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Russia's perspective on international relations and international law since 2007

BACHELOR THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

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Table of Contents

Abstract.....	3
Summary.....	3
INTRODUCTION	4
1. The theory of Realism and the Munich Security Conference in 2007	6
1.1 Russia’s Realism	6
1.2 From the Munich Security Conference to the Ukraine Crisis.....	9
1.3 Russia’s domestic aspect.....	10
2. Russia’s perspective on international law	12
2.1 Divide in interpretation.....	12
2.2 The use of force and Customary Law.....	14
3. The Russian approach	17
4. Case Studies	20
4.1 Case Study I. Russo-Georgian war.....	20
4.1.1 Events	20
4.1.2 Foreign policy goals.....	22
4.1.3 International law	23
4.1.4 Case Study Conclusions	29
4.2 Case Study II. Ukraine Crisis	30
4.2.1 Events	30
4.2.2 Foreign policy goals.....	31
4.2.3 International law	33
4.2.4 Case Study Conclusions	38
5. Conclusions	39
BIBLIOGRAPHY	41

ABSTRACT

Russia's course of action over the past 12 years caused global concern. This thesis outlines the precise moment that Russia altered its foreign policy and the underlying reasons for that change. In doing so, the approached to international relations and international law are considered and analyzed.

The bachelor thesis further outlines the main Russian positions on foreign policy and derives a hypothesis that is further proven through the consideration of two case studies.

Key words: Russia, International relations, International law, Realism, Ukraine, Georgia

SUMMARY

This paper identifies the Russian perspective on international law and international relations since 2007. The research is structured in four parts: Firstly, the thesis provides an analysis of Russia's characteristics that render it a realist actor in order to hold validity to subsequent arguments that are based on the notions. The importance of Vladimir Putin's speech at the Munich Security Conference is established and the fact that the speech marks the change of Russia's foreign policy is outlined. Secondly, an overview into the international law revolving around the *jus ad bellum* and the principle of self-determination as well as Russia's approach to those is provided. Thirdly, Russia's state practice and communication is analyzed and finally deduced into paradigms that outline the main findings:

1. Russia sees itself as a non-aggressor.
2. Russia identifies a deterioration of the status of international law by the West and accuses the West of hypocrisy.
3. Russia sees the West as driven by expansionism and geopolitical intentions.

Fourthly, these notions are further solidified in two case-studies, the Russo-Georgian war and the Ukraine-crisis. These are analyzed and at the same time, serve the purpose to further consolidating the hypothesis. Lastly, the findings are discussed and analyzed in an overall conclusion. This finally leads to the conclusion that the hypothesis, "The course of action of the Russian Federation since 2007 is a result of perceived aggressions and double-standards of the west" -is proven and that Russia is an actor that solely focuses its actions on state interest as opposed to international norms.

INTRODUCTION

After the collapse of the Soviet Union, the West anticipated the transition of the dissimilar and at the time -adjusting Russia. It was a common understanding that naturally, after the infamously proclaimed “end of history”¹ by Francis Fukuyama, the Russian state would adopt western liberal views and adapt its comprehension of moral governance, nationally and internationally. Evidently, this conception was false. Instead, it appears Russia, even though the state became more liberal and capitalistic, had moved further away from western values. Russia has continually attempted to position itself back into the world order as a “superpower” in order to counter the West’s influence. Its recent state practice as well as its several aggressions within the last 12 years, which, since the Ukraine crisis, eventually became a matter of global concern, can only lead us to conclude that the study of Russia’s approach towards International Law, International Relations and the inherent difference in interpretation thereof must be worth studying. This research takes the western view into account and thus additionally creates a comparative perspective.

The time period for the research from 2007 to 2019 has been selected. The time period has been chosen for the following reason:

In 2007, the year of the infamous speech made by Putin at the Munich Security Conference, marks the precise moment that Russia announced the alteration of its foreign policy. The speech serves as a starting point for this thesis, its relevant aspects are analysed and will serve a continuous explanatory purpose when considering the two subjects of this Thesis. The alteration firstly comes into action in 2008 in the Russo-Georgian war. A reassertion can be observed in 2014 in the Ukraine crisis.

