

Russia and the post-2014 international legal order: revisionism and *realpolitik*

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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.¹ This order depends fundamentally on rules governing the use of force. The wider clash of legal and normative positions between Moscow and western states over Russia's neighbourhood has now become acute. It is polarized by Russia's breach in the post-Cold War territorial settlement, its violation of the basic prohibition against states resorting to wars of territory or the use of force to expand their territorial sphere. This prohibition is the bedrock on which the architecture of the modern system of international law has been built: a foundation that has enabled the development of a more sophisticated system of rules.

Moscow has justified this basic breach of what might be termed the 'macro-legal' order by reference to claims which lie outside the conceptual domain of international law as it has been understood in 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.² The unexpected election of President Trump in the United States 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 might be tolerated by a Trump administration intent on a new transactional American–Russian relationship and even ready to concede Russian primacy over its neighbours in the Commonwealth of Independent States (CIS).

This article analyses Russia's use of international legal arguments since 2014 and explores how they relate to the exercise of power. I shall examine two alternative interpretations. The first is *legal revisionism*. Does Russian legal rhetoric around the use of force and its assertion of broad entitlements to intervene in its neighbourhood represent a recognition of the international legal *system* combined with 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 recasting

¹ David S. Yost, 'The Budapest Memorandum and Russia's intervention in Ukraine', *International Affairs* 91: 3, May 2015, pp. 505–38.

² Thomas D. Grant, *Aggression against Ukraine: territory, responsibility and international law* (Basingstoke: Palgrave Macmillan, 2015, pp. 165–7).

rules applicable to 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 and through an unpersuasive interpretation of self-determination, including insistent reference to the flawed analogy of international recognition of Kosovo. Since 2014 Russia has expanded on and augmented these assertions with much more radical claims over its intervention in Ukraine.

The second interpretation is *realpolitik*. Do Russian legal arguments around the Ukraine crisis simply 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 contravening rules in the international system. Putin's criticism of a range of western interventions certainly has some basis, viewed from the perspective of Russia's narrow 'restrictionist' interpretation of the lawful use of force by states, focused on sovereignty and the UN Charter. Even though this strictly legal stance was undermined by Russia's forceful dismemberment of the Georgian state in 2008,³ the acrimonious Russian attacks on the West over conflicts from Kosovo in 1999 to Libya in 2011 were expressed in recognizable legal language, often around developing if unconsolidated norms or efforts to stretch the bounds of customary international law. Western states were themselves divided at times, as for example over American claims about the pre-emptive use of force in the early 2000s.

Earlier Russian–western differences over the international legal order going back to the leadership of President Yeltsin in the 1990s 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, cooperative international society, and this jarred with Russia's increasingly 'pluralist' insistence on a thinly regulated international society. Russia has linked international legitimacy to behaviour that complies with a legally structured constitutional order at the global level, as expressed through the UN Charter system. So the question of what constituted legitimate use of force was a question about who makes the rules and who defines the normative agenda. For Russia this required a focus on procedural rules, rather than basic values, and should ultimately lead to the UN Security Council (UNSC).⁴ However, Moscow was also sensitive to changing structural power in the international system, and

³ 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.

⁴ 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.

viewed respect for its veto in the Security Council not only as proper procedure, but also as a reflection and measure of Russia's 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 reaffirmation of a rule-governed order, while acknowledging 'legacy issues' of past US-led interventions.⁵ For its part, Russia developed a forceful and carefully crafted narrative opposing regime change aimed at appealing 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-western' 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.

Notwithstanding all these contextual factors, Russian intervention in Ukraine stands apart from other fluid and contentious post-Cold War debates over the use of force. The closest analogy to Russian actions in 2014 since approval of the UN Charter in 1945 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 relies largely on the discourse of President Putin, on statements by the Russian foreign ministry, and on evidence of how other states have reacted to Russian legal claims. This selection of sources reflects the hierarchical structure of the Russian political system, focused on the presidency.⁶ In recent years the circle of influence on key decisions in Russian foreign policy related to international law has probably extended no further than certain members of the Russian Security Council and key Putin loyalists in the presidential administration and other back channels. However, I shall also refer to broad consensual positions signalled in high-profile documents such as the Russian Foreign Policy Concept of November 2016.⁷

This article initially exposes the inconsistency between Russia's traditional perspective on international order and law and its claims around intervention in Ukraine. It then asks whether this can be explained by reference to Russia's greatly enhanced sense of regional entitlement and a revisionist view of international legal order. I examine how other states have received these claims and how seriously Moscow has continued to pursue them. I then investigate the alternative

⁵ Sten Rynning, 'The false promise of continental concert: Russia, the West and the necessary balance of power', *International Affairs* 91: 3, May 2015, pp. 539–52.

⁶ Legal expertise is found in the Russian presidential administration, especially the Foreign Policy Directorate (under its chief, Alexander Manzhosin); in the Russian foreign ministry's Department of International Organization (under Mikhail Afanasiev) and Legal Department (under Anatolievich Kolodin); and in the Russian mission at the UN (with Vitaly Churkin as permanent representative until his death in February 2017).

⁷ *Foreign Policy Concept of the Russian Federation*, approved by Putin on 30 Nov. 2016, http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCkB6BZ29/content/id/2542248. (Unless otherwise noted at point of citation, all URLs cited in this article were accessible on 19 March 2017.) See esp. secs 23–6, 45, 72.

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 and realist IR scholars.⁸ But it is not self-evident that Russia would risk undermining the benefits of acting within a wider framework of regulated coexistence 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. I contrast this interpretation 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, I summarize 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's traditional perspectives on the international legal order

Since the end of the Cold War, Russia has largely 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 accompanying claims which flatly contradict the statist principles still formally espoused by Russian diplomats.

