Mon Alert CAU 180314 ad/atd, accessed 15 Mar. 2014.
- ⁵⁸ Richard Weitz, 'Kazakhstan responds to Ukraine crisis', *Eurasia Daily Monitor* (Jamestown Foundation), 11: 55, 24 Mar. 2014; Birgit Brauer, 'Crisis in Crimea: will Kazakhstan be next?', *Eurasia Daily Monitor* (Jamestown Foundation), 11: 48, 13 Mar. 2014, <http://www.jamestown.org/programs.edm/archives/2014>, accessed 5 Apr. 2014.
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- ⁶⁰ Dubnov, 'Skeletons of the "Slav cupboard"', 30 Mar. 2016; speech by Karimov, 9 May 2014, Uzbek TV first channel, 9 May 2014, BBC Mon Alert CAU 090514 ad/sg, accessed 15 May 2014.
- ⁶¹ The immigration channels at Moscow airports currently offer a channel for citizens of the 'Alliance' of Russia and Belarus. However, the abstract Union State does not appear to dissuade Belarus from defining the existence or absence of breaches of basic principles of international law. One part of the Union, Russia, was ready to annex part of a third state 'on its own', with all the constitutional implications of this, without seeking the consent of the second part of the Union.
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- ⁶³ Media interview of Lavrov after address to the Russian State Duma, 14 Oct. 2015, <http://www.mid.ru>, 16 Oct. 2015, and BBC Mon FS1 FsuPol (kdd), accessed 15 Nov. 15. For some non-official suggestions about how in principle Russia might seek to revise international law, or confirm its established positions, see Nikolay Shevchenko, 'Three ways Russian foreign policy could change international law', *Russia in Global Affairs*, 2 Nov. 2015, <http://eng.globalaffairs.ru/book/Three-ways-Russian-foreign-policy-could-change-international-law-17785>, accessed 12 Aug. 16.

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- ⁶⁵ *Concept of the Foreign Policy of the Russian Federation*, approved by Putin on 12 February 2013, section 32, http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCk6BZ29/content/id/122186, accessed 12 Mar. 17; *Foreign Policy Concept of the Russian Federation*, 2016, sections 27-38.
- ⁶⁶ See Orde F. Kittrie, *Lawfare: law as a weapon of war* (Oxford: Oxford University Press, 2016).
- ⁶⁷ Russia defines 'hybrid warfare' ('gibridnoy voyne') as part of Western not Russian strategic thinking. The term lacks clear content, or originality and has mostly been used since 2014 as shorthand for Western alarm about Russian actions in Crimea and Eastern Ukraine. See Roger N. McDermott, 'Does Russia have a Gerasimov doctrine?', *Parameters*, 46: 1, Spring 2016, pp. 97-105; Bettina Renz and Hanna Smith, 'Russia and hybrid warfare – going beyond the label', *Aleksanteri Papers*, 1, 2016, Helsinki, http://www.helsinki.fi/aleksanteri/english/publications/presentations/papers/ap_2016_1.pdf, accessed 5 Aug. 2016, pp. 2-14.
- ⁶⁸ Kotlyar, 'Who is waging "hybrid warfare" in Ukraine?', pp. 77-89.
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