The research question of this thesis is: “How does Russia approach international relations and the closely connected international law, specifically jus ad bellum and the principle of self-determination since 2007.”

The hypothesis of the thesis is “The course of action of the Russian Federation since 2007 is a result of perceived aggressions and double-standards of the west”.

¹ Fukuyama, F. (2006). *The end of history and the last man*. Simon and Schuster.

The research question this thesis aims to answer is how Russia approaches international relations and international law since its foreign policy alteration in 2007. The specific goal is to establish the overall underlying motivation in Russia's track record of intervention and its challenges towards the norms of both international law and the international order. This thesis takes a qualitative deductive approach to analyse the conduct of the state and to prove the hypothesis.

This thesis is divided into four interrelated sections. The first section examines insight into Russian foreign policy by analysing it through the lens of international relations theory. The second section presents the Russian perspective on International Law and specifically the area of *jus ad bellum* as the law regulating war is mostly relevant for the example cases as well as the matter of this thesis. Thirdly, the extraction of the Russian state practice and communication will be deduced into paradigms. In order to do this, firstly the official communication revolving around the actions of the Russian state will be analysed and broken down into overarching theories that can be derived. Subsequently, stemming from the derived theories, the hypothesis will be deduced. The fourth section is a critical analysis of the cases, taking into account the previous sections as well as problems that might arise. The course of action of the last 12 years in both fields of international law and international relations will be analysed by three case studies. The combined aspects will demonstrate an overall approach to the global order and a pattern will emerge. Lastly, an overall conclusion backed by the findings of the case studies will be given, the hypothesis elaborated and a potential future outlook will be provided.

1. THE THEORY OF REALISM AND THE MUNICH SECURITY CONFERENCE IN 2007

In order to explain the view of states on any matter, the methodology of analysis has to be established. Thus for the purpose of this thesis, and specifically for the case studies, a theoretical framework for the analysis has to be given and explained. The theory of International Relations gives great insight not only in how to identify a state's behavioural conduct but also once established, it lets one conclude and understand why certain states with respective categories of international relations act in a certain way.

There are several aspects that let one conclude that the Russian Federation has a strong realist foreign policy. Aside from the apparent consensus by numerous academic scholars identifying Russia as a Realist actor,² this conclusion can be reached by analysing the theory itself and balancing it with the state's actions and official strategies. As an image of politics, Realism is concerned with power and power politics among states, but many realists have also been concerned with values and norms and the role they play in ordering international politics.³ Below is an overview of the four main paradigms of the Realist theory as described by Kauppi and Viotti⁴; their connection to Russia will be elaborated.

1.1 Russia's Realism

Firstly, the world is an anarchical place in which states are the only actors of importance. As Fyodor Lukyanov, Editor-in-Chief of Russia in Global Affairs states: “[Putin] *believes the world today is absolutely unpredictable, ungovernable, risky and dangerous.*”⁵ Furthermore, international organisations are merely a tool for states to act through. This would, for example, render the United Nations as an institution to achieve political aspirations. The Directorate-General for external policies of the EU highlights Russian practice in the UN Security Council: “[E]vents in Libya have persuaded decision-makers in

² Maintra, S. (2014). Realism in Russian Foreign Policy: Crimean Case. *CLAWS Journal*”, summer.

³ Carr, E. H., Cox, M., & Cox, M. (1946). *The twenty years' crisis, 1919-1939: an introduction to the study of international relations* (p. 101). London: Macmillan.

⁴ Kauppi, M. V., & Viotti, P. R. (2009). *International relations theory*. Pearson Longman.

⁵ M. M., & F. L. (2012, November). The logic of Russian foreign policy [Web log post]. Retrieved May 2, 2019, from <https://eng.globalaffairs.ru/print/event/Talking-point-the-logic-of-Russian-foreign-policy-Marie-Mendras-and-Fyodor-Lukyanov-join-oDRussia-ed#>

*both Moscow and Beijing to reject any similar proposal concerning another Middle Eastern state.*⁶

Secondly, the state is one entity and acts as a whole on the international stage according to one set of policies. Political differences within the state are ultimately solved authoritatively in order to present a unified and common position. The elite in Russia has established a domestic system that allows for its foreign policy to shape public opinion, granting it increasing leeway in shaping public opinion and ultimately following its desired path of action:

Often, the Kremlin has found it sufficient to play this card [anti-americanism] in the media, increasing the access to television of a stable of anti-American commentators⁷

This phenomenon will be further explored in the chapter “domestic aspect”.

