



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

Roy Allison

To cite this article: Roy Allison (2020) Russian Revisionism, Legal Discourse and the 'Rules-Based' International Order, Europe-Asia Studies, 72:6, 976-995, DOI: [10.1080/09668136.2020.1773406](https://doi.org/10.1080/09668136.2020.1773406)

To link to this article: <https://doi.org/10.1080/09668136.2020.1773406>



Published online: 26 Jun 2020.



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



Article views: 80



View related articles [↗](#)



View Crossmark data [↗](#)

Russian Revisionism, Legal Discourse and the ‘Rules-Based’ International Order

ROY ALLISON

Abstract

Russia has been accused of revisionism in its foreign policy, understood as an effort to undermine a ‘rules-based’ international order. This essay analyses the normative dimension of such revisionism. It examines Russian legal discourse in the period 2014–2019, based on case studies of Russian interventions in Ukraine and Syria. It finds little evidence of sustained Russian legal revisionism—an effort to modify international law—despite Russian assertion of legal exceptionalism in the CIS region. It confirms previous research that Russia has deployed legal rhetoric strategically and instrumentally. Moscow understands it cannot easily gain international support for new rules, yet still seems to aspire to revise the structure of regional power relations.

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

This essay contributes to an evolving debate on these questions by reviewing the initial post-2014 scholarly findings about the Russian use of legal discourse and examining further official Russian views on the role of rules and international law in the period 2014–2019. It assesses the ways in which and purposes to which Russia has deployed such legal language in continued clashes around the regional conflicts in Ukraine and Syria. It seeks to clarify the limits of Russian revisionism as an intellectual category related to international law and rules. The focus of study is on the rules governing the use,

or the threat of use, of force in these conflicts, since these lie at the apex of a hierarchy of legal constraint on state conduct and have generated the most significant body of justificatory discourse of claims and counter-claims by Russia and other states.

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

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

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

The Ukrainian case is where the central controversy over the use and abuse of legal discourse lies. However, it is problematic to generalise from this one case about Russian approaches to legal discourse and international order at large. Previous research suggests that Russia has developed a dual track in its legal argumentation and normative expectations since the early 1990s. The first approach is towards the post-Soviet region, where sovereignty, which is at the core of the legal personality of states, is qualified by Russia and where Moscow has been able to project significant normative influence. The second approach is towards the wider international system, where the principle of sovereignty is given great emphasis in Russian legal rhetoric, but where Russia exerts rather limited normative influence despite its UN Security Council membership. Moscow presents itself as law-bound for purposes of legitimacy in the wider international system of states (MacFarlane 2003; Allison 2013, pp. 120–38, 213–16; Flavier 2015, pp. 9–11; Deyermont 2016). The Syrian case allows us to test further this dual-track hypothesis.

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

The primary data used for Russian legal discourse around the conflicts in Ukraine and Syria in the period 2014–2019 take the form of statements and interviews by Russian leaders and senior officials, in particular President Vladimir Putin, Foreign Minister Sergei Lavrov and other diplomats, including those in Russia's UN mission. These data are derived mainly from searches on official websites, as well as transcripts provided to and interviews in the Russian media. We do not assess the discourse of Russian legal scholars, since the few experts who retain influence in public debate have tended to mirror official rhetoric (Issaeva 2017, pp. 107–12). This tendency entrenches a process whereby, even before 2014, the Russian state 'selected the sort of legal doers it found convenient for itself', while the rest, including many highly professional experts, 'were gradually removed beyond the bounds of the state's legal activities' (Lukyanova 2015, p. 15).¹ There remains a specific Russian legal community with influence, comprised of officials 'in the field of law', such as judges, parliament members and law enforcement officers (Lukyanova 2015, p. 15), but even they accede to rather than formulate international legal propositions.

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

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

Literature review

Scholarly references to Russian revisionism as a general category tend to favour or dispute the core claim of official Western statements that, in some sense, Russian foreign policy is regressing, even recidivist. In other words, it has departed from some normative consensus about core principles and rules of international order, more specifically, the post-Cold War

¹For excellent analysis of Russian international law debates, see Pursiainen and Forsberg (2018, pp. 227–39).

European territorial settlement, in favour of reliance on force and coercive diplomacy. This claim is found, for example, in the 2015 National Military Strategy of the US Joint Chiefs of Staff, which identified Russia among ‘revisionist states’ that ‘seek to revise key aspects of international order and to act in a way that threatens our security interests’.² Former US NATO deputy secretary general Alexander Vershbow expressed this charge concisely, arguing that by annexing Crimea, waging an undeclared war in eastern Ukraine and occupying regions of Georgia, ‘Putin’s Russia has torn up the international rule book and firmly established itself as a revisionist power’ (Vershbow 2018).

Different theoretical standpoints influence academic responses to this notion of revisionism. Assuming a neorealist perspective, Mearsheimer refutes the assumption that Russia is at all regressive; rather, it has simply behaved the way great powers do when their core strategic interests are threatened, and for Russia, this happened in Ukraine (Mearsheimer 2014). This position is refuted by liberal claims that regime survival and contesting democracy are the key rationales behind Russian foreign policy. This liberal perspective often coexists with the claim that if the only role Russia can conceive of is an imperial one, as a former empire, ‘then it is a revisionist threat to its neighbours’ (Speck 2017, pp. 13–6).

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

Constructivist claims that Russia is seeking an enhanced international role, although one associated with an earlier time period, share some ground with scholars who describe Russia’s approach to international rules and law as ‘neo-revisionism’. Richard Sakwa adopts this term to argue that in Ukraine, Georgia and elsewhere, Russia has engaged in some selective revisionism, but is ‘far from being a genuine revisionist power, dedicated to transforming the basis of world order’. For him, Russia does not seek to change the principles of international law but how it is practised by Western states. Until 2012, Sakwa claims, Moscow’s goal was to revise the system from within as a *status quo* power. Since then, despite its neo-revisionism, Moscow has positioned itself as a ‘norm-enforcer’

²‘The National Military Strategy of the United States of America 2015’, available at: https://www.jcs.mil/Portals/36/Documents/Publications/2015_National_Military_Strategy.pdf, accessed 13 May 2020. See also the analysis by Naumov (2015).

rather than ‘norm innovator’, tilting against US ‘hegemonism’ and its practices. Sakwa claims that Russia seeks to adhere to the existing UN-centred framework of international society ‘while carving out space for its own normative world order at the regional level’ (Sakwa 2017, pp. 104, 128–31).

The Russian scholar Tatiana Romanova applies the same neo-revisionist label to Russian conduct. She argues that ‘Russia seeks to transform the global order so it accommodates its views and concerns better, but does not attempt to replace it with a completely new set of rules’. Citing official Russian documents, she claims that Russia justifies its actions with the existing order’s normative frameworks, reproaching the West for inconsistency in observing the letter of international law, and that it is trying to become part of international governance structures with the same right to interpret core norms as the United States (Romanova 2018, pp. 77–8, 81).

