



Self-Defence As Remedial Self-Determination: Continuity in Russian Narratives to Justify Imperialism and the Use of Force

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Abstract

The principle of self-determination is at the centre of the Russian Federation’s (Russia’s) ‘justifications’ for using force against Ukraine and supporting the separatist entities in its eastern provinces, as demonstrated by official statements of Russia’s representatives and the oral and written submissions to the inter-state proceedings on the application of the Genocide Convention before the International Court of Justice (*Ukraine v. Russia*). In particular, Russia construes self-defence as an exercise of remedial self-determination, supporting territorial separation and the creation of satellite states or their annexation by the Federation. This is in continuity with Russia’s policies and argumentations utilised in other contexts such as Crimea, Abkhazia and South Ossetia. These cases differ in their context and history but share the same remedial approach to external self-determination as a purported justification to use force. This is also in partial continuity with the tradition of Soviet approaches to self-determination. Like other states’ self-indulgent ‘exceptionalism’ in international law, Russia’s cherry-picking application of self-determination reveals its instrumental usage to camouflage imperialistic aggression and expansionistic ambitions.

Keywords Self-determination · Self-defence · Remedial secession · Russia · Ukraine

1 Introduction

The struggle of peoples for self-determination has always been one of the main drivers of disputes, disagreements, and armed conflicts in the modern era.¹ This still holds true in 2024: from the Chagossians to the Palestinians, from Western Sahara to Kashmir, the world is still ripped apart when called upon to determine whose land

¹ Duursma (1996), p. 1.

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is the land, whose right is the right, and how to find the ‘self’ in the people’s right to self-determination.²

The ongoing conflict in Ukraine is no exception. The people of Ukraine are fighting a liberation war to free their country from a foreign power which has occupied and annexed their eastern territories, threatens their political independence, and denies their very right to exist as a nation and sovereign independent state.³ On the other hand, the ‘People’s Militias’ of Donetsk and Luhansk initiated the 2014 war in Donbas to seek independence from Ukraine claiming the right to determine their international political status and emancipate themselves from the allegedly genocidal Ukrainian government. The Russian Federation (Russia) intervened in their support to revert the alleged progressive militarisation and nazification of Ukraine and to halt the North Atlantic Treaty Organization’s (NATO’s) expansion to eastern European territories.⁴ Both sides have classified their fight as one of self-defence, and both sides have invoked the right of people to self-determination, which confers upon ‘all peoples’ the right ‘freely to determine, without external interference, their political status and to pursue their economic, social and cultural development’.⁵

The right to self-determination attracts diametrically opposed narratives about who is the ‘people’ holding a claim over the land. For each party’s thesis, there is an equal antithesis; mirroring accusations face one another. Russia accuses Ukraine of committing genocide,⁶ but it is Ukraine that is suing Russia under the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)⁷ before the International Court of Justice (ICJ), seeking a negative (or ‘reverse compliance’) declaratory judgment disproving the allegation (*Ukraine v. Russian Federation*).⁸ At the same time, Russia stands accused of genocide too.⁹ Ukraine

² See the telling title of Sparks (2023): ‘A Struggle for Self-Determination: Whose Claim, to What Right?’.

³ Cavandoli and Wilson (2022), pp. 383–410.

⁴ Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General, 24 February 2022, UN Doc. S/2022/154.

⁵ UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, UN Doc. A/RES/2625(XXV), Principle VII.

⁶ For an analysis of Russian narratives on genocide, see Fortuin (2022). See also Etkind’s textual analysis of Putin’s speech launching the Russian invasion of Ukraine (Etkind (2022)): ‘Putin swaps the victims and the perpetrators. Starting his own genocide, Putin presents it as the victims’ revenge for the previous one’.

⁷ UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS p. 277.

⁸ ICJ, Application Instituting Proceedings, *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, 26 February 2022, available at <https://www.icj-cij.org/public/files/case-related/182/182-20220227-APP-01-00-EN.pdf> (accessed 18 April 2024). This allegation of genocide is widely contested and regarded as unfounded. It has been noted that the Organisation for Security and Co-operation in Europe (OSCE), which has been monitoring the situation in the other occupied territories since 2014, ‘has never reported anything remotely resembling Russia’s claims’ (see Quéniwet (2022), p. 142).

⁹ E.g. Azarov et al. (2023); Ioffe (2023); Pylypenko (2023).

reclaims the right to defend itself against the invader, and to remain free from foreign political influence as granted by the principles of non-interference and internal self-determination;¹⁰ in parallel, Russia claims the right to intervene in support of its nationals ('compatriots')—whether they have Russian citizenship or not—seeking self-determination and separation from Ukraine.¹¹ As truth easily dissolves into propaganda, so the borders of reality merge with the fluid contours of the 'people' who would be entitled to a right to self-determination, especially when it comes to multi-national or multi-ethnic societies with disputed territories and conflicted histories. Yet, invaders rarely—if ever—are on the right side of history.

This paper looks at Russia's misuse of the principle of self-determination to build its legal arguments when purportedly justifying the use of force against Ukraine. The paper does not aim to provide an in-depth analysis of Russia's legal arguments, which many others have already discussed extensively.¹² Instead, it conducts a legal-historical analysis of Russia's rhetorical strategies in invoking international law notions in the attempt to justify the use of force, support for separatist entities, and annexation in eastern Ukraine. Specifically, this paper argues that Russia has instrumentalised the right to self-determination as a justificatory pretext for the full-scale invasion and ongoing war in Ukraine, in continuity with previous policies and argumentations utilised in other contexts. This analysis is based on a survey of official statements by Russian representatives, *in primis* the Russian President Vladimir Vladimirovič Putin, whose position is particularly noteworthy given his ability to single-handedly steer Russia's legal stance on international legal matters and affairs.¹³ The paper also looks at the statements of other Russian politicians and diplomats, including Vassily Alekseyevich Nebenzia, the current Permanent Representative of Russia to the United Nations (UN), and the decisions of the Russian Constitutional Court. Furthermore, the paper conducts a systematic analysis of the legal arguments used by Russia and its lawyers in the written submissions and oral statements during the proceedings of *Ukraine v. Russian Federation* to date.¹⁴ It then compares these rhetorical legal arguments to previous approaches of the Russian Federation and the Soviet Union to territorial separation and self-determination.

These arguments are developed as follows. In Sect. 2, the paper briefly reviews the legal justifications advanced for using force in Ukraine, namely the responsibility

¹⁰ Internal self-determination refers to the ability of the people and minorities to participate in the political life and governance of their respective territories, as well as the right to self-government or autonomy within the confines of their parent state.

¹¹ External self-determination refers to the recognition of a people's right to achieve independence from the parent state. It has been applied, in particular, to people under colonial or other forms of foreign domination or oppression.

¹² See e.g. Cavandoli and Wilson (2022); Green et al. (2022); Hoffmann (2022); Schmitt (2022); Milanovic (2022).

¹³ Mälksoo (2021), pp. 78, 81.

¹⁴ ICJ, *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (2022), General List No. 182, available at <https://www.icj-cij.org/case/182> (accessed 18 April 2024). For specific examples and references, see the analysis *infra*, Sect. 3.

to protect, the protection of nationals abroad, the doctrine of humanitarian intervention and, above all, the right to self-defence. Section 3 argues that the principle of self-determination has been pivotal in building such legal justifications (in particular self-defence), which all hinge on the claim of Russian nationals in eastern Ukraine to seek independence in the face of human rights violations. Section 4 argues that this reveals the consolidation of a ‘remedial’ approach to external self-determination, where a ‘people’ is entitled to separate from a parent state as a grievance for alleged genocidal actions.¹⁵ This approach emerges in Russia’s narratives regarding not only Donbas, but also the different contexts of Crimea, Abkhazia and South Ossetia, and is in continuity—*mutatis mutandis*—with the pre-1991 tradition of Soviet approaches to self-determination, which sought to encourage disenfranchisement from the Western liberal geopolitical influence. This historical continuity in the Russian narrative is discussed in Sect. 5. However, while the Soviet Union was concerned with protecting its own territorial integrity, contemporary Russia is more oriented towards expanding its sphere of influence and, when possible, territorial reach. Nowadays, self-determination is used to attempt to justify supporting secessions from neighbouring states, creating satellite states and, eventually, annexing them to the Federation. This demonstrates that in different contexts, Russia misuses the right to self-determination to justify invasion and, eventually, territorial annexation. The paper concludes that while violations of international law and distorted legal exceptionalism are not unique to Russia, this double-standard argumentation and the one-sided application of a ‘remedial right to external self-determination’ demonstrate the principle’s misuse as an instrument of imperialism to foster expansionistic ambitions.

2 Russia’s Legal Arguments for the Full-Scale Invasion of Ukraine

This section provides a brief analysis of the legal arguments used by Russia in attempting to justify the use of force against Ukraine, notwithstanding the prohibition of Article 2(4) of the Charter of the United Nations (UN Charter),¹⁶ by looking at official documents outlining Russia’s position in relation to the war. A first document is the official statement through which the President of the Russian Federation, Vladimir Putin, unilaterally declared war against Ukraine on 24 February 2022, launching the so-called ‘special military operation’.¹⁷ More than a proper legal explanation, the declaration of war, immediately transmitted to the UN Secretary-General,¹⁸ offers ‘an array of justifications somewhat alluding to legal exceptions but without providing real substantiation’.¹⁹ This section also looks at the legal

¹⁵ See *infra*, Sect. 4.

¹⁶ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

¹⁷ The Spectator, Full text: Putin’s declaration of war on Ukraine [translation into English] (24 February 2022), available at <https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine/> (accessed 18 April 2024).

¹⁸ Letter dated 24 February 2022, UN Doc. S/2022/154.

¹⁹ Hilpold (2023), p. 410.

documents submitted to the ICJ in the preliminary phase of the pending proceedings in *Ukraine v. Russian Federation*, and the arguments utilised by Russia's lawyers in their oral statements on preliminary objections in September 2023.