A preliminary question is whether Russian foreign policy expresses a distinct international legal consciousness. This draws us back to Putin's discourse. In such a highly centralized authoritarian state, the practice of international law is likely to be very significantly influenced by the individual consciousness and psychology of the national leader.⁹ This in turn points to the strategic culture of the security services, which framed Putin's earlier career and has been revived in various ways more recently, especially in his third presidential term.¹⁰ However, on a subtler level constructivist scholars would argue that Putin also internalizes and reflects aspects of his wider social milieu, of Russia's cultural and historical consciousness, including its Soviet heritage.¹¹

In this respect a key element of continuity is the strong reflection in Russia's conception of international order of the priority of preserving its domestic power

⁸ For the most frequently cited stark realist assessment of the Ukraine crisis, see John J. Mearsheimer, 'Why the Ukraine crisis is the West's fault', *Foreign Affairs* 93: 5, Sept.–Oct. 2014, pp. 77–89.

⁹ Lauri Mälksoo, *Russian approaches to international law* (Oxford: Oxford University Press, 2015), p. 148.

¹⁰ Mette Skak, 'Russian strategic culture: the role of today's *chekisty*', *Contemporary Politics* 22: 3, 2016, pp. 1–15.

¹¹ See Anne L. Clunan, *The social construction of Russia's resurgence: aspirations, identity and security interests* (Baltimore, MD: Johns Hopkins University 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 University Press, 2007).

structure. Since tsarist times 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'.¹² 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 coexistence, rather than the goal of substantive cooperation in an international society favoured by western liberal states. Moscow considers the latter risks exposing its domestic political structures to undesirable and intrusive scrutiny.¹³ 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, within which state sovereignty has been viewed as the foundational principle of international law in an idealized Westphalian system, each state remaining to the maximum extent possible master in its own house.¹⁴ A political spinoff, linking this idea to domestic controls, was the Russian notion of 'sovereign democracy' in the mid-2000s.¹⁵ In this statist tradition, 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'.¹⁶ 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 would be expected to 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 UN Charter system. This enshrined the central role of the USSR (now Russia) in the global power arrangements of 1945. Russian leaders constantly insist on the institutional influence they are entitled to wield in the UNSC, especially its veto rights in codifying rules. It is this stance that 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'.¹⁷ The capacity to undertake that interpretation, Moscow insists, essentially lies with the UNSC, and efforts to bypass it, especially on matters related to international peace

¹² 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. 217–20.

¹³ Allison, *Russia, the West and military intervention*, pp. 15–21; Mälksoo, *Russian approaches to international law*, pp. 172–89.

¹⁴ Mälksoo, *Russian approaches to international law*, pp. 98–104.

¹⁵ 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.

¹⁶ For an intellectual formulation of this notion, see Andrei Kokoshin, *Real'nyy suverenitet* (Moscow: Evropa, 2006), pp. 63–97.

¹⁷ Interview with Putin in Rossiya 1 TV film 'World order', 20 Dec. 2015, BBC Monitoring Online (henceforth BBC), <http://www.bbc.monitoringonline.com>, Mon FS1 FsuPol iu/va/ibg, no longer accessible.

and security, are branded as heinous.¹⁸ Attempts to undermine the legitimacy of the UN, Putin warned in September 2015, would 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’.¹⁹

Moscow’s desire for a restricted relationship of coexistence between states prior to 2014 was expressed also in a preference for limiting and controlling the evolution of customary international law. This surely reflected a realization that customary international rules have been shaped primarily by the dominant states in the international system—which for the post-Cold War era means the United States and its allies. 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 UNSC membership. In its vision of a world legal order, therefore, Russia harks back to traditional UN principles, such as those enshrined in the UN General Assembly declaration of 24 October 1970.²⁰

Russia accepts some constraints on sovereignty, namely that ‘sovereignty cannot be used as a pretext for gross violations of human rights, ethnic cleansing, genocide, military crimes’.²¹ But it is adamant that the third pillar of the emerging Responsibility to Protect (R2P) norm (collective action by the international community and potential use of force) depends on UNSC authorization, as specified in the 2005 UN World Summit outcome document and a brief reference to it by the UNSC in April 2006: ‘This issue is closed; the rules are agreed. It is a consensus resolution.’²² Moreover, it is also adamant that states carry the primary responsibility for protecting their populations and that they should prioritize political means of doing 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’.²³

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).²⁴ 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

¹⁸ See e.g. Sergei Lavrov, ‘Making the world stable and safe’, *International Affairs* (Moscow) 61: 6, 2015, p. 2. See also *Foreign Policy Concept of the Russian Federation*, 2016, sec. 24.

¹⁹ Speech as transcribed in *Washington Post*, 28 Sept. 2015.

²⁰ Anatoly Gromyko, ‘World order or world legal order’, *International Affairs* (Moscow) 58: 3, 2012, pp. 25–7. The central principles are: non-use of or threat of force; peaceful settlement of international disputes; non-intervention in matters within the domestic jurisdiction of any states; equal rights and self-determination of peoples; sovereign equality of states.

²¹ Interview of Sergei Lavrov, *Foreign Policy*, 29 April 2013; Foreign Ministry website, 29 April 2013, BBC Mon FS1 FsuPol ME1 MEPol(ibg).

²² Interview with Sergei Lavrov, 29 April 2013.

²³ ‘The concept of the Responsibility to Protect’, *International Affairs* (Moscow) 59: 5, 2013, p. 200. This provides a full discussion of the concept by the International Law Council of the foreign ministry.