Thirdly, the state acts rationally, according to its political objectives. When doing so, it outweighs the available options and pursues the one that, to the respective individual state, appears to be the most efficient one. Evidently, this paradigm is intertwined with the fact that Russia’s main concern remains security. This leaves one to conclude that recent actions, including the change of attitude towards the West marked by the 2007 Munich Security Conference, are to be understood as rational actions that served Russia’s political objectives. Specifically the targeted and timed interventions in near-abroad states such as Georgia and Ukraine which were progressing towards western alliances, depict Russia’s desire to secure its sphere of influence and ultimately its security. The backlash cannot have been unexpected by Russian decision makers, yet consideration of risks and benefits evidently led to a decision to intervene.

Lastly, a realist state’s highest priority is security. The state revolves around actual and potential conflicts, the use of force and it values its territorial integrity tremendously. A realist state thus sees economic and social issues as lower priority issues of the state. Putin stated:

[W]e see that there are many challenges and risks in today’s world, including in the immediate vicinity of our borders. So a powerful army equipped with modern arms is a guarantee of Russia’s sovereignty and territorial integrity, a guarantee of peace and calm for millions of our citizens.⁸

⁶ Ferdinand, P. (2013). The positions of Russia and China at the UN Security Council in the light of recent crises. *Briefing Paper. Belgium: European Union.*

⁷ Greene, S. A. (n.d.). Domestic Sources of Foreign Policy in Russia: Why Moscow’s Shift to Confrontation with Washington is Structural [Web log post]. Retrieved April 21, 2019, from <https://moscowonthames.files.wordpress.com/2015/08/20130311-sgreene-ponars.pdf>

⁸ Russian government, Presidential Executive Office. (2015, June 25). *Reception in honour of graduates of military academies*[Press release]. Retrieved April 22, 2019, from <http://en.kremlin.ru/events/president/news/49763>

Since the dissolution of the Soviet Union, Russia has been on an on-going quest to regain its global image of a world power or even superpower.⁹ Its recent actions can only confirm this. In international relations a super power status is achieved when a state has the power to exert power and influence in the world.¹⁰ The main method for Russia to do so is through military means. Russia's military with a defence budget of \$44.6 billion, is ranked the second-most powerful, after the US.¹¹ Russia's main concern, as also evident from the Munich speech, is the countering of the power of the US in order to avoid unipolarity on the world stage. Russia sees unipolarity as unacceptable and as enhancing conflicts.¹²

The major models of foreign policy in realism are sphere of influence, the balance of power and great power management.¹³ This thesis argues that Russia's foreign policy mostly resembles the sphere of influence theory. Russia seeks predominantly to exert influence onto its near abroad and by doing so not only achieve power but also counter the power of the West and thus ultimately manage the power in its region. This conclusively renders the further advancement of western institutions such as the European Union but mainly the military alliance NATO towards the East, a highly controversial matter for the Kremlin. It was so in history and remains so today.

In 1999, within a matter of days after the Czech Republic, Hungary and Poland became members of NATO, the alliance started to bomb Serbia, a Slavic Orthodox country – just like Russia. While this event as well as the intervention in Bosnia in 1995 had morally good western intentions, the fact that the biggest military alliance proceeded to carry out legally unsanctioned attacks in Russia's near-abroad as well as the further expansion into the former Warsaw Pact members which would from now on naturally be western oriented in their policies, decisively shaped the relationship into one of adversaries.¹⁴ The following has to be considered: during the Cold War, St. Petersburg was approximately 1900km away from the nearest NATO member, now with the Baltic States being a full member it is about 100km away. For a realist state this is inherently alarming.¹⁵

⁹ Kozhemiakin, A. V., & Kanet, R. E. (Eds.). (2016). The foreign policy of the Russian federation (p. 183). Springer.