As mentioned in the introduction, this paper does not intend to thoroughly analyse these arguments and their validity under international law—an exercise that many others have already brilliantly undertaken elsewhere. Instead, this section seeks to show three things. First, the arguments rest upon the same narrative previously deployed to justify the military intervention in Crimea, Abkhazia and South Ossetia. Second, most of these arguments are used more as rhetorical strategies than legal justifications, as a means to depict a specific context in which the war started, victimising Russia's position. Third, the primary, if not the only, legal argument upon which Russia grounds its justification for the war is self-defence.

2.1 Protection of Nationals Abroad and the Responsibility to Protect in Conflation

One element emerging from President Putin's speech of 24 February 2022 announcing the start of the war is the emphasis on Russia's intention to protect its own nationals abroad. In Putin's words, the 'special military operation' in Ukraine aimed at 'bringing to justice those who committed numerous, bloody crimes against civilians, including citizens of the Russian Federation'.²⁰ This argument, similar to the approach previously utilised in the 2008 Russia-Georgia war and the annexation of Crimea,²¹ focuses on the prerogative/duty of Russia as a sovereign state to protect its own citizens facing dangers while in the territory of a foreign state. The 1993 Russian Constitution grants Russian citizens the right to receive protection, stating that '[t]he Russian Federation guarantees its citizens defence and patronage beyond its boundaries'.²²

This argument is premised on the presence of Russian citizens in eastern Ukraine. Thanks to Russia's unilateral mass passportisation policy, it is estimated that at least 530,000 Donbas residents received Russian citizenship between 2019 and 2021.²³ This policy manufactured the existence of large numbers of naturalised Russian compatriots that needed to be protected against the allegedly genocidal Ukrainian central government. Russia had used the same policy in the contested regions of Abkhazia and South Ossetia after the 2003 Rose Revolution in Georgia, and used it as a ground to intervene in the internal conflict.²⁴

Under international law, however, the right/duty to protect nationals abroad does not legitimise instigating a war. The protection of nationals is limited to targeted

²⁰ Milanovic (2022).

²¹ Janik (2022). On Russia's use of the 'Responsibility to Protect' doctrine as a legal justification to intervene in Georgia, see Natoli (2010), p. 391; Allison (2009), p. 184. On Crimea, see Buchan and Tsagourias (2017).

²² Russian Constitution of 12 December 1993, Art. 61(2).

²³ Bescotti et al. (2022).

²⁴ Ibid. See also Nagashima (2019), pp. 186–199.

rescue operations, possibly with the hosting state's consent. In extreme cases, special operations to rescue nationals abroad from imminent threats could be exercised unilaterally even without the consent of the host state,²⁵ but they should follow strict requirements: the presence of an imminent threat to or the injury of nationals; the failure or inability of the host state to protect them; and the use of only strictly necessary measures.²⁶ Rescue operations should be strictly localised, minimally invasive, proportionate, and used as a last resort.²⁷ They do not provide an exception to the prohibition of the use of force, and already on the occasion of Russia's military intervention in Georgia, the ad hoc Independent Fact-Finding Mission had stated that '[t]he constitutional obligation to protect Russian nationals ... cannot serve as a justification for intervention under international law. Domestic law can in principle not be invoked as a justification for a breach of an international legal rule.'²⁸ Therefore, by no means does the protection of nationals abroad provide a ground to launch a full-scale military attack.

As in the cases of Georgia and Crimea,²⁹ by suggesting that Russia has the right to intervene militarily in the territory of Ukraine to protect its own nationals—among other civilians—from genocide, President Putin seems to partially conflate the protection of nationals abroad and the Responsibility to Protect (R2P). This doctrine, agreed upon by the UN General Assembly in the 2005 World Summit Outcome Document,³⁰ enables military intervention for the purpose of protecting civilians from atrocity crimes in certain circumstances. Putin seemingly referred to the presence of Russian nationals to strengthen the argument that Russia has a responsibility to intervene to protect civilians in Donbas—although R2P typically benefits

²⁵ Buchan and Tsagourias (2021), p. 50.

²⁶ Waldock (1952), p. 467.

²⁷ Independent International Fact-Finding Mission on the Conflict in Georgia, Report, Volume II, September 2009, p. 286; Allison (2009), p. 178; Janik (2022). On the lack of proportionality of Russia's intervention in Georgia, see Buchan and Tsagourias (2021), p. 52.

²⁸ Fact-Finding Mission on Georgia Volume II (2009), p. 288. See also: 'The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law' (International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chap. IV.E.1, Art. 3); 'Every treaty in force is binding upon the parties to it and must be performed by them *in good faith*' (emphasis added) and '[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty' (Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS p. 331, Arts. 26 and 27, respectively); '... a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force' (Permanent Court of International Justice, *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory*, Advisory Opinion, 4 February 1932, Series A/B No. 44, p. 24).

²⁹ Letter dated 11 August 2008 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, 11 August 2008, UN Doc. S/2008/545 (Georgia); Letter dated 19 March 2014 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, 20 March 2014, UN Doc. A/68/803-S/2014/202 (Crimea).

For South Ossetia, where Russian officials spoke in extraterritorial terms of Russia's rights 'as an effective guarantor of peace and humanitarian security', see Allison (2009), p. 184. For Crimea, see Buchan and Tsagourias (2021), p. 53.

³⁰ UNGA Resolution 60/1, 2005 World Summit Outcome, 16 September 2005 (tab 10.3).

the genocidal state's local population, regardless of their national affiliation with the intervening states.

Like the protection of nationals abroad, R2P is not a valid justificatory ground for the war against Ukraine. R2P primarily entails the responsibility of states to protect populations under their jurisdiction and control, and the responsibility to assist other states to fulfil their responsibility. In addition, R2P entails the responsibility of the 'International Community' to take collective action through the UN, including through the use of force—as a last resort—, against a state that fails to protect its population from genocide, crimes against humanity, war crimes, and ethnic cleansing. It is widely accepted that R2P-based military interventions should be a collective response and should not be exercised unilaterally without the preliminary authorisation of the UN Security Council (SC).³¹ R2P does not even confer states with the authority to unilaterally undertake invasions and large-scale military interventions to protect their own citizens abroad, especially in the absence of the SC's approval.³² Russian operations lacked such authorisation, whose necessity had been previously insisted upon by Russia itself for the interventions in Kosovo and Afghanistan.³³

Although the protection of nationals abroad and R2P do emerge in Russia's narrative justifying the aggression against Ukraine, they are only marginal aspects. President Putin articulated his view on the protection of nationals abroad in vague terms. When Ukraine applied to the ICJ for a negative declaration regarding Russia's allegations that Ukraine was committing genocide against Russian nationals in *Ukraine v. Russian Federation*, Russia's response did not mention any concept of a responsibility, duty, or right to protect nationals abroad.³⁴ This 'responsibility to protect Russian nationals abroad' appears more as a moral rather than a legal argument—a rhetorical strategy to win the Russian public's sympathy for the war.

2.2 Humanitarian Intervention

In addition to Russia's own nationals, President Putin's speech launching the war against Ukraine referred to the imperative to protect civilians in Donbas more generally, particularly ethnic Russians and Russian speakers (regardless of their formal citizenship), who form 44% of the local population in Eastern Ukraine—the largest

³¹ Allison (2009), p. 185. See also, *inter multis*, Dobos (2018), pp. 123–138; Bellamy (2008). Contra, see e.g. Haugh (2014).

³² Allison (2009), p. 185. Partially contra, see Chatham (2011), fn. 103.

³³ Allison (2009), p. 184.

³⁴ See e.g. ICJ, *Ukraine v. Russian Federation* (2022), Preliminary Objections Submitted by the Russian Federation, Vol. I, 1 October 2022, available at <https://www.icj-cij.org/sites/default/files/case-related/182/182-20221003-wri-01-00-en.pdf> (accessed 18 April 2024), and the verbatim records of the oral proceedings, analysed *infra*. The only reference in Russia's submissions to the ICJ to the intention to protect people from 'genocide' through the military operation is found in the text of Putin's speech of 24 February 2022, reproduced in full in the Document of 7 March 2022 (with annexes) from the Russian Federation setting out its position regarding the Court's alleged lack of jurisdiction in the case, available at <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220307-OTH-01-00-EN.pdf> (accessed 18 April 2024).

percentage in Ukraine after Crimea.³⁵ In rather hyperbolic language, President Putin stated that Russia had to act preventively ‘to immediately stop ... the genocide against the millions of people living there, who rely only on Russia, hope only on us’.³⁶ Therefore, Russia ‘decided to conduct a special military operation ... to protect people who have been subjected to bullying and genocide by the Kiev regime for eight years’.³⁷

These statements seem to refer, albeit implicitly, to the doctrine of humanitarian intervention, which entails intervention without a state’s consent on humanitarian grounds to protect foreign populations from gross human rights violations. Commentators had previously pointed out Russia’s references to this doctrine to justify the intervention in Abkhazia and South Ossetia.³⁸ The doctrine of humanitarian intervention is linked to R2P but differs therefrom in four ways: 1) it extends to humanitarian emergencies other than the four atrocity crimes; 2) its theoretical underpinning is a state’s ‘right to intervene’ rather than a ‘responsibility to protect’ people; 3) as a result, it focuses on military force only, while R2P stresses the importance of preventive action and peaceful and diplomatic means before using force; 4) unlike R2P, it is not explicitly included in any positive source of international law.³⁹

The status of the doctrine of humanitarian intervention in international law is debated. Some states like the United Kingdom appear to endorse its validity under certain circumstances,⁴⁰ and allegations of genocide and the need to prevent it have often been used to justify military operations for ‘humanitarian’ purposes in practice.⁴¹ However, such operations have consistently spurred criticism and are

³⁵ Cavandoli and Wilson (2022).

³⁶ Putin’s declaration of war (2022) (above n. 17).

³⁷ Ibid.

³⁸ For an analysis of Russia’s use of humanitarian intervention in Georgia, see Allison (2009), pp. 182–184.

³⁹ Cf. Adams (2012), p. 11.