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

For all the international controversy generated, the official debate surrounding earlier controversies was accompanied by a recognisable legal language and arguable justifications, often around developing, if unconsolidated, norms or efforts to stretch the bounds of customary international law. In contrast, much of the Russian justificatory discourse over Crimea moved beyond the legal domain, for example, in citing ‘historic justice’ (Allison 2014, pp. 1258–68; Grant 2015). It is this kind of argumentation, accompanied by some Russian calls for new rules, which has raised the question of whether Russia is aiming to redefine core international legal principles, a form of legal revisionism. Taking into account the radical Russian quasi-legal rhetoric over Crimea, it could be argued, however, that the CIS region forms a zone of legal exceptionalism in Russian thinking. By carving out this exclusive legal zone, Moscow feels able to project itself as a stalwart defender of traditional rules on the use of force, ‘old rules’, around the Syrian conflict and in wider international relations (Allison 2013, pp. 120–49; 2017, pp. 528–31, 536–40).

Preliminary research, as elaborated below, indicates that there has been no sustainable post-2014 Russian effort to develop new legal interpretations over Crimea. Moscow has not seriously tried to shift understandings of customary international law more generally, nor have other states been at all ready to accede to such changes (Allison 2017, pp. 531–34, 542). This essay seeks, first, to confirm such previous research on the Russian approach to rules by examining the period 2016–2019. This period was defined by the continuation of low-intensity conflict involving Russia (despite its denials) in eastern Ukraine, and also by the US presidency of Donald Trump, whose concern about Russia’s

rule-breaking has been inconsistent and not evidently a priority in his public comments on Putin's role in international affairs. Secondly, it seeks to substantiate and elaborate a previous research proposition that a major function of contemporary Russian legal discourse is to instrumentalise such normative language. This strategic effort is broadly captured by the concept of 'lawfare' (Kittrie 2016; Allison 2017, pp. 534–35).

Rule-making and revisionism in official Russian discourse

Russian legal discourse is expressed in the context of various officially endorsed narratives that predate the acute post-2014 controversy. First, Moscow has long levelled charges that Western states are the ones revising and unravelling rules in the international system. Putin has repeatedly criticised Western interventions, citing Russia's traditional UN Security Charter-focused 'restrictionist' interpretation of the lawful use of force by states (despite Russia's forceful dismemberment of the Georgian state in 2008).³ Secondly, and crucially, Western influence it is claimed was augmented unjustly at Moscow's expense during a period of temporary Russian weakness in the 1990s. For Moscow, Western states and the 'hegemonic' order they have pursued in the post-Cold War era are revisionist and Russia, in contrast, increasingly championing what it describes as the 'non-West', is the fulcrum of international stability. Russia regards its determination to progressively restore aspects of the *status quo ante* (though not the full scope of Soviet influence) not as revisionist but as recovering a natural balance in Russian power relations in a concert of several major powers. Such a balance would reaffirm Russia's rightful trajectory of power in the wider system of states, codified all along by Moscow's continued UN Security Council membership. It would also reinvigorate Russia's underlying, preordained role in Europe—an expression of Russia's enduring great power status. In this way, a core structural claim, bolstered by an identity narrative, underpins Moscow's assertion that Russia is a rule-maker rather than a 'rule-taker'.

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

This characterisation of Russian influence in the international system raises an important question about Russian discourse more specifically on rule-making. Has Russia aimed, since 2014, at legal revisionism—that is, has it campaigned against a 'Western' international legal order, beyond the standard Russian criticisms about the human rights project of liberal states and the longstanding controversy over unconsolidated norms on humanitarian intervention?

³Restrictionists, 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.

In the aftermath of the Crimean annexation, Putin implied that Russia was indeed ready to tolerate, or even sustain, significant disruption in the international legal order. He described the choice of living ‘without any rules at all’ as ‘entirely possible’ at the Valdai Club session in October 2014, which had taken the theme ‘The World Order: New Rules or a Game without Rules’.⁴ However, no other major state would support such legal nihilism. Since 2014, the formal Russian position has been to cast itself as an indispensable ‘rule-maker’ rather than an anarchic influence on international legal regulation or general disrupter. Putin has even been tempted to grandstand against the West under a legal banner, claiming, ‘if there is an area where Russia could be a leader—it is in asserting the norms of international law’.⁵

In this spirit Lavrov, quoting the Russian philosopher Ivan Ilyin, stated that ‘a great power is the one which ... introduces a creative and meaningful legal idea to the entire assembly of the nations, the entire “concert” of the peoples and states’, thus portraying Russia as a potential pioneer in crafting international law (Lavrov 2016). This view of Russia’s great power role kept the door open for some efforts at legal revisionism. However, Russia has failed to advance any such big legal idea to the international community since 2014. It has not even tried to revise customary international law to support the various weak arguments it offered to justify the annexation of Crimea (see below). Moscow has, instead, retreated to core principles associated with legal positivism. Thus, the Russian Foreign Policy Concept approved in December 2016 enjoins Russia to uphold generally recognised rules of international law embodied in the UN Charter (Likhachev 2017, pp. 157–59).⁶ Russian legal analysts have accordingly reinforced a highly traditional focus on sovereignty, one which well precedes the Charter. In the words of Oleg Denisov, ‘it is necessary to establish order and restore the principles existing since the Peace of Westphalia’, since ‘international law should serve the interests of equal sovereign states’.⁷

This resurgence of traditionalism does not fit an image of Russia as the standard-bearer of new rules. Indeed, when asked specifically at the end of 2017 whether Russia should develop new rules to regulate the emerging ‘multipolar world order’, Lavrov affirmed that ‘this does not seem to me to be necessary’. In his view this multipolar order, in the form of the G20, the BRICS states or Putin’s Greater Eurasia project, would develop through ‘natural processes’.⁸ However, this position was accompanied by uneasiness that the legal basis of a new multipolarity was slow in coming. The Chairman of the Russian Constitutional Court, Valery Zorkin, described law as playing an important role ‘in building a unipolar world order’, arguing that ‘gradually, through the efforts of an enterprising and aggressive leader

⁴‘Meeting of the Valdai International Discussion Club’, 24 October 2014, available at: <http://eng.news.kremlin.ru/news/23137>, accessed 5 November 2014.

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

⁶*Russian Foreign Policy Concept*, 1 December 2016, available at: <http://www.mid.ru>, accessed 20 December 2016.

⁷Lawyer and political analyst Oleg Denisov, 8 December 2016, available at: <http://rethinkingrussia.ru>, accessed 5 March 2017.

⁸‘Foreign Minister Sergey Lavrov’s Interview with RT, Moscow, December 25, 2017’, 28 December 2017, available at: <http://www.russia.org.cn/en/news/foreign-minister-sergey-lavrov-s-interview-with-rt-moscow-december-25-2017/>, accessed 13 May 2020.