¹⁰ Miller, L. (2005). China an emerging superpower. *Stanford Journal of International Relations*, 6(1).

¹¹ C. W. (2018, June 18). These are the 25 most powerful militaries in the world. *Business Insider*. Retrieved from <https://www.businessinsider.com/most-powerful-militaries-in-the-world-ranked-2018-2?r=UK>

¹² Russian government, Presidential Executive Office. (2007, February 10). *Speech and the Following Discussion at the Munich Conference on Security Policy*[Press release]. Retrieved from <http://en.kremlin.ru/events/president/transcripts/24034>

¹³ Mowle, T. S. (2003). Worldviews in foreign policy: Realism, liberalism, and external conflict. *Political Psychology*, 24(3), 561-592.

¹⁴ B. S. (2018, February 12). Russia's Clash With the West Is About Geography, Not Ideology. *Foreign Policy*. Retrieved from <https://foreignpolicy.com/2018/02/12/russias-clash-with-the-west-is-about-geography-not-ideology/>

¹⁵ "Putin Deplores Collapse of USSR." *BBC News*, April 25, 2005. <http://news.bbc.co.uk/2/hi/4480745.stm>.

1.2 From the Munich Security Conference to the Ukraine Crisis

The infamous speech made by Vladimir Putin at the Munich security conference is a turning point in Russia's policy and was thus chosen as decisive for the time frame of this thesis. While Putin has been in power in Russia acting as either Prime Minister or President since 1999, he only attended the Munich Security Conference once, underpinning the importance of the message he gave. The president announced a drastic challenge towards the western-led world order and denounced US practice of security policy.¹⁶ Putin starts his speech by referring to the end of the cold war, continuing with his criticism of the proposed unipolarity.¹⁷ Subsequently he criticises the United States unilateral military actions:

Unilateral and frequently illegitimate actions have not resolved any problems. Moreover, they have caused new human tragedies and created new centres of tension.¹⁸

Furthermore, Putin stressed the issue of the NATO eastern expansion:

I think it is obvious that NATO expansion does not have any relation with the modernisation of the Alliance itself or with ensuring security in Europe. On the contrary, it represents a serious provocation that reduces the level of mutual trust. And we have the right to ask: against whom is this expansion intended? And what happened to the assurances our western partners made after the dissolution of the Warsaw Pact?¹⁹

Both these quotes can be seen as especially representative of the whole speech and ultimately as Russia's position on Foreign Policy since. The speech is of increased relevance since the assertions can be seen retrospectively, as announcing the countering of NATO's influence in Georgia and Ukraine through Russian intervention. Assertions similar to those given in the speech, constantly appear throughout the official communication of the state ever since, which signifies the importance and representative value for Russia's foreign policy.

Putin, starts his speech recollecting the time since the Cold War and then, from his perspective, defines the consequent recent missteps of the West, as well the NATO expansions and aspirations by declaring them tools for geopolitical gain as opposed to security in Europe. In doing this he essentially describes the resentment of western action and position in the past and declares the adaption of Russia to it. Russia announced its change of Foreign policy.

¹⁶ *Supra* note 12.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

Russia's invasion of Georgia, only one year after the speech brought actions to these words. Russia followed up on its conclusion with the west and successfully so. It proved to the world that the NATO expansions can be countered and that the United States of America cannot prevent it from doing so. From the perspective of Russia it was ideal to intervene and depict Russia's sphere of influence.

Yet Russia did not remain on the course of the Munich Security Conference. Instead it can be seen as a snowball-effect predating the increasing assertiveness of Russian foreign policy. The success of the Russo-Georgian War created the confidence and the Euromaidan unrests, highlighting the western-orientation in Ukraine, eventually created the need to move Russian troops into Ukraine.