⁴⁰ Certain conditions that have to be satisfied for unilateral humanitarian intervention may be found in the UK’s 2013 Policy Paper on the situation in Syria and the use of chemical weapons: Policy paper, Chemical weapon use by Syrian regime: UK government legal position, 29 August 2013, available at <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version> (accessed 18 April 2024). See Henderson (2015). Cf. the UK’s Legal Position on Syria in 2018, which reproduces the same conditions for humanitarian intervention, the only difference being the use of ‘humanitarian suffering’ instead of ‘humanitarian need’ in condition No. 3: Policy paper, Syria action—UK government legal position, 14 April 2018, available at <https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position> (accessed 18 April 2024).

See also the intervention of Belgium in the pending ICJ case of *Ukraine v. Russian Federation*, which seems to suggest that humanitarian intervention is legitimate under certain conditions (which, in Belgium’s opinion, were not satisfied in the case *de quo*) (ICJ, *Ukraine v. Russian Federation*, Declaration of Intervention of the Kingdom of Belgium ex Article 63 of the Statute of the International Court of Justice, 2 December 2022, para. 28).

⁴¹ Ferrara (2015), p. 3.

generally labelled as unlawful *ex post facto*. Most international lawyers⁴² and states⁴³ reject the validity of the doctrine of humanitarian intervention as a valid exception to the prohibition on the use of force. The possibility to intervene on humanitarian grounds is now deemed to be absorbed by R2P, seen as the only legitimate way to infringe upon state sovereignty and the principles of non-interference and territorial integrity, subject to the preliminary approval of the SC.⁴⁴

Putin's words could potentially be read as an indirect reference to humanitarian intervention, confusingly mixed with arguments about a responsibility to protect nationals. The statement of the President of the Russian Branch of the International Law Association (ILA) of March 2022, mentioning the protection of human rights as a basis for the military intervention alongside self-defence,⁴⁵ has also been viewed as an argument about humanitarian intervention.⁴⁶ Ukraine itself seems to have interpreted Russia's arguments in this way, and has premised its ICJ *Ukraine v. Russian Federation* proceedings on the contention that false claims of genocide had acted as a basis for Russia's invasion.⁴⁷

In practice, however, despite undeniably alluding to humanitarian considerations as a reason for his decision to launch the military operation, President Putin did not explicitly mention the doctrine of humanitarian intervention in his speech. At present, Russia's defence strategy appears to proactively deny relying on the doctrine of humanitarian intervention as a ground for the invasion of Ukraine. During the hearings on preliminary objections held in September 2023, Russia's lawyers underplayed any previous references to allegations of genocide against Ukraine and highlighted that the invasion was an act of self-defence rather than

⁴² Milanovic (2022). In its order dated 16 March 2022, for the first time, the ICJ mentioned the 'doubtfulness' of the use of force to prevent genocide, according to international law: 'moreover, it is doubtful that the Convention, in light of its object and purpose, authorizes a Contracting Party's unilateral use of force in the territory of another State for the purpose of preventing or punishing an alleged genocide' (ICJ, *Ukraine v. Russian Federation* (2022), Request for the Indication of Provisional Measures, Order of 16 March 2022, p. 18, para. 59).

Partially contra, see Buchan and Tsagourias (2021), pp. 90-96, according to whom a combination of post-Cold War practice and the emergence of the responsibility to protect doctrine demonstrate the progressive consolidation of a right to unilateral humanitarian intervention under customary international law in response to egregious human rights violations because of the need to strengthen the collective security system. However, Buchan and Tsagourias also note that some discordance in state practice persists, and concede that an unilateral right to humanitarian intervention may be used as a pretext for aggression.

⁴³ See e.g. Gözen Ercan's review of the approaches of UN member states towards the use of force as humanitarian intervention (Gözen Ercan (2019)).

⁴⁴ States which accept the doctrine of humanitarian intervention seem to presume that it needs to adhere to the same requirements as for R2P, such as the SC's authorisation (see Belgium's Intervention in ICJ, *Ukraine v. Russian Federation* (2022), para. 28).

⁴⁵ Statement of the President of the Russian International Law Association, 7 March 2022, available at www.ilarb.ru/html/news/2022/7032022.pdf (accessed 18 April 2024).

⁴⁶ Green et al. (2022).

⁴⁷ Ibid.

one of humanitarian intervention.⁴⁸ Russia's Agent Alfredo Crosato stressed that the Genocide Convention, which constitutes the jurisdictional basis for Ukraine's complaint before the ICJ, does not confer a right of humanitarian intervention in the first place.⁴⁹ In fact, Mr. Crosato argued that in the 2005 World Summit Outcome Document establishing R2P, states had confirmed the 'inexistence of a right to humanitarian intervention' in general.⁵⁰ Furthermore, in her intervention, Agent Maria Zabolotskaya proceeded to criticise the NATO intervention in Kosovo 'under the pretext of the so-called "humanitarian intervention" aimed at preventing "genocide" and "ethnic cleansing"'.⁵¹

Therefore, just like the protection of nationals abroad and R2P, the doctrine of humanitarian intervention is not to be considered as a legal argument in Russia's justificatory strategy. Instead, the references to genocide against Russians and Russian speakers should be seen as attempts to generate empathy and polarise the Russian audience's attitude towards the war. This should be read in the light of Russia's official foreign and humanitarian policies, which seek the creation of a 'humanitarian space', encompassing Russia and neighbouring states, in the face of Western states' numerous violations of human rights and the marginalisation of Russia.⁵² This narrative, therefore, feeds into portraying Russia and the states under its sphere of influence as the victims of abuses and human rights violations, which, in turn, strengthens the premises for the primary, if not sole, legal argument utilised by Russia in justifying its military operations: self-defence.

2.3 Self-Defence

In his speech announcing the start of the military campaign in Ukraine, later transmitted to the UN, President Putin decisively stated that he had decided to 'conduct a special military operation' 'in accordance with Article 51 of Part 7 of the UN

⁴⁸ ICJ, Verbatim Record 2023/13 of the Public sitting held on Monday 18 September 2023 in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*: 32 States intervening), Preliminary Objections.

⁴⁹ *Ibid.*, p. 65, para. 35; p. 71, para. 68.

⁵⁰ ICJ, Verbatim Record 2023/17 of the Public sitting held on Monday 25 September 2023 in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*: 32 States intervening), Preliminary Objections, p. 85, para. 58. See also p. 73, para. 5.

⁵¹ *Ibid.*, pp. 50–57, paras. 65–109.

⁵² According to the Decree of the President of the Russian Federation of September 5, 2022 No. 611 [on] approval of the Concept of humanitarian policy of the Russian Federation abroad', the 'humanitarian policy' is necessary because of the 'attempts to belittle the significance of Russian culture and Russian humanitarian projects ... discredit the Russian world ... [and] numerous gross violations of human rights, more frequent cases of ignoring the [UN] Charter' (paras. 9–10). Russia's 2023 Foreign Policy foresees the 'creation of a single humanitarian space of the Russian Federation and the CIS member states [Commonwealth of Independent States], preserving centuries-old civilizational and spiritual ties between the people of Russia and the peoples of these states' (The Concept of the Foreign Policy of the Russian Federation, approved by Decree of the President of the Russian Federation No. 229, 31 March 2023 [Unofficial translation], available at https://mid.ru/en/foreign_policy/fundamental_documents/1860586/ (accessed 18 April 2024)).

Charter'⁵³ (self-defence) 'to protect people who have been subjected to bullying and genocide by the Kiev regime for eight years' and proceed to the 'demilitarisation and denazification of Ukraine'.⁵⁴ The statement issued in March by the President of the Russian ILA Branch confirmed this point, arguing that the invasion of Ukraine was lawful 'on the basis of the provisions of the UN Charter on self-defence...'.⁵⁵ In the current proceedings that are pending before the ICJ, Russia's lawyers have consistently concentrated on stressing the argument of self-defence, arguing that the country's use of force is regulated by the UN Charter provisions and customary international law on self-defence (which, they argue, falls outside the jurisdiction of the ICJ in the present case).⁵⁶ In other words, self-defence emerges as the main, and possibly the only, legal argument relied upon by Russia to justify its full-scale invasion of Ukraine under international law.

The centrality of self-defence in Russia's justificatory argumentation is thus clear; what is less clear is whether it refers to individual or collective self-defence.⁵⁷ Had Ukraine attacked Russia, the latter would have been legitimised to respond to the attack with force, but not to intervene in Ukraine's territory; since Ukraine did not attack Russia, the latter cannot invoke *individual* self-defence. However, parts of Putin's speech seem to refer to the threat of a potential 'imminent attack' against Russia that may be an attempt to justify its intervention based on a right to *anticipatory* self-defence,⁵⁸ before an actual attack is launched. For example, he stated that 'Russia's clash with [Western and Ukrainian] forces is inevitable. It is only a matter of time: they are getting ready, they are waiting for the right time. Now they also claim to possess nuclear weapons.'⁵⁹ Furthermore, 'circumstances require[d] ... to take decisive and immediate action' as the only 'opportunity to protect Russia'.⁶⁰ In particular, he clarified that the invasion of Ukraine was 'connected with the protection of Russia itself' and such 'actions [amounted to] self-defence against the threats

⁵³ Spectator, Putin's declaration of war (2022) (above n. 17).

⁵⁴ Ibid.

⁵⁵ Russian ILA President's Statement (2022) (above n. 45).

⁵⁶ ICJ, *Ukraine v. Russian Federation* (2022), Verbatim Record 2023/13, p. 72, para. 70.

⁵⁷ See ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Merits, Judgment of 27 June 1986, ICJ Reports 1986, p. 14, paras. 176 (individual) and 194 (collective).