²⁴ For the former, see Derek Averre, ‘Russia, humanitarian intervention and the Responsibility to Protect: the case of Syria’, *International Affairs* 91: 4, 2015, pp. 817–31; Vladimir Kotlyar, “‘Responsibility while protecting’ and the ‘Arab Spring’”, *International Affairs* (Moscow) 58: 6, 2012, pp. 111–24. For the latter, see Vladimir Baranovsky and Anatoly Mateiko, ‘Responsibility to Protect: Russia’s approaches’, *International Spectator* 51: 2, 2016, pp. 61–6.

Concept notes Russia's intention to prevent military intervention or other forms of outside interference contrary to international law 'under the pretext of implementing' the R2P concept.²⁵ This perspective remains unchanged 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

Russia's legal case supporting its annexation of Crimea, and the controversy over its 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 my purpose here to add to this literature.²⁶ 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 into some doubt with the election of President Trump. But his administration's new Ambassador to the United Nations, in her first public remarks before the UNSC in February 2017, bluntly described eastern Ukraine as 'suffering because of Russia's aggressive action'. She also noted that the United States '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.'²⁷ Therefore *opinio juris* and western state response are at one on the issue.

For context, it is worth making a few comments on Russian justifications of its actions in Crimea. 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 recognize 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 triggered only by clear and compelling evidence of systematic oppression. The legacy of oppression, ethnic cleansing and crimes against humanity—absent in Crimea—is a critical

²⁵ *Foreign Policy Concept of the Russian Federation*, 2016, sec. 26c.

²⁶ See in the first instance Grant, *Aggression against Ukraine*, esp. chs 1 and 2; 'The crisis in Ukraine', special issue, *German Law Journal* 16: 3, July 2013, pp. 350–712; Anne Peters, 'The Crimean vote of March 2014 as an abuse of the institution of the territorial referendum', Max Planck Institute for Comparative Public and International Law, July 2014, <http://ssrn.com/abstract=2463536>; 'Debate map: Ukraine use of force', Oxford Public International Law, <http://opil.oup.com/page/ukraine-use-of-force-debate-map>, 3 Aug. 2014; also Roy Allison, 'Russian "deniable intervention" in Ukraine: how and why Russia broke the rules', *International Affairs* 90: 6, Nov. 2014, pp. 1258–68; Christian Marxsen, *International law in crisis: Russia's struggle for recognition*, Max Planck Institute Research Paper Series no. 5, 2016, pp. 3–11.

²⁷ Ambassador Nikki Haley, 2 Feb. 2017, <http://www.rferl.org/a/ukraine-un-ambassador-haley-condemns-russia/28275953.html>; <https://twitter.com/realdonaldtrump/status/831846101179314177?lang=en>.

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.²⁸ 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. In the event, Russia's threat and use of force eclipsed concerns about the issue of recognition or the precise point at which Yanukovich ceased to represent the Ukrainian state, as I shall discuss further below.

Russia has advanced legal justifications of its actions towards Crimea even when these are obviously weak (such as those related to self-defence, humanitarian emergency and self-determination) and has used these to argue that 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'.²⁹ Claims on Crimea based on 'historical justice' have been especially threatening to the European territorial order.³⁰ This has aroused anxiety and uncertainty over Russian intentions.

The views of Russian professional lawyers and legal specialists offer little enlightenment. They adhere with remarkable fidelity to Moscow's official positions, often repeating them 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, held by the same association together with the Russian Academy of Diplomacy.³¹ 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 purely legal argumentation, and it is difficult to discern in these statements 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 in

²⁸ 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.

²⁹ 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>, 2 April 2014; Allison, 'Russian "deniable intervention" in Ukraine', pp. 1282–9.

³⁰ Addresses by Putin, 18 March 2014, <http://en.kremlin.ru/events/president/news/20603>; 9 May 2014.

³¹ For the appeal in the form of an open letter, see <http://www.ilarb.ru/html/news/2014/5062014.pdf>; for the conference, see Ivan Kotlyarov, 'Vooruzhennyy konflikt v Ukraine', *Nezavisimaya gazeta*, 8 Aug. 2014. 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) 60: 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) 60: 1, 2014, pp. 178–88.

other states; the former seem unable to engage in any substantive legal discussion of the claims being asserted.³²

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 unfounded assertion of 'facts', in relation to 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 troops there', as 'total nonsense and there ... could not be anything like this'.³³ 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'.³⁴ But despite multiple reports by journalists on the ground as well as credible visual images and the capture of some Russian soldiers, he continued to claim 'outright and unequivocally that there are no Russian troops in Ukraine' (meaning beyond Crimea).³⁵ Russia's UN envoy admitted only that 'there are Russian volunteers in the East of Ukraine'.³⁶

The deliberate or inadvertent misuse of facts in claims to justify the use of force is hardly new (like assertions on 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 relating to non-state actors—as in denying responsibility for the actions of the unidentified militias in Crimea in spring 2014 and of various forces in eastern Ukraine thereafter. A state is required to have 'effective control'—a high threshold—of a non-state actor in order for that state to incur legal responsibility for the latter.³⁷ This provision, 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–

³² This seriously compounds other problems inhibiting the engagement of Russian legal scholars with the wider international legal community and raises the question posed in the title of the following article: Maria Issaeva, 'Does "Russian international law" have an international academic future?', *EJIL: Talk!*, blog of *European Journal of International Law*, 21 Sept. 2015, www.ejiltalk.org/does-russian-international-law-have-an-international-academic-future, accessed 18 Aug. 2016.

³³ News conference, Rossiya 1 TV, 19 Dec. 2013, BBC Mon Alert FS1 FsuPol iu.

³⁴ Putin speaking at meeting of the Valdai International Discussion Club, 24 Oct. 2014, <http://eng.news.kremlin.ru/news/23137>.

³⁵ 'Direct line with Vladimir Putin', broadcast on multiple TV channels, 16 April 2015, <http://en.kremlin.ru/events/president/news/49261>.