[the United States], a system of norms, rules of thumb and priorities emerges, which can hardly be called “the law” (Klishin 2016). Zorkin has been at the forefront of efforts in Moscow in 2015 to bring about judicial change (see below) in order to prevent the subordination of Russian national laws, let alone the Russian constitution, to international laws (Klishin 2016).

Whatever the benefits Putin may have hoped for from a Trump presidency, Russian rhetoric on the theme of Western manipulation of the rules has continued unabated. If anything, it has become more vigorous, encouraged by Trump’s growing disdain for international rules and his ‘America first’ rhetoric against constraints on US sovereignty. In early 2019, the Russian Foreign Ministry accused Washington of ‘steps to dismantle the system of international law and to force a certain rules-based order on the world, formulated by them in accordance with their immediate foreign policy needs’.⁹ Here, ‘rules-based’ is contrasted to the operation of law; by implication if Russia disavows such rules, it rejects their binding quality. Later that year, just before the G20 summit, Putin lamented that, during the Cold War, ‘there were at least some rules that all participants in international communication more or less adhered to or tried to follow’, but ‘now it seems there are no rules at all’.¹⁰ This reprised his rhetoric at Valdai almost five years previously.¹¹ This cynical approach raises the question of what exactly Russia has expected from its extensive discourse of legal argumentation since 2014.

Legal discourse over Crimea and ‘lawfare’

If we consider the specific legal justifications Russian leaders advanced over the annexation of Crimea, such as those related to self-defence, humanitarian emergency and self-determination, these have obviously been weak. Their shallow content has been examined exhaustively by international lawyers and scholars on the politics of international law (for example, Allison 2014, pp. 1258–68; Peters 2014; Grant 2015, chs 1 & 2; Marxsen 2016, pp. 2–11; Dubinsky & Rutland 2019).¹² Some of these justifications represent a U-turn on self-determination and indeed on formal support for sovereignty. In addition, alongside arguable, if unpersuasive, claims, Russian officials offered ‘an admixture of quasi-legal language, ethnic nationalism, territorial irredentism, and simmering grievance’ (Allison 2014, pp. 1282–89; Borgen 2014). Claims based on ‘historical justice’ clearly did not suggest an effort to revise general legal principles,¹³ but seemed to reflect a regional zone of exception outside the global system of international

⁹Russian Foreign Ministry statement, *Tass*, 1 February 2019.

¹⁰Interview with *The Financial Times*, 27 June 2019, available at: <http://en.kremlin.ru/events/president/news/60836>, accessed 19 May 2020.

¹¹‘Meeting of the Valdai International Discussion Club’, 24 October 2014, available at: <http://eng.news.kremlin.ru/news/23137>, accessed 5 November 2014.

¹² See also, ‘The Crisis in Ukraine’, *German Law Journal* (special issue), 16, 3, 2013; ‘Debate Map: Ukraine Use of Force’, *Oxford Public International Law*, 2016, available at: <http://opil.ouplaw.com/page/ukraine-use-of-force-debate-map>, accessed 17 October 2016.

¹³‘Address by President of the Russian Federation’, 18 March 2014, available at: <http://eng.news.kremlin.ru/transcripts/6889>, accessed 18 October 2014; ‘Speech at Gala Concert to Mark the 69th Anniversary of Victory in the Great Patriotic War and 70th Anniversary of the Liberation of Sevastopol from Nazis’, 9 May 2014, available at: <http://www.eng.news.kremlin.ru/transcripts/7159>, accessed 18 October 2014.

law or the operation of the UN Charter. This has been accompanied by a narrative on Russian civilisation and within it the needs of Russian ‘compatriots’, loosely defined.¹⁴

In the case of Ukraine, Russia did not really try, in legal terms, to clearly establish state practice, nor suggest unequivocal interpretations that other states could relate to. Rather, ‘it pursued a strategy of ambiguity, invoking concepts, but not fully spelling them out; claiming hypothetical justifications for actions that Russia denied to have carried out, only to admit them later on’ (Marxsen 2016, pp. 13, 22). This was no resurgence of Westphalian principles or reinforcement of traditional sovereignty norms, although there were ways Russia might have attempted this (Shevchenko 2015). To the contrary, it unsettled them. There was no sustained effort during 2014–2019 to attract follower states with new claims, so this was not a campaign of legal revisionism as we have defined it.

How, then, to interpret this extensive and continuing discursive campaign? It is posited here that Russia has engaged in a vigorous instrumentalisation of legal and extra-legal discourse primarily for political and strategic ends around Ukraine. The diversity of the messaging is explained by the political need to devise claims to reach different audiences—CIS state elites, Western states, influential states in the ‘non-West’, and especially domestic elites and public opinion (Borgen 2015, pp. 271–77; Allison 2017, pp. 531–34). Such strategic leveraging of law can be formulated as the highest state-to-state expression of the concept of ‘lawfare’. Scholarship has shown this to be an increasingly effective instrument in the global security landscape (Kittrie 2016). Another way of viewing this is a determination by Russia to add legal weight to its hard-power techniques. As one study of Russian normative influence in Ukraine and Belarus claims, this is a form of ‘normative expansion’ that ‘consists in the imposition, by means of more or less explicit coercion, of a legal rule on third parties’ (Flavier 2015, p. 10). Lawfare then emphasises the coercion in this relationship.

Russia appears to engage in the full spectrum of actions covered by lawfare, which may be offensive or defensive in purpose. These actions include the vigorous assertion of claims known to be untrue, intended in this case to reduce the diplomatic costs for Russia of the Crimean annexation and military engagement in eastern Ukraine. Lawfare also describes the clearly offensive approach of the plausible deniability of the use of force in Crimea and eastern Ukraine. For example, in the case of the various militias in these zones, this use of legal discourse takes advantage of the requirement that a state have ‘effective control’ over non-state actors for that state to incur legal responsibility for such actors—a high threshold of proof (Gillich 2015; Allison 2017, pp. 527–28). All this has generated copious legal rhetoric by Russia and Ukraine, both in the form of denial and assertion.

Indeed Russia has itself faced a variety of legal actions and rulings, many initiated by Ukraine, which might be defined as a defensive use of lawfare. These, at the least, help prevent Russian claims around the crisis from becoming embedded or accepted *de facto* by other states with further strategic consequences. These actions have used a wide variety of venues to rally international juridical opinion, *opinio juris*, against unlawful Russian conduct. In response, Russia has sought to deflect external legal challenges by

¹⁴See interview with Putin, Rossiya 1’s television film *World Order*, 20 December 2015, available at: *BBC Monitoring* online, accessed 30 December 2015.

increasingly emphasising its state sovereignty, in particular, declaring that no international court can decide matters against Russia's sovereign will. In July 2015 the Russian Constitutional Court declared that the judgments of the European Court of Human Rights could not be implemented in Russia if they contradicted the Russian constitution. In December that year, the Russian *Duma* passed a law allowing the Constitutional Court to declare international court orders unenforceable if they went against the constitution.