⁵⁸ Some consider anticipatory self-defence as being derived from customary international law: Van den Hole (2003); cf. Murphy (2005). Under this view, anticipatory self-defence would be justified when there is evidence of an imminent attack, i.e. when 'a state has not yet been the victim of such a coercive act, but perceives that such an act is about to occur in the immediate future' (Murphy (2005), p. 703). Anticipatory self-defence is sometimes distinguished from pre-emptive self-defence, which occurs when a state uses force 'to prevent another state (or non-state actor) from pursuing a particular course of action that is not yet directly threatening, but which, if permitted to continue, could result at some future point in an act of armed coercion against the first state' (Murphy (2005), p. 704). Therefore, the difference between anticipatory and pre-emptive self-defence seems to rest in the degree of imminence of the attack. Both doctrines are controversial and are not universally accepted as being permitted under the UN Charter, but the unlawfulness of pre-emptive self-defence is generally agreed upon. It is assumed here that Putin was impliedly referring to the less controversial of the two doctrines; either way, pre-emptive self-defence would not be lawful.

⁵⁹ Putin's declaration of war (2022) (above n. 17).

⁶⁰ Ibid.

posed to [it] and from an even greater disaster'.⁶¹ These words seem to indicate that the reference to self-defence concerns Russia's own security, despite the lack of any actual attack by Ukraine. The justification would thus be one of individual anticipatory self-defence.

This justification appears weak. Even Putin's words describe such a threat of an attack in vague and future terms, which makes it hard to categorise the situation as an 'imminent attack'. President Putin has not provided any evidence of the existence of an imminent threat,⁶² and given the disparity of military capacity at the time, the suggestion that Ukraine constituted such a threat to Russia that it was able to justify anticipatory self-defence has been referred to as 'preposterous'.⁶³ At the same time, it was unclear whether Putin envisaged such an attack as coming from Ukraine, or from NATO powers. Some have noted how Ukraine is completely absent from the first part of Putin's speech, who almost seems to declare a 'war against the US and its allies' rather than Ukraine.⁶⁴ Either way, such a preventive use of individual self-defence—against a potential and vaguely identified future attack by either Ukraine or other states—does not appear to comply with the requirements of the UN Charter on the defensive use of force. As a result, many scholars have persuasively rejected the argument that Russia could legitimately invoke individual anticipatory self-defence.⁶⁵

Other passages in Putin's speech seem to refer to Russia's right to intervene in *collective* self-defence, supporting the self-declared People's Republics of Luhansk and Donetsk. In particular, Putin stated that '[t]he people's republics of Donbass turned to Russia with a request for help'.⁶⁶ Following this view, Russia would not be defending itself, but rather Luhansk and Donetsk and their inhabitants. Collective self-defence differs from humanitarian intervention, which entails intervention to protect civilians from gross human rights violations, instead of defending the People's Republics from an armed attack.

However, collective self-defence is only possible in support of other states that are members of the UN. Providing military support to armed groups, rebels, and other illegitimate non-state actors engaged in non-international armed conflicts is deemed unlawful under international law and conflicts with the prohibition on the use of force and the parent state's territorial integrity.⁶⁷ This was also confirmed by the Independent International Fact-Finding Mission on Georgia.⁶⁸ The same

⁶¹ Ibid.

⁶² Hilpold (2023), pp. 419–420.

⁶³ Cavandoli and Wilson (2022).

⁶⁴ Etkind (2022).

⁶⁵ For a discussion of why anticipatory self-defence (provided that one accepts the validity of this doctrine) would not apply to the Russian invasion of Ukraine, see Green et al. (2022); Hoffmann (2022), pp. 206–235; Schmitt (2022); Cavandoli and Wilson (2022).

⁶⁶ Putin's declaration of war (2022) (above n. 17).

⁶⁷ ICJ, *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, ICJ Reports 2005, p. 168, paras. 45–47; ICJ, *Nicaragua v. United States* (1986) (above n. 57), para. 246.

⁶⁸ Fact-Finding Mission on Georgia Volume II (2009) (above n. 27), p. 282.

applies to intervention by invitation, which operates in a similar way to collective self-defence.⁶⁹ Intervention by invitation is only possible when intervening within a foreign territory upon request and with the consent of the legitimate government of that state.⁷⁰

To overcome this legal obstacle, and following its previous conduct regarding Abkhazia and South Ossetia in 2008,⁷¹ Russia recognised Luhansk and Donetsk as states under international law (and later annexed them). In this way, Russia would have virtually stepped in to support two states, instead of supporting armed groups. However, only a few other states and partially-recognised states have recognised Luhansk and Donetsk besides Russia. It is doubtful that they had achieved the necessary factual criteria for statehood at the time—especially before Russia’s intervention. In addition, since they were not part of the UN, collective self-defence would not be applicable under Article 51 UN Charter, which allows for it in the case of an armed attack ‘against a Member of the United Nations’.

Furthermore, even if one follows Russia’s logic that the government of Ukraine is illegitimate, according to the doctrine of ‘negative equality’, third states’ military intervention in a state torn apart by civil war always constitutes an illegal use of force and cannot be justified by an invitation.⁷² This is to avoid political discretion as to which government should be recognised when ‘none of the competing fractions can be said to be effective, stable, and legitimate’.⁷³ Such intervention would violate the right to self-determination and the prohibition on interfering with the political independence of a country; the illegality of the foreign invited intervention would only be suspended if the opposing part also received military support from other actors.⁷⁴ In other words, if a territorial entity sought to secede from a state, the principle of non-intervention would prevent other states from unilaterally intervening in support of either the state’s territorial integrity or the secessionist movement.⁷⁵

Even if one were to accept the argument of collective self-defence and invitation in the case of the Republics of the Donbas, other reasons would exclude the legitimacy of Russia’s intervention and full-scale invasion. First, intervention in defence would not be possible unless it is proven that Ukraine had attacked these two new supposed states first. Second, Donetsk and Luhansk’s authorities would not be competent to authorise intervention in the whole territory of Ukraine beyond their own administrative borders.⁷⁶ Third,

⁶⁹ In doctrinal terms, the concepts of collective self-defence and military intervention by invitation are distinct, but they overlap in practice. The legal evaluation of relevant situations leads to identical results, and the two potential grounds of intervention ‘must be assessed identically’ (Fact-Finding Mission on Georgia Volume II (2009) (above n. 27), p. 282).

⁷⁰ ICJ, *Democratic Republic of the Congo v. Uganda* (2005) (above n. 67), paras. 45–47.

⁷¹ On Russia’s arguments concerning self-defence regarding Georgia, see Allison (2009), pp. 170–175.

⁷² Fact-Finding Mission on Georgia Volume II (2009) (above n. 27), pp. 277–278.

⁷³ *Ibid.*

⁷⁴ Buchan and Tsagourias (2021), pp. 110–112.

⁷⁵ Ediger (2018), p. 1685. See also Ferro (2021).

⁷⁶ Cf. re: Abkhazia and South Ossetia: Fact-Finding Mission on Georgia Volume II (2009) (above n. 27), p. 279.

the scale and extent of Russia's military intervention would still be incompatible with the customary criteria of necessity and proportionality.⁷⁷ Finally, defence and intervention by invitation would be limited to providing support, and could not be used as a pretext to foster territorial changes such as annexation.

Russia's legal justification of 'self-defence' (either individual or collective) is thus weak from a legal standpoint. Yet, their focal legal argument is used to justify the use of force in Ukraine. It is not clear whether it is intended as individual or collective self-defence, but the analysis suggests that the Russian lawyers intervening in the current ICJ proceedings in *Ukraine v. Russian Federation* refer to both Russia's 'inherent right to self-defence' and Donetsk and Luhansk's request for 'military assistance in self-defence'.⁷⁸ Their legal argumentation consistently stresses self-defence as the crucial justification for the war.

3 Self-Defence As Self-Determination

The argument of self-defence appears to be based on Russia's conception of the right of people to self-determination, which features prominently in Russia's legal strategy. On 23 February 2022, one day before the declaration of war against Ukraine, the Permanent Representative of the Russian Federation to the UN in New York, Mr. Nebenzia, explained—in relation to the escalating tensions between the two countries—that

the principle of sovereignty and territorial integrity of states, ... as stipulated in [the] 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, must be strictly observed with regard to states that are 'conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour'.⁷⁹

With these words, Mr. Nebenzia alluded to the possibility of not observing the territorial integrity of states that (in Russia's view) do not respect internal self-determination.

The following day, in the speech of 24 February 2022 announcing the 'special military operation', President Putin recalled the importance of the 'right of nations to self-determination, enshrined in Article 1 of the UN Charter',⁸⁰ and stated that

⁷⁷ Milanovic (2022).

⁷⁸ ICJ, *Ukraine v. Russian Federation* (2022), Verbatim Record 2023/13, pp. 42–43.

⁷⁹ Permanent Mission of the Russian Federation to the United Nations official website, 'Statement and reply by Permanent Representative Vassily Nebenzia at UNSC briefing on Ukraine', 23 February 2022.

⁸⁰ Spectator, Putin's declaration of war (2022) (above n. 17). The Spectator's translation slightly differs from the official transcript of President Putin's address to the nation transmitted to the ICJ by the Russian Federation in the course of the *Ukraine v. Russia* proceedings (see the Document of 7 March 2022 (with annexes) from the Russian Federation setting out its position regarding the Court's alleged 'lack of jurisdiction' in the case, Address by the President of the Russian Federation). The Spectator's

‘[Russia’s] policy is based on ... the freedom of choice for everyone to independently determine their own future and the future of their children’.⁸¹ President Putin therefore confirmed that, in his view, Ukraine’s alleged violations of the right to self-determination were behind the decision to start the war. Alongside Mr. Nebenzia’s remarks, this indicates that in Russia’s view, the *jus cogens* obligation to respect territorial integrity can yield to the *jus cogens* right of people to self-determination.