1.3 Russia's domestic aspect

In order to analyse the status and handling of International Law as well as international relations of one state, one has to consider the domestic aspect. It can be seen that the domestic legal situation of a state usually reflects its international nature and behaviour. This is further described by Lauri Mälksoo, Professor of International Law at the University of Tartu, in his book "Russian Approaches to International Law":

[I]t is necessary to take a thorough look inside the state and the society itself, particularly in the world of its predominant ideas that shape the country's understanding of international law. In Russia's case, the country's historically unique on and off and periodically hostile relationship with Europe and nowadays the West, its historically established tendency of authoritarian government, relative weakness of the rule of law inside the country, and the utmost desire to preserve the territorial integrity of Russia as the world's largest territorial state have decisively shaped post-Soviet Russia's approaches to international law.²⁰

Decision-makers in general are greatly influenced by the political and social state of their respective countries. Although, in the case of Russia this remains limited to the elite only, as such discourses are kept amongst key decision-makers and top ranking officials.²¹ The significance of the society of a state and its philosophy and thus ultimately where these come from, when considering its international law, becomes apparent and underlines the need to consider the elements that shape the Russian nation and civil discourse. Russia has a system that provides for its foreign policy to shape domestic public opinion. Specifically, anti-Americanism is used as a tool for creating a "common enemy" and to shape public opinion in

²⁰ Mälksoo, L. (2015). *Russian approaches to international law*. Oxford University Press, USA.

²¹ *Ibid.*

a way that it stands behind its current government.²² Furthermore, the Russian government has immense control over the state media and is able to shape even private outlets in a way that favours the position of the state and allows for influence of the public in an immense way.²³ The government uses the media to keep and achieve a government-friendly domestic opinion, broadcast state policies to foreign audiences and finally to influence foreign viewers.²⁴ This combined with a low English-proficiency²⁵ allows for the state to shape public opinion in its favour on any matter it wishes, ultimately granting the government massive leeway in decision-making as repercussions from the public are simply of no concern.²⁶ A poll after the Ukraine crisis shows that almost nine out of ten Russians supported the President Vladimir Putin.²⁷ This shows, that the Russian elite has immense power to influence and ultimately to independently shape the foreign policy aspirations of the country.

²² Zakem, V., Saunders, P., Hashimova, U., & Frier, P. K. (2017). *Mapping Russian Media Network: Media's Role in Russian Foreign Policy and Decision-Making* (No. DRM-2017-U-015367-1Rev). CNA ANALYSIS AND SOLUTIONS ARLINGTON VA ARLINGTON United States.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Supra* note 22.

²⁶ *Ibid.*

²⁷ Alberto Nardelli, Jennifer Rankin, and George Arnett. "Vladimir Putin's Approval Rating at Record Levels." *The Guardian*. July 23, 2015. <https://www.theguardian.com/world/datablog/2015/jul/23/vladimir-putins-approval-rating-at-record-levels>.

2. RUSSIA'S PERSPECTIVE ON INTERNATIONAL LAW

The term "International Law" should logically, have a unified meaning. Nevertheless, it is proposed and understood by many scholars, that in fact International Law comes from the European tradition, yet simultaneously it is perceived as universal in the West.²⁸ It often appears that the West has developed its own liberal approach towards international law to the distress of other conservative-leaning states, amongst them Russia, which see international law through a rather realist lens. An obvious display of the polarization of approaches towards the interpretation of international law can be observed and will be further defined in this chapter.

2.1 Divide in interpretation

In April of 2018, the Syrian state was accused of using chemical gas for an attack in Damascus. While the involvement of the Syrian state in the attack was denied by Syria and Russia, which has many military bases in the country, the US claimed to have reliable information regarding their involvement. Ultimately, it came to the US, France and the UK cooperating in attacking chemical weapons facilities.²⁹ The relevant factor in the event was, that the three western countries did not consult the United Nations Security Council, which would effectively violate the sovereignty of Syria as prescribed in Article 2 of the United Nations Charter (hereinafter: the Charter): "[...] *All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state*[...]"³⁰. Such intervention, under International Law and specifically the Charter, is explicitly only intended after a consultation of the UN Security Council or in cases of self-defence, as prescribed in Chapter VII of the Charter. While the three states felt vindicated in their actions by the western states' overall acquiescence, Moscow naturally condemned the attack. It has to be mentioned that Russia, during the then-six years of Syria's war, vetoed 8 resolutions concerning President Assad's government, effectively hinting to anyone that another attempt for a resolution would have been vetoed with certainty. Nevertheless, this raises the question of the standing of the UN system for western states, when those that cannot get their will, would merely ignore the laws to which

²⁸ Koskenniemi, M. (2005). International law in Europe: between tradition and renewal. *European Journal of International Law*, 16(1), 113-124.