A particular site of legal discourse is the International Criminal Court (ICC). In November 2016 Russia decided to withdraw formally from the ICC, after the court's lead prosecutor and an ICC report said that the simmering conflict in Ukraine should be considered as an international armed conflict between Russia and Ukraine, confirming that Russian forces were fighting in Eastern Ukraine (Grove 2016; Yashlavskiy 2016). In fact, Russia had never actually ratified the Rome Statute of the ICC and had been cooperating with the ICC as an observer. In January 2017 Ukraine filed a case against Russia at the UN International Court of Justice (ICJ). Moscow was accused of illegally annexing Crimea and 'intervening militarily in Ukraine, financing acts of terrorism, and violating the human rights of millions of Ukraine's citizens'.¹⁵ While the court's rulings are final and binding, it lacks any means of enforcement. Russia has refused to try to legitimise the actions it has taken in Ukraine by arguing its case before the ICJ. It has simply stated its actions are consistent with international law and that the ICJ lacks jurisdiction in the case involved (Baggiani 2017).¹⁶

The United Nations is an especially important discursive site for legal wrangling, as heated debates over Crimea in 2014 in the Security Council showed. While Russia could veto Security Council resolutions, in December 2018 the UN General Assembly adopted a (non-binding) Ukraine-initiated resolution (66 states in favour, 19 opposed and 72 abstentions), which for the first time in this forum urged Russia 'as the occupying power, to withdraw its military forces from Crimea and to end its temporary occupation of Ukraine's territory without delay'. The resolution expressed non-recognition of the annexation of Crimea and grave concern about the progressive militarisation of the peninsula and adjacent marine areas.¹⁷ This resolution followed a serious Russian–Ukrainian naval clash in the Kerch Straits, which also highlights a new front in the legal confrontation between the two sides.

Kyiv already had filed a case before the Permanent Court of Arbitration in September 2016, accusing Russia of usurping Ukraine's maritime rights, energy resources and fisheries, and blocking access through the Kerch Strait. However, Russia made no concessions to Ukraine over these infringements and, by opening its new bridge across the Kerch Straits in summer 2018, physically reasserted its claim to sovereignty over Crimea and projected its power further into a largely unregulated maritime legal environment. In

¹⁵*The Washington Post*, 17 January 2017; 'State TV Show Talks Ukraine's Lawsuit against Russia', 13 March 2017, available at: *BBC Monitoring* online, accessed 25 March 2017.

¹⁶'Russia Rejects Ukraine's Case Over Separatist Support in UN Court', *Radio Free Europe/Radio Liberty*, 3 June 2019, available at: <https://www.rferl.org/a/russia-rebuffs-ukraine-s-case-over-separatist-support-in-un-court/29979360.html>, accessed 17 January 2020.

¹⁷'UN General Assembly Adopts Resolution on Crimea', *Ukrinform*, 18 December 2018, available at: <https://www.ukrinform.net/rubric-politics/2603191-un-general-assembly-adopts-resolution-on-crimea.html>, accessed 25 December 2018.

claiming the Crimean port of Kerch with its adjoining waters, backed up by naval force, Russia has *de facto* if not *de jure* annexed the Kerch Straits. Russia had claimed for years that the legal status of the enclosed Azov Sea and the Kerch Strait had been codified by a bilateral Russian–Ukrainian treaty signed in December 2003.¹⁸ By annexing Crimea and changing borders, Russia overturned the previously agreed basis for interpreting and applying this treaty, and indeed put itself in breach of the treaty (and others, such as the 1997 interstate treaty between Moscow and Kyiv). Ukraine is litigating this case on the basis of the UN Convention on the Law of the Sea (UNCLOS). However, international lawyers have debated whether the naval clash should come under peacetime rules of the law of the sea or the law of naval warfare (if it is part of a continuing aggression by Russia against Ukraine), which applies to international armed conflicts (Kraska 2018).

Russia has sought to close down the legal argumentation on this volatile issue and insists that it cannot be presented for international jurisdiction or arbitration; rather, it is to be resolved on a bilateral basis under the 2003 treaty (Socor 2019b). Yet this approach lacks credibility while the foundations of Russian–Ukrainian legal relations and Ukrainian territorial integrity are in dispute. When the Treaty of Friendship and Cooperation between Russia and Ukraine, which had been ratified by Moscow in 1998, and which expired in 2018, was formally terminated by Ukraine in 2019, it was described by Russian commentators as having been the legal basis for bilateral relations as well as for Ukraine’s lawsuits against Russia in international courts.¹⁹ Yet, while the treaty was in force, Russia had blatantly infringed its key article on the mutual respect of the parties for each other’s territorial integrity over Crimea and eastern Ukraine, given especially that the treaty referred to the boundaries that existed in 1998. Asked about the termination of the treaty, Lavrov blithely noted that ‘at a political level we continue to respect the territorial integrity of Ukraine within the boundaries that took shape after the referendum in Crimea and its reunification with the Russian Federation’.²⁰

In the eastern portions of Ukraine’s Donetsk and Luhansk provinces Russian official legal discourse has not raised the option of boundary changes. However, since 2014, Ukraine has faced a full-spectrum Russian use of lawfare to relativise and undermine its sovereignty here, even seeking to create new legal rights and obligations. In this vein, in April 2019, Putin issued a decree offering Russian citizenship *en masse* to residents of the ‘people’s republics’ in those Russian-supported breakaway regions, a tactic sometimes described in the West as ‘passportisation’. The offer could even extend further into Ukraine: ‘Russia will give its passports to Russians in Ukraine as well as those Ukrainians who feel that their ties with Russia are unbreakable’, Putin declared (Socor 2019a). At the least, this offer blurs the difference in Russian legal discourse between these Donbas regions and Crimea as regards citizenship and, to some extent, status. Ukraine condemned these Russian steps as ‘legally void’ and the European Union threatened not to recognise

¹⁸For the text of the Treaty between the Russian Federation and Ukraine in the Use of the Sea of Azov and the Kerch Strait, see: https://www.mid.ru/foreign_policy/international_contracts/2_contract/-/storage-viewer/bilateral/page-154/46287, accessed 7 May 2020.

¹⁹‘Poroshenko razryvaet dogovor o druzhbe s Rossiei’, *Kommersant*”, 18 September 2018.

²⁰Foreign Minister Sergey Lavrov’s Annual Press Conference, 15 January 2018, available at: <https://russiaeu.ru/en/foreign-minister-sergy-lavrov-s-annual-press-conference>, accessed 7 May 2020.

Russian passports obtained through what it denounced as an illegal method.²¹ However, this effort to extend Russian citizenship certainly expands the scope of legal contestation around conflict in Ukraine, although passportisation is not a novel dimension of Russian statecraft (Littlefield 2009; Allison 2013, pp. 153–55).