In addition to the possibility to violate territorial integrity by crossing Ukraine’s borders, self-determination was also used as a reason to recognise the separatist entities as states. In its document submitted to the ICJ on 7 March 2022 in response to Ukraine’s application in *Ukraine v. Russian Federation*, Russia argued that its recognition of the Peoples’ Republics of Donetsk and Lugansk was

a sovereign political act of the Russian Federation ... related to the right of self-determination of peoples under the United Nations Charter and customary international law as reflected in the statements of the President of the Russian Federation and the Permanent Representative of the Russian Federation to the United Nations, who in this regard specifically quoted from the principle of self-determination of peoples as reflected in the 1970 Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.⁸²

Asked to confirm the constitutionality of the treaties on annexation concluded with the governors of the occupied provinces of Donetsk, Kherson, Luhansk and Zaporizhzhia later in 2022, the Russian Constitutional Court argued, *inter alia*, that the peoples of these areas could exercise the right to self-determination.⁸³ This decision was described as ‘self-determination *à la russe*’.⁸⁴ From that point onwards, the right to self-determination features prominently as a justification for the war in the legal arguments put forth in the preliminary phase of the current ICJ proceedings, according to which Russia’s actions were ‘taken under the right of self-defence and

Footnote 80 (continued)

translation states that the fight against Nazis in World War II ‘also does not cancel the right of nations to self-determination’, while Russia’s official transcript states that ‘[t]his does not mean that nations cannot enjoy the right to self-determination’. However, the text of the Spectator’s translation is the same as the official letter sent to the UN Secretary-General on the same day (Letter dated 24 February 2022, UN Doc. S/2022/154).

⁸¹ Russia’s official transcript reads: ‘Freedom guides our policy, the freedom to choose independently our future and the future of our children’.

As discussed *infra*, this does not apply to those who are already living within the Russian Federation.

⁸² ICJ, *Ukraine v. Russian Federation* (2022), Document (with annexes) on jurisdiction – Letter from the Russian Ambassador (2022), pp. 4–5, para. 17. This was later reiterated by Russia’s Agent, Sienho Yee, during the preliminary objections at the ICJ, where Yee affirmed Russia’s ‘right to recognize States under the right to self-determination under Article 1 of the UN Charter and relevant customary international law, which are no doubt *jus cogens*’ (ICJ, Verbatim Record 2023/18 of the Public sitting held on Monday 25 September 2023 in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*: 32 States intervening), Preliminary Objections, p. 42, para. 27).

⁸³ On this point, see Shaw (2023), p. 68.

⁸⁴ Masol (2022).

the right to self-determination'.⁸⁵ In recalling the Russian President's February 2022 speech in his intervention at the ICJ during the opening public hearing of 18 September 2023, the Agent of Russia, Mr. Gennady Kuzmin, listed Article 1 UN Charter and the principle of the self-determination of peoples as the first reason underlying the decision to commence the special military operation—followed by the 'inherent right of a State to self-defence', the 'growing threat of NATO expansion into the territory of Ukraine and the futility of efforts to reach an agreement', the appeals of the People's Republics of Donetsk and Luhansk to Russia for 'military assistance in self-defence' under the so-called 'treaties on friendship', and Ukraine's violations of SC Resolution S/RES/2202 upholding the Minsk Agreements.⁸⁶ Another Agent of Russia, Sienho Yee, argued that Russia never used the Genocide Convention as the basis for its actions in Ukraine, which are instead 'based on the right of self-determination and its inherent right to self-defence'.⁸⁷

Furthermore, Russia's lawyers construed self-determination as an element of self-defence. In particular, Russia's 'inherent right of self-defence' is '*in realization of the right to self-determination*' (emphasis added).⁸⁸ The argument seems to be that Ukraine's violation of the right to self-determination entails Russia's right to self-defence. It also suggests that self-determination entails the right to use force in self-defence—even against another state's territorial integrity, as stated by Nebenzia. Because, in Russia's view, the case is fundamentally one that revolves around self-determination and self-defence, and not genocide, the ICJ would lack jurisdiction. This was Russia's position in its written preliminary objections, which stress that nothing in the Genocide Convention suggests that the Contracting Parties intended to regulate issues relating to the use of force, territorial integrity, self-determination, or the recognition of states, and to grant the ICJ jurisdiction over such matters.⁸⁹ This was further reiterated during the oral proceedings. For instance, in the closing statements of 25 September 2023, Yee stated that the World Court has no jurisdiction over the rights of self-defence and self-determination and thus its potential judgment would have no practical *effet utile*.⁹⁰

This overview demonstrates that the principle of self-determination is a core aspect of Russia's legal arguments to justify its war against Ukraine. In Russia's view, its right to self-defence originates from the violation of self-determination and it is *in realisation* thereof. What is less clear is, instead, whom does Russia view as the 'self' in self-defence and self-determination—who are the subjects entitled to self-determination and self-defence?

As far as self-defence is concerned, it was mentioned above that Russia did not explain whether it saw the intervention as a case of individual (Russia's own security) or collective self-defence (in support of Donetsk and Luhansk's separatists).

⁸⁵ ICJ, *Ukraine v. Russian Federation* (2022), Verbatim Record 2023/18, p. 46, para. 39.

⁸⁶ ICJ, *Ukraine v. Russian Federation* (2022), Verbatim Record 2023/13, pp. 42–43.

⁸⁷ *Ibid.*, p. 88.

⁸⁸ ICJ, *Ukraine v. Russian Federation* (2022), Verbatim Record 2023/18, p. 45, para. 37.

⁸⁹ ICJ, *Ukraine v. Russian Federation* (2022), Preliminary Objections of the Russian Federation, paras. 163, 196, 188, 200, 214, 215.

⁹⁰ *Ukraine v. Russian Federation* (2022), Verbatim Record 2023/18, p. 42, para. 27.

The statements by Putin, Kuzmin, and Russia's lawyers indicate that they implicitly refer to both aspects. Therefore, the subjects entitled to self-defence, in Russia's perspective, seem to be both the Donbas Republics and Russia itself.

The identification of the 'people' entitled to self-determination appears to be more complex.⁹¹ On the one hand, it is implausible that Russia would refer to its own right to self-determination. The allusions to the expansion of NATO in Eastern Europe could possibly be construed as a threat to Russia's security but not as threats to Russia's self-determination. More likely, Russia is referring to the right to self-determination of the Russian and Russophone inhabitants of Donbas and the separatist groups in Luhansk and Donetsk. This is confirmed by the words of President Putin (reproduced in the Letter to the Secretary-General), who alluded to the right of the 'peoples living on the territory of today's Ukraine' to exercise their 'right to choose' and independently determine their own future.⁹²

This wording, alongside the use of the plural 'peoples', seems to assume the existence of multiple 'peoples' in Ukraine who would be entitled to the right to self-determination (for example, declaring independence and deciding to be annexed to the Russian Federation). This view would identify the inhabitants of Luhansk and Donetsk as different 'peoples', considered as separate and distinct from the other Ukrainians. Instead of one single 'Ukrainian people', this view presumes the existence of different peoples, maybe divided along geographic (east/west) or ethno-linguistic (Russian/non-Russian) lines. Under this logic, Russia intervened—collectively with the separatist entities—in defence of the peoples in Donbas against a different people, affiliated to Ukraine's central government.

On the other hand, Russia also alludes to another conception of the people entitled to self-determination: one that views eastern Ukrainians and Russians as one people. Months before the invasion, in July 2021, President Putin published the essay *On the historical unity of Russians and Ukrainians*, focused on the unitary historical and ethnical origin of Ukrainians, Belarusians, and Russians as 'one people' bound by a shared common heritage, constituting one nation.⁹³ The essay seems to be an attempt to elaborate a narrative of 'one people' entitled to self-determination. This narrative would explain the annexation of the Republics, as it would merely be the people's reunification with a broader territorial unit encompassing the rest of such people. If eastern Ukrainians and Russians are the same people, then it is legitimate for the former to rejoin the latter, and it is legitimate for Russia to intervene in support of 'its own people'.

This conception blurs the distinction between individual and collective self-defence, since an attack against a separatist group would be conceived as an attack against one and the same 'people'. It would explain why Russia did not care to distinguish between collective and individual self-defence arguments. This conception

⁹¹ Note that the Russian Constitutional Court did not elaborate on why the 'people' of the Donetsk, Kherson, Luhansk and Zaporizhzhia provinces of Ukraine were proper right-holders of self-determination (see Masol (2022)).

⁹² Spectator, Putin's declaration of war (2022) (above n. 17); Letter dated 24 February 2022, UN Doc. S/2022/154.

⁹³ Cavandoli and Wilson (2022).

also blurs the borders between Ukraine and Russia: in his February 2022 speech, President Putin talked about ‘our common homeland’ and rhetorically erased Ukraine’s eastern boundaries. Under this perspective, Russia’s intervention would not violate Ukraine’s territorial integrity because it is ultimately the same land as Russia’s.

One reading of the Russian arguments presupposes the existence of multiple peoples in Ukraine, distinguished along the eastern/western axis, or the Russian/Ukrainian-speaking axis. Under this conception, Russia intervened to defend the one against the other. However, another reading is possible. President Putin’s essay did not distinguish between the people of eastern Ukraine and other Ukrainians and simply stated that Ukrainians form one people with Russians and Belarusians. A large part of President Putin’s statement of February 2022 also focused on clarifying that his actions do not intend to ‘infringe on the interests of Ukraine and the Ukrainian people’ and that the real enemies are NATO and the Nazis in Ukraine. In inviting the Ukrainian Armed Forces not to take up arms, President Putin emphasised that allegiance to ‘the Ukrainian people’ would require them to side with Russia, and not ‘the anti-people junta that is robbing Ukraine and mocking its very people’.

This seemingly indicates that Ukrainians are seen as a unitary people, a member of the broader family of Russians, which has been ‘taken hostage’ by a neo-Nazi junta and its NATO allies. If this is the correct interpretation of Russia’s view of the Ukrainian people, then there would be no reason for limiting the right to self-determination and self-defence to those living in Donbas. This argument of one, single ‘people’ encompassing all Ukrainians, as well as Belarusians and Russians, would fabricate a purported justification for Russia to ‘defend’ the entire Ukrainian people from their own government and potentially open the door to annexing Ukraine as a whole in the future.