³⁶ Speech by Vitaly Churkin at UN Security Council session on the situation in Ukraine, 28 Aug. 2014, http://www.mid.ru/en/web/guest/vystuplenia-zaavlenia/-/asset_publisher/97FOFHiV2r4j/content/id/6272799. This glosses over an apparent mix of units of the Russian special forces, Federal Security Service, retired servicemen, Cossacks, Chechen fighters and mercenaries.

³⁷ 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>.

Georgian conflict in 2008—precluded any effective international or Ukrainian response during the Russian takeover of Crimea.³⁸

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 exploit this state of legal ambiguity in calculated fashion, asserting the right of self-defence, beyond the dissimulation over Crimea in spring 2014. It has inserted forces—at times, in significant numbers—into eastern Ukraine, while flatly denying any such deployments, as for example in the battle around Debaltsevo 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 placed Russian forces on combat alert. His rhetoric fell just short of claiming a *casus belli* and led to an emergency UNSC meeting.³⁹

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?’⁴⁰ Some months previously the deputy secretary of the Russian National Security Council had 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’.⁴¹

Russia and rules for the CIS regional order

This appeal for new rules is grandiose and universalist. However, since 1991 Russia appears to have conceived of two distinct domains. One is the global system of international law, underwritten by the legal and institutional authority of the UNSC. The other 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’

³⁸ The US advised Ukraine to avoid any military confrontation with Moscow in Crimea, to preclude any claimed justification for launching a greater military intervention in Ukraine (which occurred anyway): see ‘US told Ukraine to stand down as Putin invaded’, *Bloomberg View*, 21 Aug. 2015, <http://www.bloombergvew.com/articles/2015-08-21/u-s-told-ukraine-to-stand-down-as-putin-invaded>.

³⁹ See Simon Saradzhyan, ‘Does Russia want war with Ukraine? Not really—or not yet’, *The National Interest*, 18 Aug. 2016; media roundup, 11 Aug. 2015, BBC Mon KVVU nm/yl/db.

⁴⁰ Meeting of the Valdai International Discussion Club, 24 Oct. 2014, <http://eng.news.kremlin.ru/news/23137>.

⁴¹ Eugenie Lukyanov, in July 2014, cited in Allison, ‘Russian “deniable intervention” in Ukraine’, p. 1267.

geopolitical interests, or on the border of cultural, historical, and economic civilizational continents'.⁴² He insists, therefore, that in Ukraine 'we cannot abandon those people who live in the south-east of the country, not just Russians but also the Russian-speaking population that aligns itself with Russia'.⁴³ This broad commitment to support ethnic Russians, Russian-speakers, Russian citizens (of however recent citizenship) or Russian compatriots loosely defined—in other words, open-ended extraterritorial assistance by the Russian state for its 'kindred peoples'—provides fertile ground for the assertion of new legal precepts, perhaps underwriting traditional statecraft.

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, coexists with regional public orders, one of which is 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 the subsystem. 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'.⁴⁴ As the dominant state in its region, 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.⁴⁵ 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 in the borderlands of a more legalistic and institution-oriented EU regional order (such as Ukraine).⁴⁶ 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 deliberate choice of direction 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'.⁴⁷

Russia's instrumentalization of legal discourse at the regional level was apparent before 2014, especially during the 2008 Russia–Georgia war.⁴⁸ In such a Russia-centred regional public order, law is not simply at the service of power

⁴² Meeting of the Valdai International Discussion Club, 24 Oct. 2014.

⁴³ Interview with Putin in *Rossiia 1* TV film 'World order'.

⁴⁴ Christopher J. Borgen, 'Whose public, whose order? Imperium, region and normative friction', *Yale Journal of International Law* 32: 2, Summer 2007, pp. 342, 350–53.

⁴⁵ Nico Krisch, 'International law in times of hegemony: unequal power and the shaping of the international legal order', *European Journal of International Law*, 16: 3, 2005, pp. 369, 371, as cited in Borgen, 'Whose public, whose order?', p. 341.

⁴⁶ Borgen, 'Whose public, whose order?', pp. 348–50.

⁴⁷ Mälksoo, *Russian approaches to international law*, p. 183.

⁴⁸ Roy Allison, 'The Russian case for military intervention in Georgia: international law, norms and political calculation', *European Security* 18: 2, 2009, pp. 173–200.

(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 on how it has pursued its declarations of intent 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, above all 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 William 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 on Russia and China, which seek to turn back to the Westphalian origins of the international legal system.⁴⁹

From this perspective Moscow’s assertion of the Crimean right of self-determination, for example, is not merely an attempt to justify the annexation, but a claim for Russia’s status as a proto-hub in this new emerging regionally diffused international legal order. Such an assertion may express ‘a revisionist conception of international law’ with the aim of validating 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’.⁵⁰ 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 short or medium term.

This argument is plausible but problematic. The notion of a Russia-centred hub is consonant with Russia’s general and longstanding sovereignty-oriented critique of western policies, which is shared by many other CIS states. However, it is not consistent 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 I shall show below, states at large have been loath to concede to Russia extended rights to ‘protect’ its co-ethnics, compatriots and

⁴⁹ William W. Burke-White, ‘Power shifts in international law: structural realignment and substantive pluralism’, *Harvard International Law Journal* 56: 1, Winter 2015, pp. 49, 50–53, 76–9. For a summary argument focused on Russia, see Burke-White, ‘Crimea and the international legal order’, pp. 1–14.