²⁹ Julian Borger. "Syria: US, UK and France Launch Strikes in Response to Chemical Attack." *The Guardian*, April 14, 2018. <https://www.theguardian.com/world/2018/apr/14/syria-air-strikes-us-uk-and-france-launch-attack-on-assad-regime>.

³⁰ U.N. Charter art. 2, para. 4.

they bound themselves. This accurately represents Russia's view on the matter. As Putin put it in 2014:

In absence of legal and political instruments, arms are once again becoming the focal point of the global agenda; they are used wherever and however, without any UN Security Council sanctions. And if the Security Council refuses to produce such decisions, then it is immediately declared to be an outdated and ineffective instrument.³¹

It becomes a matter of principle. As history shows, Russia is certainly not innocent when it comes to military interventions without the consultation of the Security Council. In fact, it has been outlined that in these situations, the US and Russia have a similar history of putting state interest above international law³² and the matter becomes one of justifying the immense necessity of intervention. Although, states in similar cases often refer to the doctrine of Responsibility to Protect which basically indicates that international action can be taken if a population is under instant threat. While this would allow for a legal way to circumvent the above-mentioned charter's protection of sovereignty of states, it does not allow for disregard of the Security Council i.e. Responsibility to Protect still requires the Security Council's consent.³³ This can be seen as somewhat hypocritical and the absence of criticism from other western states, lets one to some extent, understand where Putin comes from when talking about the West appearing to have a detached liberal approach towards International Law. Putin often refers to precedents of the West to underline this: "*Iraq, Libya, Afghanistan and Yugoslavia Was this really all handled within the framework of international law?*"³⁴ The Kremlin frequently uses this divide in approaches as justification for its actions or to outline the hypocrisy of the West. In his essay "The disciplines of International Law and Policy", David Kennedy outlines the potential blind spots that make the West vulnerable when considering disciplines such as international law or international relations,³⁵ highlighting the need to detach oneself from a subjective view and confirming that the understanding and practice of international law differs in regions. This thesis seeks to take an objective approach when analysing the conduct of Russia in terms of its application of international law.

Russia in its quest for regaining the status of a super power, definitely constitutes a state to investigate as it takes challenging steps in its pursuit. Leading state officials of Russia have

³¹ Russian Government. Presidential Executive Office. "Meeting of the Valdai International Discussion Club." News release, October 24, 2014. <http://en.kremlin.ru/events/president/news/46860>.

³² *DER WESTEN UND RUSSLAND: Intermezzo*. (2014, September 14). Retrieved from <https://www.faz.net/-hox-7tw1n>

³³ United Nations, Office on genocide prevention and the Responsibility to Protect. (n.d.). *RESPONSIBILITY TO PROTECT*[Press release]. Retrieved from <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>

³⁴ *Supra* note 31.

³⁵ Kennedy, D. (1999). The disciplines of international law and policy. *Leiden Journal of International Law*, 12(1), 9-133.

repeatedly underlined the importance of International Law to the state. When considering the emphasis on respect towards international law of Putin in his Munich speech in 2007 and the subsequent war with Georgia or Russia's foreign policy concept of 2013, in which one finds sentences such as "*Russia pursues an independent foreign policy guided by its national interests and based on unconditional respect for international law.*"³⁶ and the military intervention in Ukraine, not a year later,³⁷ the question arises of how Russia understands international law and specifically the law of war.

2.2 The use of force and Customary Law

The use of force remains a particularly important aspect to consider for this research, as the contemporary state-practice of Russia has proven. Additionally, the use of force greatly intertwines with international relations theory as it remains the prime subject for realism.