4 Remedial Self-Determination

The analysis in the previous section demonstrates that, in Russia’s view, military force could be used in self-defence to realise self-determination. The inhabitants of Luhansk and Donetsk would constitute a self-determination unit, ‘a people’ (either self-standing or part of a broader Russian people) entitled to the right to self-determination that is not exhausted by their right to participate in the political life and governance of their respective territories (internal self-determination) but extends to the right to legitimately seek independence from Ukraine by virtue of the latter’s alleged human rights violations and genocidal activities (external self-determination). As a result, in Russia’s narrative, the people of Luhansk and Donetsk, in realisation of self-determination, would have the right to defend themselves against such abuses (individual self-defence), as well as the right to seek Russia’s intervention in their support (collective self-defence or intervention by invitation). Russia’s recognition of Luhansk and Donetsk as independent Republics provides a—flawed—ground to overcome the prohibition on intervening upon the invitation of non-state actors. Eventually, the people of Luhansk and Donetsk would have the right to determine

their international legal status by means of a referendum on independence as well as their ‘voluntary’ annexation to the Federation.⁹⁴

Loqman Radpey has argued that this ‘remedial approach of peoplehood, bestowing peoplehood status to allow a populace to foster a right to external self-determination—if the minority has been oppressed by its host state’, constitutes a ‘new’ Russian theory of self-determination that started with the annexation of Crimea in 2014.⁹⁵ However, this approach does not seem to be completely novel to Russia. This view of the principle of self-determination as a ground to exercise (both individual and collective) self-defence, resulting in external self-determination against the territorial integrity of an allegedly abusive sovereign state, is one that shares many similarities with the already established, albeit controversial, doctrine on remedial secession.

Under the so-called ‘moral theories’ of remedial secession, a group of people should be entitled to a right to separate from the parent state if it ‘suffers what are uncontroversially regarded as injustices and has no reasonable prospect of relief short of secession’.⁹⁶ For example, attempted genocide and threats endangering the physical or identitarian existence of a group and other gross violations of fundamental human rights could be a good reason to seek independence.⁹⁷ ‘Remedial self-determination’ thus entails a ‘claim by a group which has suffered a severe abuse of its rights vis-à-vis other groups within a state, and which seeks autonomy, secession or irredentism as a remedy of last resort’.⁹⁸ Russia’s approach to self-determination is a proxy for the remedial secession doctrine, with annexation by the Federation as the ultimate goal. Remedial secession is, however, widely criticised—despite its potentially valid moral stance—and is generally not accepted as a valid reason to recognise seceding entities.⁹⁹ Russia, instead, chose to refer to less controversial doctrines: by using the language of self-defence and self-determination, it concealed remedial secession arguments behind well-established principles enshrined in the UN Charter.¹⁰⁰ In substance, President Putin justified the independence of the Donbas Republics through remedial secession,¹⁰¹ mediated by the reference to self-determination and self-defence.

Such a remedial approach to external self-determination is not new even to Russia itself. The American commentators Brunk and Hakimi have framed the invasion of Ukraine and the annexation of the provinces of Donbas as exceptional and unprecedented,¹⁰² but a closer look at ‘Russian approaches to self-determination’ shows a

⁹⁴ For critiques on the legitimacy and legality of the annexation referenda, see UNGA Resolution ES-11/4, Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations, 13 October 2022, UN Doc. A/RES/ES-11/4.

⁹⁵ Radpey (2022).

⁹⁶ Buchanan (1997), p. 44.

⁹⁷ Hannum (1993), p. 57.

⁹⁸ Sparks (2023), p. 19.

⁹⁹ See *inter multis* Vidmar (2010), pp. 37–56.

¹⁰⁰ Pelliconi (2023).

¹⁰¹ Cavandoli and Wilson (2022).

¹⁰² Wuerth Brunk and Hakimi (2022).

certain degree of continuity in the country's legal narrative regarding external self-determination and its conflict with territorial sovereignty.

5 Continuity in Russian Approaches to Self-Determination

The remedial approach to external self-determination deployed to justify the military support to the separatist Republics of Donbas mirrors Russia's legal arguments in similar contexts. Many legal scholars have argued that Russia endorsed a remedial approach to secession and external self-determination when recognising South Ossetia and Abkhazia as states in 2008, privileging their independence over Georgia's territorial integrity.¹⁰³ These cases differ significantly from the context of Ukraine in many respects, including the ethno-national composition and affiliation of the local population, and the degree of their support for the Russian cause; yet, the underpinning legal arguments that are utilised are very similar to Russia's position that was premised on remedial claims of liberation from oppression and the restoration of justice, defending 'a remedial right to secession' based on allegations of genocide committed by Georgia.¹⁰⁴ The accusations of genocide were used initially as *casus belli* and then as a justification to permanently recognise South Ossetia and Abkhazia as states.¹⁰⁵

Similarly, some scholars have argued that, when annexing Crimea in 2014, Russia appeared to rely on the doctrine of remedial secession, encompassing a right to unilateral secession in case of serious injustices suffered by a people by virtue of an expansive interpretation of the principle of self-determination.¹⁰⁶ When discussing its actions at the SC in 2014, Russia's representative stated that although 'the achievement of the right to self-determination in the form of separation from an existing state is an extraordinary measure ... in the case of Crimea, it obviously arose as a result of the legal vacuum created by the violent coup against the legitimate Government carried out by nationalist radicals in Kyiv, as well as by their direct threats to impose their order throughout the territory of Ukraine'.¹⁰⁷ President Putin's speech at the Valdai Club in 2014 further emphasised that the people in Crimea feared for their future after neo-Nazis seized power in Ukraine and reacted by exercising their right to self-determination.¹⁰⁸ Russia annexed Crimea by legitimising its cause for secession based on protecting compatriots from Ukraine's

¹⁰³ Allison (2009), p. 186; Janik (2022); Christakis (2015), p. 87; and more recently Pustorino (2023), pp. 67–70.

¹⁰⁴ Coppieters (2018), pp. 992, 1001–1002.

¹⁰⁵ Allison (2009), p. 183.

¹⁰⁶ Van den Driest (2015), pp. 329–363; Sparks (2023), pp. 185 et seq.; Hoffmann (2022), pp. 206–235; Cavandoli and Wilson (2022); Pustorino (2022), p. 68.

¹⁰⁷ UNSC Verbatim Record (13 March 2014), UN Doc. S/PV.7134, 15, cited in Corten (2015), fn. 32.

¹⁰⁸ Valdai Club, Vladimir Putin Meets with Members of the Valdai International Discussion Club. Transcript of the Final Plenary Session [Official Translation], 25 October 2014, available in archive at https://web.archive.org/web/20141025230537/http://valdaiclub.com/valdai_club/73300.html (accessed 18 April 2024).

violations of human rights and the outcome of the separation referendum in the exercise of self-determination.¹⁰⁹

In all these cases, Russia used similar legal arguments to justify its military intervention in favour of separatist groups: self-defence, humanitarian grounds, the need to protect its nationals and, above all, self-determination. In all cases, blaming gross human rights abuses on the parent states, Russia supported the declaration of independence and, in the case of Crimea, the eventual annexation to the Federation, by means of exercising self-determination through independence or annexation referenda.

Russian officials consistently relied upon the argument of self-determination and, implicitly, remedial secession, referring to the ‘precedent’ of the case of Kosovo in an attempt to justify their actions and the purported existence of a right to assist local separatist movements.¹¹⁰ In its intervention in the ICJ *Kosovo* case, Russia explicitly endorsed the potential validity of remedial secession, although it did not accept its applicability to Kosovo itself.¹¹¹ In its statement of 16 April 2009, Russia argued that the conditions for remedial secession should be ‘limited to truly extreme circumstances, such as an outright armed attack by the parent state, threatening the very existence of the people in question’.¹¹² Although Kosovo is often used as an example of the applicability of remedial secession being excluded, this statement indicates that, in Russia’s view at the time, there could be situations where unilateral separation is legitimate, provided that such exceptional circumstances are present. Later, in 2014, when justifying the actions in Crimea, Putin said that the ICJ ‘clearly states (as applied to the Kosovo precedent) that the decision on self-determination does not require the approval of the supreme authority of a country’.¹¹³ This is in line with the abovementioned statement on territorial integrity by Nebenzia of February 2022.

This approach is not always reflected in Russian scholarship. Boris Kashnikov, for example, expressed the view that

[t]he right of a group to exist as well as the right for self-determination is the right to exist at the expense of some other group. The principle of self-determination inherits these contradictions of more basic rights and does not resolve its core problems. On the contrary, the right of self-determination prompts the right to resist, even when there is no threat to the right to exist. It triggers suspicion when there is no threat to the right of a group to exist, even when there

¹⁰⁹ Poghosyan (2021), pp. 189–191.

¹¹⁰ Allison (2009), p. 187; Sparks (2023), pp. 185 et seq.; O’Connell (2018), p. 867. Contra, see Mälksoo, according to whom before 2014, Russian scholars and the government vocally favoured the territorial integrity of states over claims to self-determination or demands made as a consequence of serious human rights violations, such as in Chechnya or Kosovo (Mälksoo (2019), p. 310).

¹¹¹ Pelliconi (2023).

¹¹² *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* (2008), General List No. 141, Written Statement by the Russian Federation, 16 April 2009, para. 88, available at <https://www.icj-cij.org/public/files/case-related/141/15628.pdf> (accessed 18 April 2024).

¹¹³ Valdai Club (2014) (above n. 108).

is in fact no group. Self-determination creates a paranoia, an atmosphere of constant and persistent alert.¹¹⁴

Kashnikov criticised the right of self-determination and, in particular, the ‘just cause (or remedial) theory’,¹¹⁵ opposing the potential multiplication of secessionist claims by undeserving groups¹¹⁶ (sometimes termed the ‘spillover’ effect).¹¹⁷ In Kashnikov’s view, ‘self-determination can have only limited applicability and little moral value’.¹¹⁸

Nonetheless, the parallelism between the arguments around external self-determination in the cases of Crimea, Abkhazia, South Ossetia, and Donbas, and the similar pattern in these different contexts, indicate continuity in Russia’s approach and legal argumentation, at least since the war with Georgia. In all of these cases, there is a partial conflation between the concepts of external self-determination, humanitarian intervention, the responsibility to protect, the protection of nationals, and the right to self-defence. The justification is legally inconsistent, but it is consistent with itself since it revolves around the same arguments: that Russia has a right to support persecuted Russian minorities in neighbouring states in their struggle for liberation. There has been no discontinuity in the narrative during the last two decades.