⁵⁰ 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. This article assesses how Russia has used such legal revisionism previously.

so forth. Second, 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 in the claim to the 'repatriation' of Crimea as an act of historic justice. Such *national exceptionalism* is much starker than the exceptionalism expressed in American foreign policy, vocally criticized 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 sidelining established Charter provisions.⁵¹ 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 practised in the Crimea referendum. Most explicitly, Russian claims were rejected in the draft UNSC resolution of 15 March 2014, supported by 13 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'.⁵² This vote has continued to reflect wider opinion among states 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.⁵³

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 68/282.⁵⁴ 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 BRICS⁵⁵ and the Shanghai Cooperation Organization). Moscow claimed the abstentions revealed wider latent support for

⁵¹ Marxsen, *International law in crisis*, p. 3.

⁵² UNSC, UN Doc.S/2014/189, 15 March 2014, as cited in Marxsen, *International law in crisis*, p. 10.

⁵³ Marxsen, *International law in crisis*, p. 11.

⁵⁴ UN General Assembly 68th session, 24 March 2014, http://www.un.org/ga/search/view_doc.asp?symbol=A/68/L.39: 58 states abstained; 24 states, perhaps intentionally, were absent for the vote; 99 states, including all EU and NATO states, supported the resolution.

⁵⁵ Brazil, Russia, India, China, South Africa.

Russia among states.⁵⁶ 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 recognized 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 the following month at the plenary of the General Assembly.⁵⁷

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?⁵⁸ In the wider context there may well be growing diversity among 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 to clearly establish state practice in legal terms, or suggest clear interpretations to which other states could relate. 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'.⁵⁹ Therefore the effect of Moscow's claims over Ukraine was to muddy the waters rather than to establish a set of principles to attract follower states.

There is little evidence of a CIS subsystem forming on the basis of the contested claims around Crimea and Ukraine. The central Asian CIS states, along with Belarus and Azerbaijan, share the broad Russian statist approach to sovereignty. But it is precisely this that has caused them deep unease about Russian violations of Ukrainian sovereignty and the privileging of separatism, just as it did in 2008 when Russia ruptured Georgian sovereignty by recognizing 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.⁶⁰ No CIS state apart from Russia formally recognized 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'.⁶¹ However, Kazakhstani officials stressed that they recognized neither the referen-

⁵⁶ Russian foreign ministry statement, 28 March 2014, http://www.mid.ru/en/kommentarii/-/asset_publisher/2MrVt3CzL5sw/content/id/68506.

⁵⁷ 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>.

⁵⁸ Burke-White, 'Power shifts in international law', pp. 76–8, and 'Crimea and the international legal order', pp. 9–10. However, of the eleven states that voted against the General Assembly resolution, only two were CIS states: Armenia (for its specific reasons related to the Nagorno-Karabakh region) and Belarus

⁵⁹ Marxsen, *International law in crisis*, pp. 13, 22.

⁶⁰ For a compilation of CIS states' positions on the crisis, see Arkadiy Dubnov, 'Skeletons of the "Slav cupboard"', on Gazeta.ru website, 30 March and 1 April 2016, BBC Mon FS1 MCU 060514 prt/evg, BBC Mon FS1 MCU 060514 at/prt.

⁶¹ Statement by Kazakh foreign ministry, 18 March 2014, Khabar Television, Almaty, 18 March 2014, BBC Mon Alert CAU 180314 ad/atd.

dum nor the annexation, and that while they understood Russia's position and concerns, they never said they agreed with them. Mindful of its own long land border with Russia, Kazakhstan certainly did not wish to imply that Moscow had the right to redraw national borders unilaterally or by force.⁶² The Kyrgyz foreign ministry similarly accepted that the Crimean referendum results were 'the expression of will of the majority of [the] 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'.⁶³ 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 recognizing the Crimea referendum as expressing a nation's right to self-determination, 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'.⁶⁴ This has remained Tashkent's position under the new president Shavkat Mirziyoyev after Karimov's death in 2016. Azerbaijan also emphasized 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',⁶⁵ avoided all language implying an 'understanding' of Russian actions in Crimea. President Lukashenko derided Yanukovich's presidential pretensions after his flight from Kiev,⁶⁶ 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 and 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 a campaign to modify the theory of international law in the wider frame. Sergei Lavrov, the Russian Foreign Minister,

⁶² Richard Weitz, 'Kazakhstan responds to Ukraine crisis', *Eurasia Daily Monitor* (Jamestown Foundation) 11: 55, 24 March 2014, <https://jamestown.org/program/kazakhstan-responds-to-ukraine-crisis>; Birgit Brauer, 'Crisis in Crimea: will Kazakhstan be next?', *Eurasia Daily Monitor* (Jamestown Foundation) 11: 48, 13 March 2014, <https://jamestown.org/program/crisis-in-crimea-will-kazakhstan-be-next>.

⁶³ Kyrgyz foreign ministry statement, 20 March 2014, report of Kyrgyz Telegraph Agency, 20 March 2014, BBC Mon Alert CUA 200314 ad/atd; BBC Monitoring research, 14 March 2014, BBC Mon CAU 130314 mk/tbj.

⁶⁴ Dubnov, 'Skeletons of the "Slav cupboard"'; speech by Karimov, 9 May 2014, Uzbek TV first channel, 9 May 2014, BBC Mon Alert CAU 090514 ad/sg.

⁶⁵ 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.

⁶⁶ Dubnov, 'Skeletons of the "Slav cupboard"'; Grigory Ioffe, 'Belarus: the Chernobyl-scale fallout from the crisis in Ukraine', *Eurasia Daily Monitor* 11: 57, 26 March 2014, <https://jamestown.org/program/belarus-the-chernobyl-scale-fallout-from-the-crisis-in-ukraine>.

revealed this when asked whether 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.⁶⁷ 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 kind of new international legal order.⁶⁸ Overall, there is to date little evidence of any Russian attempt 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 on grounds from humanitarianism to self-defence, perhaps expecting some at least 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’.⁶⁹

Recent research has popularized 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.⁷⁰ In terms of this notion, Russian conduct around Ukraine is not at the soft end of lawfare, such as the use of litiga-

⁶⁷ Media interview with Lavrov after address to the Russian state дума, 14 Oct. 2015, http://www.mid.ru/en/web/guest/meropriyatiya_s_uchastiem_ministra/-/asset_publisher/xK1BhB2bUjd3/content/id/1852611, and BBC Mon FS1 FsuPol (kdd). 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>.