Russian defence of the status quo: the case of Syria

The Syrian conflict has offered Putin a high-profile opportunity to try to reassert Russia's dominant legal image before 2014 as supporter of the hard shell of state sovereignty, although this appears to be inconsistent with various Russian actions in the CIS region. Russia has accused the United States and other Western states of legal violations in this conflict, cast in terms of traditional UN Charter-focused legal principles (Allison forthcoming), even as the furore over the annexation of Crimea persists.

This is part of an entrenched Russian narrative, by which Western states challenge the *status quo* and stability in the international order for strategic ends through efforts to transform the domestic order of states, by inciting mass unrest. In the Middle Eastern context, this narrative fuses the Arab Spring uprisings (with some qualification)²² with the overthrow of Muammar Qaddafi in Libya in 2011 and the civil war in Syria, as well as the 2014 Maidan revolution in Ukraine. Putin is virulently opposed to states (or the UN Security Council) applying judgments about regime legitimacy to justify any external enforcement action. On this issue he seeks to bond with many illiberal states, including China, where regime security is prized over human security, as well as with various ex-colonial states still sensitive to Western assessments of their domestic politics. This component remains central to Russia's critique of 'hegemonic' US policies. Putin knows that the liberal notion of democratic legitimacy is not grounded in international law and has scorned 'a kind of "supra-legal" legitimacy', used to justify illegal intervention or 'toppling inconvenient regimes'.²³

As the civil uprising of spring 2011 in Syria escalated into civil war, Russia used its Security Council veto to shield the Syrian regime of Bashar al-Assad. Moscow proceeded to reject a series of Security Council draft resolutions, claiming these could prepare the ground for a Chapter 7 authorisation of force against Syria, even if their language remained muted over such intervention. At the same time Russia continued to arm the Syrian regime. Putin justified this as cooperation 'with a legitimate government without violating any rules of international law', since the United Nations had imposed no restrictions on weapons supplies to Syria.²⁴

²¹'Russia Begins Handing out Passports to Ukrainians from Conflict Zone', *Radio Free Europe/Radio Liberty*, 14 June 2019.

²²The Russian response to the Arab Spring uprisings varied, despite the cruder 'colour revolution' depiction of them after 2012; Dannreuther (2015, pp. 79–93).

²³Interview with Putin, Rossiya 1 television film *World Order*, 20 December 2015, available at: *BBC Monitoring* online, accessed 30 December 2015; 'Meeting of the Valdai International Discussion Club', 24 October 2014, available at: <http://eng.news.kremlin.ru/news/23137>, accessed 5 November 2014.

²⁴'Interview to Channel One and Associated Press News Agency', 3 September 2013, available at: <http://eng.news.kremlin.ru/news/5935>, accessed 4 September 2013.

A polarisation over the principle of sovereignty developed in September 2013 when the United States threatened military strikes against Assad for the apparent use of chemical weapons by his regime against civilians. Putin dismissed any humanitarian justification for an attack bypassing the Security Council and presented Russia as taking the high ground in upholding the use of force 'only within the existing international order, international rules and international law'.²⁵ Writing specially for the *New York Times* to a US audience, he emphasised this meant that the use of force, except in self-defence or under the UN Charter, would be an act of aggression (Putin 2013).²⁶

Moscow's 'restrictionist' legal position gained the tacit or explicit support of many influential states. The Russian-led Collective Security Treaty Organisation (CSTO) on this occasion (unlike soon after over Crimea) worked in tandem with Russia in critiquing the legality of any intervention in Syria bypassing the Security Council.²⁷ Putin used a G20 meeting in St Petersburg in early September 2013 to rally opposition to 'the use of force against a sovereign state'. He listed a group of other G20 states firmly opposed to a military operation against Damascus: China, India, Indonesia, Argentina, Brazil, South Africa and Italy.²⁸ He took evident pleasure in opposing the United States and its allies and in averting the US strike through enabling the agreement that was reached to destroy Syria's chemical weapons.

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

Russia asserted, however, that bombing sovereign states, whether or not 'conducted under the pretext of destroying terrorist groups', is illegal 'without the consent of the state in question or a direct sanction of the UN Security Council'.²⁹ Putin reaffirmed this position

²⁵ 'Interview to Channel One and Associated Press News Agency', 3 September 2013, available at: <http://eng.news.kremlin.ru/news/5935>, accessed 4 September 2013.

²⁶ 'For President Obama's case for military action against Syria, see "Transcript: President Obama's Address To The Nation On Syria", *NPR*, 10 September 2013, available at: <http://www.npr.org/2013/09/10/221186456/transcript-president-obamas-address-to-the-nation-on-syria>, accessed 12 September 2013. Obama does not offer specific legal justifications for force against the Syrian regime, though he observes that chemical attacks on civilians are a violation of international (humanitarian) law.

²⁷ 'Meeting of CSTO in Sochi, Interfax-AVN Military News Agency, Moscow, 23 September 2013', *BBC Summary of World Broadcasts*, 23 September 2013, available at: <https://web.lexis-nexis.com/universe>, accessed 1 October 2013.

²⁸ 'Vladimir Putin's News Conference Following the G20 Summit', 6 September 2013, available at: <http://en.kremlin.ru/events/president/news/19168>, accessed 4 November 2016.

²⁹ 'Foreign Minister Lavrov's Address and Annual News Conference on Russia's Diplomatic Performance in 2014, 21 January 2015', available at: https://www.mid.ru/en/press_service/minister_speeches/-/asset_publisher/7OvQR5KJWVmR/content/id/905272, accessed 30 January 2015.

in September 2015 after a spectacular ISIS attack in Paris, condemning combat strikes by Australian and French as well as US air forces against ISIS on Syrian territory (France invoked the right of direct self-defence). Meanwhile, Putin accepted no prohibition on Russian military assistance to Syria ‘provided exclusively to a legitimate government of one country or another, upon its consent or request’. In contrast, he claimed, military support to ‘illegal structures runs counter to the principles of modern international law’.³⁰ These arguments sidestepped the problem that arises if states openly disagree over who is the effective or legitimate government in a particular case.

Russia took advantage of the unclear position in international law about the possible response when an armed attack comes from a ‘non-state actor’ such as ISIS, based in a state that is ‘unwilling or unable’ to prevent the attack. Security Council Resolution 2249 in November 2015, which calls upon states to take ‘all necessary measures’ in compliance with international law against terrorist groups in Syria and Iraq, went some way to provide legitimacy for the military actions taken against ISIS.³¹ Despite its creative ambiguity, the resolution does not however authorise all necessary measures or provide any new stand-alone legal basis for the use of force against ISIS in Syria or Iraq (Lang 2015, pp. 3–21; Scahrf 2016, pp. 1–54). For its part, Russia explicitly stated that Resolution 2249 ‘is a political appeal, rather than a change to the legal principles underlying the fight against terrorism’.³²

For Moscow, the importance of asserting clear legal distinctions between Western and Russian military actions and aid to Syria intensified when the Russian air force became a direct and extensive participant in the civil war in the country from September 2015. Just before launching the Russian air campaign, Putin sought the high ground in the UN General Assembly by calling for a ‘broad international coalition against terrorism ... on the basis of international law’, which in practice meant one aligned with Damascus.³³ The legal basis Russia offered for this unprecedented post-Cold War Russian use of force outside the CIS region was intervention by invitation of the Syrian government. There is no rule prohibiting an intervention by invitation in a civil war if the invitation comes from the government, a point emphasised in this case since Assad’s regime retained control over the strategic core territory of the state (Visser 2016). Moscow has legally justified its support for the Assad regime, for what it portrays as constitutional order, on these grounds.