According to Lauri Mälksoo and Sevanna Poghosyan, a change occurred in Post-Soviet Russia’s *jus ad bellum* doctrine since the early 2000s, when concerns shifted from worrying about secessionist aspirations of national groups within the Federation and its own potential territorial losses (e.g. Tatarstan and Chechnya), to supporting secessionist movements in other states with the goal of annexation.¹¹⁹ Mälksoo explains this with the growing ‘existential threat’ felt by Russia after 1991, when its territory was drastically diminished after the dissolution of the Soviet Union.¹²⁰ Accordingly, legal arguments in support of Russian policies shifted from the Soviet focus on territorial integrity (for example, the Russian Constitutional Court emphasised in its 1992 *Tatarstan* case that under the Russian Federation’s 1978 Constitution and rules of international law, the exercise of self-determination is limited by the principle of territorial integrity)¹²¹ to the protection of nationals struggling against the ‘oppressor’¹²²—marking Russia’s endorsement of remedial external self-determination. This approach construes normative justifications for territories seeking independence from the parent state in order to join the Federation.

Notwithstanding this shift, there appears to be continuity in the fundamental interests protected by Russia’s approach to self-determination pre- and post-1991.

¹¹⁴ Kashnikov (2022), p. 31.

¹¹⁵ *Ibid.*, p. 39.

¹¹⁶ *Ibid.*, p. 32.

¹¹⁷ Sparks (2023), pp. 34, 224–225.

¹¹⁸ Kashnikov (2022), p. 44.

¹¹⁹ Poghosyan (2021), p. 188.

¹²⁰ Mälksoo (2019), p. 318.

¹²¹ O’Connell (2018), pp. 870–871.

¹²² Poghosyan (2021), p. 188.

The Soviet (and then the Russian) position on the right to self-determination always diverged from the parallel liberal democratic concept.¹²³ According to scholars researching Russian approaches to international law, Soviet self-determination was conceived as a tool for a pan-socialist project to legitimise the disenfranchisement of territories from traditional bourgeois governance first, and from the influence of the West later.¹²⁴ Russia's current approach to external self-determination is firmly rooted in Soviet legal thought, according to which self-determination entails secession, with the ultimate goal of achieving the integration of nations into a socialist world.¹²⁵ In Soviet international law, Russia's vital interests must be defended through the creation of a 'greater space' where the dominant central power could intervene to secure its prerogatives and halt external interventions.¹²⁶ This normative framework explains why the goal after separation would be joining the Russian Federation, and it also explains why separation from the Russian Federation itself would not, instead, be tolerated. The same mechanism applies nowadays, although pan-socialist goals yield to mere expansionism and securitisation. In this sense, there is no discontinuity between Russia's original and current understanding of the principle of self-determination.

Under this view, Russia endorses the separation of territories from other states to join the Federation, while it does not tolerate secessions within its own territory. Self-determination is read through the lens of a Russian expansionist project and against the threat of 'otherness' and the West. This also explains the Russian position on Kosovo, since the emerging country was seeking to create more distance from the Russian sphere of influence. Within the mentioned normative framework, therefore, this double-standard position appears to be internally logical.

6 Conclusion: Imperialism Disguised As Self-Determination

This analysis shows that we are witnessing not the rise, but rather the consolidation of a Russian approach to remedial external self-determination, which is well rooted in the Soviet tradition, although with opposite outcomes. Far from abandoning the language and normative power of international law, Russia appears to have embraced its own approach to the UN Charter and well-established legal grounds in order to provide justifications for the invasion of Ukraine. Its main argument for using force is the 'inherent right to self-defence' in *realisation* of the right to self-determination; this, in turn, is viewed as a *remedial* right to external self-determination which can justify infringing territorial integrity to achieve independence and annexation to the Russian Federation. This stance is in continuity with the approaches shown in Crimea, Abkhazia and South Ossetia, and with the underpinnings of the 'old' Soviet approach to self-determination.

¹²³ Mälksoo (2017).

¹²⁴ Ibid.; Poghosyan (2021).

¹²⁵ Poghosyan (2021), p. 184.

¹²⁶ Hilpold (2023), p. 426; see also generally Simonyan (2023).

In an international legal world increasingly aware of regionalism and critiques of universalism, it could be asked whether such an approach should legitimately be juxtaposed to the Western liberal one.¹²⁷ The fact that the Soviet Union and the West always followed different standards of self-determination presents a persistent challenge to the idea of the universality of international law, and Soviet claims and practices on self-determination could be seen as a manifestation of the regional fragmentation of international law.¹²⁸ Western approaches to self-determination are also not immune from legitimate criticism.¹²⁹ Furthermore, distortions of the UN Charter's provisions on self-defence and the use of force are not unique to Russia, and scholars have highlighted equally egregious violations of principles of international law by Western states and their allies.¹³⁰ Disrespect for Charter rules was only inconsequential because of their own hegemonic position.¹³¹ In his speech at the Valdai Club in October 2023, President Putin emphasised this perspective, highlighting the contradictions of Western powers and criticising their violations of international law and colonial approaches.¹³² Putin presented Russia as an 'original civilisation-state' which is attempting to establish the 'foundations of [a] new world system' based on Russia's view of the 'principles of international order'.¹³³ 'The Ukraine crisis', Putin added, 'is not a territorial conflict ... and not an attempt to establish regional geopolitical balance. The issue is much broader and more fundamental and is about the principles underlying the new international order.'¹³⁴

Yet violations of international law are not erased by uncovering the wrongs of others, and the validity of a legal argument is not increased by pointing out flaws elsewhere. Violations of international law by Western states do not justify launching a war and invading a country, and Putin's frequent rhetoric on virtuous principles does not erase atrocities in Ukraine. The analysis of Russia's approach to self-determination—conceived as a remedial right to external self-determination—unveils its one-sided application to instrumentally support expansionistic ambitions. Russia has attempted to 'link the right of self-determination on the part of allegedly oppressed groups and its recognition of their independent statehood to bolster its questionable bases for the use of force'.¹³⁵ At the same time, Russia has rejected arguments related to humanitarian intervention and self-determination when advanced in other situations,¹³⁶ and refused to accept the legitimacy of the remedial secession doctrine

¹²⁷ See e.g. Kattan (2023).

¹²⁸ Mälksoo (2017).

¹²⁹ See e.g. Massad (2018).

¹³⁰ Burra (2023).

¹³¹ See e.g. Krisch (2022); Krisch (2005).

¹³² Full Text of Russian President Putin's Speech at Valdai Discussion Club, 5 October 2023, available at <https://sputniknews.in/2023/10/05/read-here-president-putins-full-speech-at-valdai-discussion-club-4630736.html> (accessed 18 April 2024).

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ Cavandoli and Wilson (2022), p. 405.

¹³⁶ *Ibid.*

when it conflicted with its own geopolitical interests.¹³⁷ Putin talks about the equality between all countries, justice, diversity, and representation, while refusing to recognise democratically elected governments; he proposes ‘universal security and lasting peace’, while launching a war against another sovereign state.¹³⁸

This ‘cherry picking’ approach demonstrates that Russia is keen on endorsing this doctrine, when useful, but abuses it by applying it selectively and instrumentally, instead of objectively. This also brings the risk of leaving smaller states at the mercy of powerful states’ changing goals. Any people seeking self-determination would have to obtain the great powers’ mandate for their cause,¹³⁹ while parent states would need to look for protection from other powers. Milena Sterio referred to this process as the return of the great powers rule in the field of self-determination, where ‘politics have effaced law’.¹⁴⁰ Great powers are able to dictate the results of external self-determination quests, whose success depends on their compatibility with the great powers’ geopolitical agendas.¹⁴¹ According to Tamás Hoffmann, Russia’s ‘plan of territorial conquest endeavours to erase the international consensus based on the prohibition of use of force and annexation and ultimately return the international legal order to the nineteenth century, when war was a sovereign prerogative’.¹⁴² Even ‘frozen conflicts’ about disputed territories, as Dunn and Bobick put it, are used by Russia as a ‘form of post-Soviet liminality that challenges international law, humanitarian intervention, and the rules of international system’.¹⁴³

The narrative of Russia’s legal justifications for the special military operation in Donbas and elsewhere embraces a rhetorical use of self-determination to provide faux legal legitimacy to territorial separation and annexation—a discursive tactic which has been recurrently utilised by the Russian Federation to legitimise expansionistic ambitions and geopolitical securitisation. Self-determination has been instrumentalised to create a pretext for military intervention and to justify aggression. Even a *jus cogens* principle originally endowed with empowering and emancipatory authority—a sword for the oppressed to liberate themselves from colonial domination—is not immune from instrumental usages to disguise imperialistic goals.

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¹³⁷ Coppieters (2018), p. 1011.

¹³⁸ Russian President Putin’s Speech at Valdai (2023) (above n. 132).

¹³⁹ Kashnikov (2022), p. 43.

¹⁴⁰ Sterio (2013), p. 22.

¹⁴¹ *Ibid.*, p. 22.

¹⁴² Hoffmann (2022), pp. 206–235.

¹⁴³ Cullen Dunn and Bobick (2014), p. 406.

Declarations

Conflict of Interest The author declares that she has no competing interests.