⁶⁸ Question put by the author to Oleg Stepanov, Moscow, 30 Sept. 2016.

⁶⁹ *Concept of the Foreign Policy of the Russian Federation*, approved by Putin 12 Feb. 2013, sec. 32, http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCk6BZ29/content/id/122186; *Foreign Policy Concept of the Russian Federation*, 2016, secs 27–38.

⁷⁰ See Orde F. Kittrie, *Lawfare: law as a weapon of war* (Oxford: Oxford University Press, 2016).

tion 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 practised plausible deniability of the use of force in support of Russian military–strategic policies. This could be viewed as a component of ‘hybrid warfare’, as rather loosely discussed by western commentators since 2014.⁷¹ It is an expression of Russian policy that mirrors the official Russian narrative that western states’ legal and normative claims over regime change and the ‘colour revolutions’ are harnessed to preparations for eventual military actions against Russia itself.⁷² 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 United States should at least deploy all legal means to challenge the Russian annexation of Crimea.⁷³ But this is far from promoting a legal rationale to support efforts at regime change in Russia itself.

Just as Russian ‘lawtalk’ over Ukraine is more about *realpolitik* than law, so the revisionism it expresses does not fall within 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 goal is implied by a well-placed Russian specialist’s view that Moscow expects the United States 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’.⁷⁴ Ukraine’s neutral status should be guaranteed and its close ties to Russia ensured. Washington (and presumably the EU) should ‘recognize de facto the right of global centres to regional hegemony in a multipolar world, which is a norm for this international order’.⁷⁵ Another analyst with longstanding 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’.⁷⁶

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’,

⁷¹ 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 no. 1 (Helsinki: Kikkimora, 2016), http://www.helsinki.fi/aleksanteri/english/publications/presentations/papers/ap_2016_1.pdf, pp. 2–14.

⁷² Kotlyar, ‘Who is waging “hybrid warfare” in Ukraine?’, pp. 77–89.

⁷³ David B. Rivkin Jr and Lee A. Casey, ‘The outlaw Vladimir Putin: Moscow’s flouting of treaties, international law and the Geneva Conventions is raising world-wide dangers’, *Wall Street Journal*, 8 April 2014.

⁷⁴ Dmitry Suslov, ‘For a good long while: global aspects of the new Russia–US confrontation’, *Russia in Global Affairs*, 18 Dec. 2014, p. 6, <http://eng.globalaffairs.ru/number/For-a-Good-long-While-17211>.

⁷⁵ Suslov, ‘For a good long while’, p. 6. For another perceptive Russian analysis, see Alexei Arbatov, ‘Collapse of the world order?’, *Russia in Global Affairs*, 23 Sept. 2014, pp. 1–8, <http://eng.globalaffairs.ru/print/number/Collapse-of-the-World-Order-16987>.

⁷⁶ Sergei Karaganov, in Pavel Felgenhauer, ‘If Trump hands over Ukraine, he will make Russia great again’, *Eurasia Daily Monitor* (Jamestown Foundation) 14: 12, 2 Feb. 2017, <https://jamestown.org/program/trump-hands-ukraine-will-make-russia-great>.

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 Helsinki Final Act, emerging from the 1975 Conference on Security and Cooperation in Europe]; their model is Yalta.’⁷⁷ If Putin is driven by this *realpolitik* outlook, he envisages hard regional spheres of 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.⁷⁸ ‘International law as it 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’.⁷⁹ A focus on such principles deflects attention from the post-1991 territorial order, which codified the aftermath of the Soviet Union’s demise. 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’.⁸⁰ 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, which reflects his belief in Russia’s increased structural power in the Eurasian regional system and indeed globally, a quarter of a century after the dissolution of the Soviet Union, could well be some new Yalta II agreement, recognizing Russian primacy through 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 tortuous legal logic over intervention in Ukraine, which involves 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 now ubiquitous in Russian diplomatic rhetoric. It presents a unified chain of events, a new domino theory, linking the colour revolutions in CIS states, American policies in pursuit of regime change, the Arab Spring (with some qualification), the overthrow of Gaddafi 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 United States for strategic ends, to transform the domestic order of states by provoking mass unrest. The process, it is claimed, ultimately threatens Russia

⁷⁷ As interviewed in ‘Helsinki versus Yalta’, *Wall Street Journal*, 14 Oct. 2014.

⁷⁸ Comments by state duma Speaker Sergei Naryshkin, *Rossiyskaya gazeta*, 25 Feb. 2015. See Pavel Felgenhauer, ‘Russia proposes a Yalta-2 geopolitical tradeoff to solve the Ukrainian crisis’, *Eurasia Daily Monitor* (Jamestown Foundation) 12: 26, 26 Feb. 2015, <https://jamestown.org/program/russia-proposes-a-yalta-2-geopolitical-tradeoff-to-solve-the-ukrainian-crisis>.

⁷⁹ Alexey Gromyko, ‘West–Russia relations and the emerging global order’, in Riccardo Alcaro, ed., *West–Russia relations in light of the Ukraine crisis*, IAI Research Papers, no. 18, Feb. 2015 (Rome: Nuova Cultura), p. 53.