In April 2018, as in September 2013, Russia positioned itself as the upholder of the UN Charter and norms of international law when President Trump ordered airstrikes against military and civilian targets in Syria in response to an apparent regime use of chemical weapons.³⁴ The strikes were carried out by US, British and French armed forces. Their

³⁰‘Answers to Journalists’ Questions’, 29 September 2015, available at: <http://en.kremlin.ru/events/president/news/50394>, accessed 20 October 2015; ‘Interview to US TV Channel CBS and PBS’, 29 September 2015, available at: <http://en.kremlin.ru/events/president/news/50380>, accessed 29 September 2015.

³¹Resolution 2249, adopted on 20 November 2015, available at: <http://www.un.org/en/sc/documents/resolutions/2015.shtml>, accessed 15 August 2016. The resolution was adopted 15-0-0.

³²Vitaly Churkin at Security Council 7565th meeting, United Nations, 20 November 2015, available at: <https://undocs.org/en/S/PV.7565>, accessed 20 August 2016.

³³‘Putin’s UN General Assembly Speech’, *Washington Post*, 28 September 2015, available at: <https://www.washingtonpost.com/news/worldviews/wp/2015/09/28/read-putins-u-n-general-assembly-speech>, accessed 29 September 2015.

³⁴‘Statement by President of Russia Vladimir Putin’, 14 April 2018, available at: <http://en.kremlin.ru/events/president/news/57257>, accessed 14 April 2018.

respective governments argued that there was no prospect of obtaining a mandate from the UN Security Council to confront chemical weapons used by Syria and thereby claimed to fulfil ‘an international public order function of defending the credibility of the prohibition of the use of chemical weapons in general and enforcing Syria’s obligation in particular’ (Weller 2018).³⁵ However, in the event Russia gained little from opposing this rather weak legal claim. Moscow’s draft Security Council resolution seeking to condemn the attack as an act of aggression attracted only three votes in its favour and eight states voted positively against (Chan 2018).

From another perspective, however, the Syrian conflict has graphically illustrated Russian resistance to the notion of humans as subjects of international law, despite its abusive use of humanitarian claims over Crimea. Moscow’s rigid focus on Syrian sovereignty has accompanied its dismissal of egregious violations of international humanitarian law by Damascus, including evidence of regime complicity in the use of chemical arms. Indeed Russia contributed to those violations through its own bombing campaign in Aleppo and other civilian areas. Russian officials have criticised ‘the politicization of human rights and humanitarian topics’ in Syria, resulting from ‘alleged’ civilian deaths as a result of strikes by Russian forces.³⁶

After Moscow had repeatedly blocked efforts in the Security Council to prosecute alleged war crimes in Syria, at the end of 2016 the UN General Assembly finally voted, over strenuous objections from Russia and Syria, to establish a panel to prepare cases involving war crimes and human rights abuses in Syria. The resolution was adopted by 105–15, with 52 abstentions.³⁷ This vote may be viewed as a measure of the acceptability to the international community at large of Russia’s attempt to resist developing norms on state responsibility for human rights, its determination to ignore outright violations of international humanitarian law and its disputing of the established facts of the Syrian conflict, on the grounds of defence of state sovereignty.

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

³⁵However, the UK government presented a detailed legal position based on the grounds of ‘overwhelming humanitarian necessity’; see, ‘Syria Action—UK Government Legal Position’, available at: <https://www.gov.uk/government/publications/syria-action-uk-government-legal-position>, accessed 20 April 2018.

³⁶Vladimir Safronkov at UN Security Council 7560th meeting, United Nations, 16 November 2015, available at: <https://undocs.org/en/S/PV.7560>, accessed 5 November 2016.

³⁷‘UN Creates Body to Prepare Syrian War Crimes Cases over Russian Objections’, *Radio Free Europe/Radio Liberty*, 22 December 2016, available at: <https://www.rferl.org/a/un-creates-body-prepare-syria-war-crimes-cases-over-russian-objections/28190272.html>, accessed 7 May 2020.

concerns over the small-scale use of chemical munitions in Syria, has made it easier for Putin to envisage such a world.

Conclusion

This study considers the balance between revisionist and *status quo* policies in Russian diplomacy during 2014–2019, as expressed in its international legal discourse around the conflicts in Ukraine and Syria, especially in relation to the use of force. It examines evidence that Russia is seeking legal revisionism, a normative aspiration. This is done by assessing whether Russia expects its justifications and claims to gain wider traction among states and judicial opinion, perhaps even encouraging modification in legal understandings. This study shows that there is no evidence that this has been happening in the case of Russia's contentious and radical claims over Ukraine or that Russia has even made a serious and sustained effort towards such legal revisionism. In contrast, in the Syrian case, Russian discourse does not raise any question of legal revisionism. Here Moscow has presented itself as a stalwart supporter of traditional sovereignty norms, a staunch advocate of the *status quo* in defending the incumbent regime. This variance in normative language substantiates previous research, which has argued that, for Moscow, most of the CIS region forms a zone of legal exceptionalism, a zone wherein Russia has long asserted specific entitlements as an adjacent power, and which simply took more extreme forms and justifications in 2014. In the wider international system, such as the Middle East, on the other hand, Moscow falls back on traditional UN Charter principles and deploys them to constrain Western power.