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References

- Adams S (2012) Libya and the responsibility to protect. Global Centre for the Responsibility to Protect, Occasional paper series no 3. <https://www.globalr2p.org/wp-content/uploads/2020/07/LibyaAndR2POccasionalPaper.pdf>. Accessed 18 April 2024
- Allison R (2009) The Russian case for military intervention in Georgia: international law, norms and political calculation. *Eur Secur* 18(2):173–200
- Azarov D, Koval D, Nuridzhaniyan G, Venher V (2023) Understanding Russia's actions in Ukraine as the crime of genocide. *J Int Crim Justice* 21(2):233–264
- Bellamy AJ (2008) The responsibility to protect and the problem of military intervention. *Int Aff* 84(4):615–639
- Bescotti E, Burkhardt F, Rabinovych M, Wittke C (2022) Passportization: Russia's 'humanitarian' tool for foreign policy, extra-territorial governance, and military intervention. *Global Citizenship Observer*. <https://globalcit.eu/passportization-russias-humanitarian-tool-for-foreign-policy-extra-territorial-governance-and-military-intervention/>. Accessed 18 April 2024
- Buchan R, Tsagourias N (2017) The crisis in Crimea and the principle of non-intervention. *Int Commun Law Rev* 19(2–3):165–193
- Buchan R, Tsagourias N (2021) *Regulating the use of force in international law: stability and change*. Edward Elgar, Cheltenham
- Buchanan A (1997) Theories of secession. *Philos Public Aff* 26(1):31–61
- Burra S (2023) Russian invasion of Ukraine is not an exception or rupture but a continuity. *Cambridge Core*. <https://www.cambridge.org/core/blog/2023/02/22/russian-invasion-of-ukraine-is-not-an-exception-or-rupture-but-a-continuity/>. Accessed 18 April 2024
- Cavandoli S, Wilson G (2022) Distorting fundamental norms of international law to resurrect the Soviet Union: the international law context of Russia's invasion of Ukraine. *Neth Int Law Rev* 69:383–410
- Chatham RC (2011) Defence of nationals abroad: the legitimacy of Russia's invasion of Georgia. *Fla J Int Law* 23(1):75–102
- Christakis T (2015) Self-determination, territorial integrity and *fait accompli* in the case of Crimea. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 75:75–100
- Coppieters B (2018) Four positions on the recognition of states in and after the Soviet Union, with special reference to Abkhazia. *Europe-Asia Stud* 70(6):991–1014
- Corten O (2015) The Russian intervention in the Ukrainian crisis: was *jus contra bellum* 'confirmed rather than weakened'? *J Use Force Int Law* 2:17–41
- Cullen Dunn E, Bobick MS (2014) The empire strikes back: war without war and occupation without occupation in the Russian sphere of influence. *Am Ethnol* 41(3):405–413
- Dobos N (2018) On the uses and 'abuses' of responsibility to protect. In: Coady CAJ, Dobos N, Sanyal S (eds) *Challenges for humanitarian intervention: ethical demand and political reality*. Oxford University Press, Oxford, pp 123–138
- Duursma J (1996) *Fragmentation and the international relations of micro-states: self-determination and statehood*. Cambridge University Press, Cambridge

- Ediger ML (2018) International law and the use of force against contested states: the case of Taiwan. *NY Univ Law Rev* 93:1668–1706
- Etkind A (2022) Ukraine, Russia, and genocide of minor differences. *J Genocide Res* 7(4):551–559
- Ferrara A (2015) Beyond genocide and ethnic cleansing: demographic surgery as a new way to understand mass violence. *J Genocide Res* 17(1):1–20
- Ferro L (2021) The doctrine of ‘negative equality’ and the silent majority of states. *J Use Force Int Law* 8(1):4–33
- Fortuin E (2022) ‘Ukraine commits genocide on Russians’: the term ‘genocide’ in Russian propaganda. *Russian Linguist* 46:313–347
- Gözen Ercan PG (2019) UN General Assembly dialogues on the responsibility to protect and the use of force for humanitarian purposes. *Glob R2P* 11(3):313–332
- Green JA, Henderson C, Ruys T (2022) Russia’s attack on Ukraine and the jus ad bellum. *J Use Force Int Law* 9(1):4–30
- Hannum HM (1993) Rethinking self-determination. *Va J Int Law* 34(1):1–69
- Haugh JA (2014) Beyond R2P: a proposed test for legalizing unilateral armed humanitarian intervention. *Mil Law Rev* 221(1):1–74
- Henderson C (2015) The UK government’s legal opinion on forcible measures in response to the use of chemical weapons by the Syrian government. *Int Comp Law Q* 64(1):179–196
- Hilpold P (2023) Justifying the unjustifiable: Russia’s aggression against Ukraine, international law, and Carl Schmitt’s ‘theory of the greater space’ (‘Groß raumtheorie’). *Chin J Int Law* 20:409–433
- Hoffmann T (2022) War or peace?—International legal issues concerning the use of force in the Russia–Ukraine conflict. *Hung J Leg Stud* 63(3):206–235
- Ioffe Y (2023) Forcibly transferring Ukrainian children to the Russian Federation: a genocide? *J Genocide Res* 25(3–4):315–351
- Janik R (2022) Putin’s war against Ukraine: mocking international law. *EJIL:Talk!* <https://www.ejiltalk.org/putins-war-against-ukraine-mocking-international-law/>. Accessed 18 April 2024
- Kashnikov B (2022) Self-determination of peoples. In: Sayapin S et al (eds) *International conflict and security law—a research handbook*. T.M.C. Asser Press, The Hague, pp 27–46
- Kattan V (2023) Self-determination in the third world: the role of the Soviet Union (1917–1960). *Jus Gentium* 8(1):87–144
- Krisch N (2022) After hegemony: the law on the use of force and the Ukraine crisis. *EJIL:Talk!* <https://www.ejiltalk.org/after-hegemony-the-law-on-the-use-of-force-and-the-ukraine-crisis/>. Accessed 18 April 2024
- Krisch N (2005) International law in times of hegemony: unequal power and the shaping of the international legal order. *Eur J Int Law* 16(3):369–408
- Mälksoo L (2017) The Soviet approach to right of peoples to self-determination. *J Hist Int Law* 19:200–218
- Mälksoo L (2019) The annexation of Crimea and balance of power in international law. *Eur J Int Law* 30(1):303–319
- Mälksoo L (2021) International law and the 2020 amendments to the Russian constitution. *Am J Int Law* 115(1):78–93
- Masol S (2022) Orwellian rulings of the Russian Constitutional Court on the Donetsk, Kherson, Luhansk and Zaporizhzhia Provinces of Ukraine. *EJIL:Talk!* <https://www.ejiltalk.org/orwellian-rulings-of-the-russian-constitutional-court-on-the-donetsk-kherson-luhansk-and-zaporizhzhia-provinces-of-ukraine/>. Accessed 18 April 2024
- Massad J (2018) Against self-determination. *Humanit J* 9(2):161–191
- Milanovic M (2022) What is Russia’s legal justification for using force against Ukraine? *EJIL:Talk!* <https://www.ejiltalk.org/what-is-russias-legal-justification-for-using-force-against-ukraine/>. Accessed 18 April 2024
- Murphy SD (2005) The doctrine of preemptive self-defense. *Villanova Law Rev* 50(3):699–748
- Nagashima T (2019) Russia’s passportization policy toward unrecognized republics. *Probl Post-Commun* 66(3):186–199
- Natoli K (2010) Weaponizing nationality: an analysis of Russia’s passport policy in Georgia. *Boston Univ Int Law J* 28:389–417
- O’Connell ME (2018) The crisis in Ukraine—2014. In: Ruys T, Corten O (eds) *The use of force in international law, a case-based approach*. Oxford University Press, Oxford, pp 855–872

- Pelliconi AM (2023) Self-determination as faux remedial secession in Russia's annexation policies. When the devil wears justice. *Völkerrechtsblog*. <https://voelkerrechtsblog.org/self-determination-as-faux-remedial-secession-in-russias-annexation-policies/>. Accessed 18 April 2024
- Poghosyan S (2021) Russian approaches to the right of peoples to self-determination: from the 1966 United Nations covenants to Crimea. *Jurid Int* 30:183–193
- Pustorino P (2023) Self-determination of Ukrainian people and Russian aggression. *Rev Eur Droit* 5(1):67–70
- Pylypenko V (2023) Transferring of the Ukrainian children to Russia as genocidal act. *Cambridge Core Blog*. <https://www.cambridge.org/core/blog/2023/01/24/transferring-of-the-ukrainian-children-to-russia-as-genocidal-act/>. Accessed 18 April 2024
- Quénivet N (2022) The conflict in Ukraine and genocide. *J Int Peacekeeping* 25:141–154
- Radpey L (2022) Remedial peoplehood: Russia's new theory on self-determination in international law and its ramifications beyond Ukraine. *EJIL:Talk!* <https://www.ejiltalk.org/remedial-peoplehood-russias-new-theory-on-self-determination-in-international-law-and-its-ramifications-beyond-ukraine/>. Accessed 18 April 2024
- Schmitt MN (2022) Russia's 'special military operation' and the (claimed) right of self-defense. *Articles of war*. <https://lieber.westpoint.edu/russia-special-military-operation-claimed-right-self-defense/>. Accessed 18 April 2024
- Shaw M (2023) A house of many rooms: the rise, fall and rise again of territorial sovereignty? *Collected Courses of the Hague Academy of International Law—Recueil des cours* 432:57–78
- Simonyan A (2023) Regional international law revisited: a Eurasian international law. *Mich State Int Law Rev* 31(2):283–332
- Sparks T (2023) *A struggle for self-determination: whose claim, to what right?* Hart Publishing, Oxford
- Sterio M (2013) *The right to self-determination under international law. 'Selfistans', secession, and the rule of the great powers*. Routledge, London
- Van den Driest SF (2015) Crimea's separation from Ukraine: an analysis of the right to self-determination and (remedial) secession in international law. *Neth Int Law Rev* 62:329–363
- Van den Hole L (2003) Anticipatory self-defence under international law. *Am Univ Int Law Rev* 19(1):69–106
- Vidmar J (2010) Remedial secession in international law: theory and (lack of) practice. *St Antony's Int Rev* 6(1):37–56
- Waldock HM (1952) The regulation of the use of force by individual states in international law. *Collected Courses of the Hague Academy of International Law—Recueil des cours* Vol 81
- Wuerth Brunk I, Hakimi M (2022) Russia, Ukraine, and the future world order. *Am J Int Law* 116(4):687–697

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