⁸⁰ Interview with Putin for *Rossiya 1* TV film ‘World order’.

itself. At the root of this *idée fixe* lies Putin's deep antipathy, shared by his political coterie, to any link between the notion of regime legitimacy and 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 do not trust 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 as both a metaphor and a mobilizing concept, therefore, to justify and solidify the priority of 'order' over justice both within Russia and in various conflicts in the wider system of states. It acts as a bridge between Russian discourse on order in the CIS region and on order 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'.⁸¹ At the regional level Nikolai Patrushev, the Secretary of the Russian Security Council, alleged 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'.⁸² In the Collective Security Treaty Organization (CSTO), which it leads, Russia castigates 'outside forces' for their use of democratizing slogans to replace undesired governments with regimes controlled from abroad.⁸³ 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, aimed at enlisting their support in the clash with western powers. In autumn 2014, for example, defence chiefs of the Association of Southeast Asian Nations 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.⁸⁴ All these accusations also have a harder edge. The spectre of colour revolutions is being integrated into Russian military defence planning, where it has been presented as part of a 'western hybrid warfare'. In the tortuous logic that ensues, Russia then needs to respond by developing its own hybrid counter-(colour-)revolutionary capabilities.⁸⁵

⁸¹ 'Putin sounds the alarm over budding "color revolutions" in Russia', *Moscow Times*, 5 March 2015; Russian Security Council meeting, 4 March 2015, <http://kremlin.ru/events/president/news/47045>.

⁸² 'Ukraine crisis—the view from Russia', interview with Patrushev, *Guardian*, 24 Oct. 2014.

⁸³ First Deputy Defence Minister Arkadiy Bakhin, at meeting of Council of CSTO Defence Ministers, 10 June 2014, Interfax, 10 June 2014, BBC Mon FS1 FsuPol gyl.

⁸⁴ Deputy Defence Minister Anatoliy Antonov, at ASEAN defence chiefs' dialogue, 27 Nov. 2014, BBC Mon FS1 FsuPol AS1 AsPol iu.

⁸⁵ Col. A. N. Belsky and O. V. Klimenko, 'Political engineering of colour revolutions: ways to keep them in check', *Military Thought*, no. 3, 2014, pp. 20–29; Army General Yuri Baluevskiy, in *Voenno-promyshlennyi kurer*, 12 Nov. 2014.

At the core of Russian antagonism towards ‘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 over which they preside. 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’.⁸⁶ 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.⁸⁷

The controversy over democratic legitimacy was boosted in the 2000s by neo-conservative thinking under US President George W. Bush, and 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, but 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 ground on which 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.⁸⁸

On the matter of support for ‘legitimate’ governments in control of their territory, therefore, whatever the normative debate, Russia remains on fairly 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 Gaddafi regime in Libya as a central part of this critique. Russia (under President Medvedev) and China abstained in the vote over UNSC Resolution 1973, allowing it to pass, which authorized military intervention in Libya. Putin later charged western powers with abusing this UN authorization 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. In May 2011, after

⁸⁶ Interview with Putin for Rossiya 1 TV film ‘World order’; Putin at Valdai International Discussion Club, 24 Oct. 2014.

⁸⁷ For a Russian analysis along these lines, see M. Khodynskaya-Golenishcheva, *Libiyskiy urok—tsel’ opravdyvaet sredstva?* (Moscow: OLMA Medina Grupp, 2013). The Russian response to the Arab Spring uprisings varied, despite the cruder colour revolution depiction of them after 2012; see Roland Dannreuther, ‘Russia and the Arab Spring: supporting the counter-revolution’, *Journal of European Integration* 37: 1, 2015, pp. 79–93.

⁸⁸ Gregory H. Fox, ‘Regime change’, *Max Planck Encyclopedia of Public International Law*, Jan. 2013, paras 14–18, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1707?print>.

a G8 summit, Medvedev even specified that the G8 leaders were unanimous that Gaddafi's regime 'has lost legitimacy and he must leave'.⁸⁹

Despite this, as the focus of international concern shifted from Libya to Syria, Putin vehemently reinforced his position that 'no effort should be spared in strengthening legitimate governments' in the Middle East and North Africa.⁹⁰ 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.⁹¹

Putin's privileging of 'constitutional order' within states reflects Russia's broader statist outlook, the priority of support for authoritarian CIS leaders, as for example in Belarus and central Asia, and, crucially, his domestic political agenda in Russia. It is also expedient in another way. It enables adroit diplomatic shifts, unconstrained by liberal concerns about domestic repression within states. After the Turkish President Recep Tayyip Erdogan overcame a coup attempt in August 2016, Putin expressed immediate solidarity with him, having 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 increasingly repressive character of domestic Turkish governance.⁹²

Defending the hard shell of state sovereignty, Russia seeks to rally support against threats to incumbent regimes in the form of coups as well as 'coloured revolutions'. 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'.⁹³ 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 Yanukovich in Kiev in February 2014, which has failed to convince most states.⁹⁴

In shifting back to the Ukraine crisis it becomes apparent that here Russia's wider position of principle unravels, since it draws attention to the Russian military action in Crimea. Russia claimed that Yanukovich as head of state could invite Russian troops into Ukraine after fleeing the capital. But towards the end

⁸⁹ Allison, *Russia, the West and military intervention*, pp. 192–4; Medvedev at news conference, 28 May 2011, <http://en.kremlin.ru/events/president/transcripts/11374>.

⁹⁰ Interview with Putin by *Bild*, part 2, 12 Jan. 2016, <http://en.kremlin.ru/events/president/news/51155>.

⁹¹ Interview with Putin by *Bild*, part 2.

⁹² Meeting of Putin with Erdogan, 9 Aug. 2016, <http://en.kremlin.ru/events/president/news/52671>; *New York Times*, 8 Aug. 2016.

⁹³ *New York Times*, 27 Sept. 2014.