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

On the latter point Putin may have hoped to extract concessions from President Trump, out of the latter's disdain for rules and constraints on the exercise of power. Yet the US State Department has very explicitly confirmed that the US will 'not recognise Russia's "referendum" of March 16 2014 [on Crimea], nor its attempted annexation of Crimea and continued violation of international law'.³⁸ After Trump's first summit meeting with Putin in July 2018, a formal US policy was announced reaffirming the United States' 'refusal to

³⁸See 'US Denounces Russia's Crimea Annexation on Referendum Anniversary', *Radio Free Europe/Radio Liberty*, 16 March 2017, available at: <https://www.rferl.org/a/united-states-denounces-crimea-annexation-referendum-anniversary/28373961.html>, accessed 7 May 2020.

recognise the Kremlin's claims of sovereignty over territory seized by force in contravention of international law' (Najarian 2018). This stance parallels continued EU policy. In a statement marking the fifth anniversary of Russia's 'illegal annexation' of Crimea, Federica Mogherini, then EU foreign policy chief, emphasised that 'the EU reiterates that it does not recognise and continues to condemn this violation of international law' and that it 'remains a direct challenge to international security, with grave implications for the international legal order that protects the territorial integrity, unity and sovereignty of all states'.³⁹

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

Although it is beyond the scope of this study, the research raises the important issue of whether this behaviour expresses Russia's assertion of significantly increased regional entitlements in the European security order. Russian legal discourse then becomes a means to question established security policy principles, where Moscow seeks disruption, not stabilisation, of the *status quo*; in other words, a structural form of revisionism. The desired outcome for Europe by this logic would be a reversion to spheres of influence, which would demarcate the scope of security alignments and memberships of core institutions as well as the respective legal zones (with the CIS region at least falling under Russian patronage, if not a wider Russian-influenced zone).⁴⁰ Back in 2014, Putin had already envisaged this could leave a bare, pragmatic minimum of rules to avoid dangerous conflict: 'A clear system of mutual commitments and agreements ... and mechanisms for managing and resolving crisis situations'.⁴¹

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

³⁹Statement by Federica Mogherini, 'Mogherini Slams Russia as EU Marks Fifth Anniversary of Crimea's "Illegal Annexation"', *Radio Free Europe/Radio Liberty*, 17 March 2019, available at: <https://www.rferl.org/a/mogherini-slams-russia-as-eu-marks-fifth-anniversary-of-crimea-s-illegal-annexation-/29826147.htm>, accessed 7 May 2020.

⁴⁰At the end of 2019 Putin used some new language of territorial entitlement. He lamented that 'when the Soviet Union was created, ancestral Russian territories [such as] all of the Black Sea coastal lands [*Prichernomor'e*] and Russia's western lands [*zapadnye zemli rossiiskie*], that never had anything to do with Ukraine, were turned over to Ukraine'. This recasts Putin's argument in 2014 contesting Ukraine's control of the territory of 'Novorossiia', which had been given by the Russian Bolsheviks to Soviet Ukraine in 1922. See, 'Vladimir Putin's Annual News Conference', 19 December 2019, available at: <https://en.kremlin.ru/events/president/news/62366>, accessed 7 May 2020.

⁴¹'Meeting of the Valdai International Discussion Club', 24 October 2014, available at: <http://eng.news.kremlin.ru/news/23137>, accessed 5 November 2014.

agreement, which seems improbable, would be the expression of power arrangements rather than normative alignment.

ROY ALLISON, Professor of Russian and Eurasian International Relations, School of Global and Area Studies, University of Oxford; Director, Centre for Russian and Eurasian Studies, St Antony's College, Oxford, OX2 6JF, UK. *Email:* roy.allison@sant.ox.ac.uk

References

- Allison, R. (2013) *Russia, the West and Military Intervention* (Oxford, Oxford University Press).
- Allison, R. (2014) 'Russian "Deniable Intervention" in Ukraine: How and Why Russia Broke the Rules', *International Affairs*, 90, 6.
- Allison, R. (2017) 'Russia and the Post-2014 International Legal Order: Revisionism and Realpolitik', *International Affairs*, 93, 3.
- Allison, R. (forthcoming), 'Russian Legal and Normative Claims for its Intervention in the Syrian Conflict Since 2015', in Kozhanov, N. (ed.) *Russia and the Middle East* (Oxford, Oxford University Press).
- Baggiani, G. (2017) 'Ukraine's Legal Cases Against Russia in International Courts', *Eurasian Daily Monitor*, 14, 27, 1 March, available at: <http://jamestown.org/programs/edm/archives/2017>, accessed 20 March 2017.
- Borgen, C. (2007) 'Whose Public, Whose Order? Imperium, Region and Normative Friction', *Yale Journal of International Law*, 32.
- Borgen, C. (2014) 'Kosovo, South Ossetia, and Crimea: the Legal Rhetoric of Intervention, Recognition and Annexation', 2 April, available at: <http://www.opiniojuris.org/2014/04/02/Kosovo-south-ossetia-crimea-legal-rhetoric-intervention-recognition-annexation>, accessed 12 August 2016.
- Borgen, C. (2015) 'Law, Rhetoric, Strategy: Russia and Self-Determination Before and After Crimea', *International Law Studies*, 91.
- Chan, S. (2018) 'U.N. Security Council Rejects Russian Resolution Condemning Syrian Strikes', *New York Times*, 14 April.
- Clark, I. (2005) *Legitimacy in International Society* (Oxford, Oxford University Press).
- Clunan, A. (2019) *The Social Construction of Russia's Resurgence: Aspirations, Identity and Security Interests* (Baltimore, MD, Johns Hopkins University Press).
- Dannreuther, R. (2015) 'Russia and the Arab Spring: Supporting the Counter-Revolution', *Journal of European Integration*, 37, 1.
- Deyerdmond, R. (2016) 'The Uses of Sovereignty in Twenty-First Century Russian Foreign Policy', *Europe-Asia Studies*, 68, 6.
- Dubinsky, D. & Rutland, P. (2019) 'Russia's Legal Position on the Annexation of Crimea', *Journal of Soviet and Post-Soviet Politics and Society*, 5, 1.
- Felgenhauer, P. (2015) 'Russia Proposes a Yalta-2 Geopolitical Trade-off to Solve the Ukrainian Crisis', *Eurasia Daily Monitor*, 12, 35, 26 February, available at: <https://jamestown.org/program/russia-proposes-a-ylta-2-geopolitical-tradeoff-to-solve-the-ukrainian-crisis/>, accessed 19 May 2020.
- Flavier, H. (2015) 'Russia's Normative Influence Over Post-Soviet States: The Examples of Belarus and Ukraine', *Russian Law Journal*, 3, 1.
- Gillich, I. (2015) 'Illegally Evading Attribution? Russia's Use of Unmarked Troops in Crimea and International Humanitarian Law', *Vanderbilt Journal of Transnational Law*, 48.
- Grant, T. D. (2015) *Aggression Against Ukraine: Territory, Responsibility and International Law* (Basingstoke, Palgrave).
- Grove, T. (2016) 'Russia to Withdraw from the International Criminal Court', *Wall Street Journal*, 16 November.
- Issaeva, M. (2017) 'Quarter of a Century from the Soviet Era: Reflections on Russian Doctrinal Responses to the Annexation of Crimea', *Russian Law Journal*, 5, 3.
- Kittrie, O. F. (2016) *Lawfare: Law as a Weapon of War* (Oxford, Oxford University Press).
- Klishin, A. (2016) 'Law and National Interest', *Russia in Global Affairs*, 4, 25 September, available at: <https://eng.globalaffairs.ru/number/Law-and-National-Interest-18392>, accessed 7 May 2020.
- Kokoshin, A. (2006) *Real'nyi suverenitet v sovremennoi miropliticheskoi sisteme* (Moscow, Evropa).