⁹⁴ Kotlyar, 'Who is waging "hybrid warfare" in Ukraine?', pp. 84–5. The reference is to the definition of aggression in the so-called 'Friendly Relations Declaration' of the General Assembly on 24 Oct. 1974.

of February 2014 only a small number of states took symbolic steps to indicate support for the deposed President. By and large, states did not recognize him as the head of government any more or deal with him as if he were.⁹⁵ In essence, international law permits governments in *effective control* of their territory, that is, 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 recognize the effective government of a state, and take a view about the mechanism of governmental transition only in extreme cases.⁹⁶ A government as thoroughly disfranchised by its own population as Yanukovych's is not legally entitled to maintain itself in power through external armed intervention.⁹⁷

Conclusion

Of all the major powers and permanent members of the UNSC, Russia is the one most truculently striving for greater influence on international rule-making. As relations between Russia and the West have deteriorated sharply since the annexation of Crimea, the extent of Moscow's ambitions has 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'.⁹⁸ On the one hand, norms may indeed be involved. Putin is bidding for the mantle of international champion for those states seeking to resist any further erosion of the traditional concept of sovereignty as enshrined in the UN Charter, especially the encroachments of the western-led humanitarian project of recent decades. Viewed in this way, Russia endorses 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 in support of a traditionalist and counter-revisionist legal agenda.

On the other hand, in the mindset 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, one prominent commentator claims, this means that international law is 'a means of curbing the ambitions of NATO and the US'; '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'.⁹⁹ 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

⁹⁵ Grant, *Aggression against Ukraine*, pp. 50–54; Fox, 'Regime change', paras 23–4.

⁹⁶ Grant, *Aggression against Ukraine*, p. 54.

⁹⁷ Marc Weller, 'Islamic State crisis: what force does international law allow?', BBC News, 25 Sept. 2014, <http://www.bbc.co.uk/news/world-middle-east-29283286>.

⁹⁸ Meeting of the Valdai International Discussion Club, 24 Oct. 2014.

⁹⁹ Sergei Markov, 'Russia must stop US aggression', *Moscow Times*, 26 Sept. 2013.

its longstanding connection 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 extraterritorial 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 been sustained through 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 other major power has breached the prohibition against states reverting to wars of territory or the use of force to expand their territorial sphere, or sought to justify it, among other claims, on such irredentist grounds as 'historic justice'. The effect of Russia's actions on the international legal order exceeds and compounds the earlier shock of the 2003 Iraq War, which was so vehemently criticized by Russia (among other major states). Two outcomes deserve special attention.

First, as one legal scholar emphasized 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', so that 'every great power that deviates from established interpretations of the law carries with it the potential to shape a new interpretation'.¹⁰⁰ In this sense Russian actions potentially dilute the inhibition on changing boundaries by internationally unlawful means and destabilize the wider international system.

Second, 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 came to be viewed as very weak or non-existent as a tool for restraining state action then state leaders could no longer 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 of which Russia now complains is a self-inflicted wound. Weakening the Charter rule may alternatively encourage renewed US unilateral military action by the Trump administration.

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 coequal manager of conflicts on the global stage, while President Trump's commitment to unilateral augmentation of US military power is hardly music to Putin's ears. So any such future concordat is likely to be fragile

¹⁰⁰ Tom J. Farer, 'The prospect for international law and order in the wake of Iraq', *American Journal of International Law* 97: 3, July 2003, p. 622.

at best. Moreover, if the United States is encouraged by UNSC inactivity over Ukraine and Syria to bypass any Russian veto, this tendency will be reinforced by the Trump administration's more dismissive and critical view of the role of the UN overall.¹⁰¹ In the words of the American UN envoy, justifying the US missile strike against Syria's Al-Shayat air base in April 2017, 'when the international community consistently fails in its duty to act collectively, there are times when states are compelled to take their own action'.¹⁰²

This article has examined the possibility that a substantive revisionist international legal agenda lies behind Russia's 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 and thereby justifies the 'repatriation' of Crimea to Russia. Elites in Russia itself do accept Russian actions in Ukraine as legally valid.¹⁰³ However, Russia has not tried to establish a legal practice based on its actions in Crimea, let alone in eastern Ukraine. Nor has it set out clear interpretations of legal principles to which other states can relate. 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 rules it desires to see acknowledged are not the foundational legal principles of the UN Charter—the principles so strongly asserted by Russia over Syria or relied on 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'.¹⁰⁴ 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 II agreement, or a European Charter confirming the new power dispensation, seems to lie behind Putin's reverence for the principles of the 1945 Yalta Conference.

¹⁰¹ 'Trump threatens to cut funds from "failing" UN', *The Times*, 19 Jan. 2016.

¹⁰² Ambassador Niki Haley at UN Security Council Meeting on the Situation in Syria, 7 April 2017, <http://usun.state.gov/remarks/7755>.

¹⁰³ See the 2016 Hamilton College Levitt Poll, *The Russian elite 2016: perspectives on foreign and domestic policy*, 11 May 2016, p. 19, <https://www.hamilton.edu/documents/russianelite2016final.pdf>.

¹⁰⁴ Meeting of the Valdai International Discussion Club, 24 Oct. 2014.

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 Soviet Union and the United States, rather than NATO extending to this region.¹⁰⁵ Decades later, this vision of Europe without NATO, with Russia as a coequal security influence alongside the United States 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 will most probably 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 (such as Abkhazia), as a zone of legal exception. Therefore, future—like past—Russian actions in this zone will contradict the way it relies on and uses international law in the wider international system.

¹⁰⁵ Putin commended this proposal, made in June 1990 by the German politician Egon Bahr: Interview with Putin by *Bild*, part 1, 11 Jan. 2016, <http://en.kremlin.ru/events/president/news/51154>.