- Kraska, J. (2018) 'The Kerch Strait Incident: Law of the Sea or Law of Naval Warfare?', *EJIL: Talk!*, 3 December, available at: <https://www.ejiltalk.org/the-kerch-strait-incident-law-of-the-sea-or-law-of-naval-warfare/>, accessed 17 January 2020.
- Krickovic, A. (2018) 'Russia's Challenge: A Declining Power's Quest for Status', *PONARS Eurasia Policy Memo*, 543, October, available at: http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/Peppm543_Krickovic_Oct2018_0.pdf, accessed 13 May 2020.
- Lang, A. (2015) *Legal Basis for UK Military Action in Syria*, House of Commons Library, Briefing Paper 7404, 26 November, available at: <https://researchbriefings.files.parliament.uk/documents/CBP-7404/CBP-7404.pdf>, accessed 7 May 2020.
- Lavrov, S. (2016) 'Russia's Foreign Policy in a Historical Perspective', *Russia in Global Affairs*, 2, available at: <https://eng.globalaffairs.ru/articles/russias-foreign-policy-in-a-historical-perspective/>, accessed 7 May 2020.
- Likhachev, V. (2017) 'How to Build a Law-Governed World: The Russian Perspective', *International Affairs* (Moscow), 63, 3.
- Littlefield, S. (2009) 'Citizenship, Identity and Foreign Policy: The Contradictions and Consequences of Russia's Passport Distribution in the Separatist Regions of Georgia', *Europe-Asia Studies*, 61, 8.
- Lukyanova, E. (2015) 'On the Rule of Law in the Context of Russian Foreign Policy', *Russian Law Journal*, 10.
- MacFarlane, N. S. (2002) *Intervention in Contemporary World Politics*, Adelphi Paper 350 (Oxford, International Institute for Strategic Studies).
- MacFarlane, N. S. (2003) 'Russian Perspectives on Order and Justice', in Foot, R., Gaddis, J. & Hurrell, A. (eds) *Order and Justice in International Relations* (Oxford, Oxford University Press).
- Mälksoo, L. (2015) *Russian Approaches to International Law* (Oxford, Oxford University Press).
- Marxsen, C. (2016) 'International Law in Crisis: Russia's Struggle for Recognition', *Max Planck Institute Research Paper Series*, 5.
- Mearsheimer, J. (2014) 'Why the Ukraine Crisis is the West's Fault', *Foreign Affairs*, 18 August, available at: www.foreignaffairs.com/articles/russia-fsu/2014-08-18/why-ukraine-crisis-west-s-fault, accessed 17 January 2020.
- Najarian, M. (2018) 'U.S. Issues "Crimea Declaration" Reaffirming Rejection of Russia's Annexation', *Radio Free Europe/Radio Liberty*, 26 July, available at: <https://www.rferl.org/a/u-s-issues-crimea-declaration-reaffirming-rejection-of-russia-s-annexation/29390681.html>, accessed 11 August 2018.
- Naumov, A. (2015) 'The Pentagon Accuses Russia of Revisionism', *Nezavisimaya Gazeta*, 3 July.
- Peters, A. (2014) 'The Crimean Vote of March 2104 as an Abuse of the Institution of the Territorial Referendum', Max Planck Institute for Comparative Public and International Law, July, available at: <http://ssrn.com/abstract=2463536>, accessed 5 February 2017.
- Petrovsky, V. (2018) 'A New Helsinki Process: Pros and Cons', *International Affairs* (Moscow), 64, 6.
- Pursiainen, C. & Forsberg, T. (2018) 'The Principle of Territorial Integrity in Russian International Law Doctrine: The Case of Crimea', in Morris, P. (ed.) *Russian Discourses on International Law. Sociological and Philosophical Phenomenon* (London, Routledge).
- Putin, V. (2013) 'A Plea for Caution from Russia', *New York Times*, 11 September.
- Rodin, I. & Garmonenko, D. (2015) 'Ukraine Fully Denied Rights in Crimea', *Nezavisimaya Gazeta*, 29 June.
- Romanova, T. (2018) 'Russia's Neorevisionist Challenge to the Liberal International Order', *The International Spectator*, 53, 1.
- Sakwa, R. (2017) *Russia Against the Rest: The Post-Cold War Crisis of World Order* (Cambridge, Cambridge University Press).
- Scahrf, M. (2016) 'How the War Against ISIS Changed International Law', *Case Western Reserve Journal of International Law*, 48.
- Shevchenko, N. (2015) 'Three Ways Russian Foreign Policy could Change International Law', *Russia in Global Affairs*, 2 November, available at: <https://eng.globalaffairs.ru/articles/three-ways-russian-foreign-policy-could-change-international-law/>, accessed 7 May 2020.
- Sliney, S. A. (2015) 'Right to Act: United States Legal Basis Under the Law of Armed Conflict to Pursue the Islamic State in Syria', *University of Miami National Security and Armed Conflict Law Review*, 6, 1, November, available at: <http://repository.law.miami.edu/umnsac/vol6/iss1/1>, accessed 10 November 2017.
- Socor, V. (2019a) 'Russia Launches "Passportization" in Occupied Ukrainian Donbas', *Eurasia Daily Monitor*, 16, 64, 2 May, available at: <https://jamestown.org/program/russia-launches-passportization-in-occupied-ukrainian-donbas-part-one/>, accessed 19 May 2020.
- Socor, V. (2019b) 'Kerch Strait Incident: Ukraine Wins Court Ruling Against Russia', *Eurasia Daily Monitor*, 16, 79, 30 May, available at: <https://jamestown.org/program/kerch-strait-incident-ukraine-wins-court-ruling-against-russia/>, accessed 19 May 2020.

- Speck, U. (2017) 'Russia's Challenge to the Liberal International Order', in Irisova, O., Barbashin, A., Burkhardt, F. & Wyciszkievicz, E. (eds) *A Successful Failure: Russia after Crime(a)* (Warsaw, Centre for Polish–Russian Dialogue and Understanding).
- Vershow, A. (2018) 'Trump's "Grand Bargain" with Russia is an Illusion', *Washington Post*, 22 June.
- Visser, L. (2016) 'Russia's Intervention in Syria', *EJIL: Talk!*, 25 November, available at: <http://www.ejiltalk.org/russias-intervention-in-syria>, accessed 15 August 2016.
- Weller, M. (2014) 'Islamic State Crisis: What Force does International Law Allow?', 25 September, available at: <http://www.bbc.co.uk/news/world-middle-east-29283286>, accessed 10 August 2016.
- Weller, M. (2018) 'Syria Air Strikes: Were They Legal?', *BBC News*, 14 April, available at: <http://www.bbc.co.uk/news/world-middle-east-43766556>, accessed 14 April 2018.
- Yashlavskiy, A. (2016) 'Expert Explains why Russia Will Not Be a Party to the ICC's Rome Statute', *Moskovsky Komsomolets*, 17 November.