The charter of the United Nations governs the restrictions on any kind of foreign intervention. The interpretations are divided. On the one hand, one can identify the "restrictionists", those who claim that the use of force is only to be deployed in cases of self-defence, apart from the two following exceptions in the charter: Firstly, Article 51 which gives the right of self-defence in the case of an armed attack against a UN member state.³⁸ It has to be mentioned, that such action is limited in that it must be proportionate, i.e. to be an action of last resort and not be excessive.³⁹ The second exception applies in cases of threats to international peace and security under the condition of a mandate of the UN Security Council. Customary law supports the argument that those are the exclusive cases of use of force.

Customary law consists of states that act according to a norm in which those states believe.. The term "belief" already hints at the subjectivity of what a state sees or wants to see as a norm. Thus ultimately, this belief will be justified by lawyers as *opinio juris* which is essential to create legally binding customary rules. Conclusively, customary law is in a position to evolve over time, making the justifications that are being brought about by states in cases of use of force, highly interesting. In theory, the above lets one conclude that states, in fact, have the power to create international legal norms through practice and justification, although certainly requiring a longer period of time, persuasion and immense undertaking as

³⁶ Russia, The Ministry of Foreign Affairs of the Russian Federation. (2013). *Concept of the Foreign Policy of the Russian Federation*. Moscow: Russian government. Retrieved at: http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptICk6BZ29/content/id/122186

³⁷ A. P. (2014, April 17). Putin admits Russian forces were deployed to Crimea. *Reuters*. Retrieved from <https://www.reuters.com/article/russia-putin-crimea/putin-admits-russian-forces-were-deployed-to-crimea-idUSL6N0N921H20140417>

³⁸ U.N. Charter art. 51.

³⁹ Wilmschurst, E. (2005). *Principles of International law on the use of force by states in self-defence*. Royal Institute of International Affairs.

the essence of customary law requires general acceptance of the majority of the international community. Yet, it is Russia who has been creating precedents in the last 12 years and continuously seeks to push norms and further develop doctrines such as the Responsibility to Protect. Though, it is much rather the case that International customary law and the inherent norms have a restrictive factor in international undertakings of states. As Neil Macfarlane, in his book “Intervention in Contemporary World Politics”, points out:

For intervention to be legitimately mandated, it must be justified in terms of normative principles that are generally accepted in international society. Although such justification may to some extent be spurious and mask power-political or other self-centred motivations, the need to justify again narrows the behavioural parameters of states.⁴⁰

In other words, states are limited to actions that will remain within the boundaries of legitimate justifications of such actions. Those justifications are mostly heard at the UN Security Council, naturally as it constitutes the body to refer to when seeking approval or justifications for use of force, intervention or ultimately pushing norms. Thus, in the case studies, this research will take those justifications into account and further elaborate if those constitute a challenge towards international law and norms in general.

Russia has repeatedly praised the importance of international law. In all its foreign policy concepts international law is mentioned as the underlying foundation of international relations.⁴¹ Yet, Russia’s actions are frequently labelled as grave violations of international norms and laws by western politicians. It has to be understood, that Russia has a detached approach to international law and its norms. Firstly, Russia has a differing status of values from the West. Issues such as state sovereignty as opposed to human rights, are of higher importance.⁴² This is also represented in its track record at the European Court of Human Rights.⁴³ Secondly, Russia sees itself, also in the language of international law, as a distinct civilization and in recent practice repeatedly emphasizes this fact.⁴⁴ And thirdly, as Lauri Mälksoo outlines:

Russia imported the discourse of international law from Western Europe only in the 18th-19th centuries, i.e. several centuries later than international law came to be practiced and theorized in the West. International law came to Tsarist Russia to some extent as foreign language.⁴⁵

⁴⁰ MacFarlane, N. (2013). *Intervention in Contemporary World Politics* (p.15). Routledge.

⁴¹ *Supra* note 36.; Russia, The Ministry of Foreign Affairs of the Russian Federation. (2016, December 1). *Foreign Policy Concept of the Russian Federation*. Retrieved from http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptICk6BZ29/content/id/2542248

⁴² *Supra* note 20.

⁴³ European Court of Human Rights, Press unit. (2019, May). *Press country profile Russia*[Press release]. Retrieved from https://www.echr.coe.int/documents/cp_russia_eng.pdf

⁴⁴ Tsygankov, A. (2016). Crafting the State-Civilization Vladimir Putin’s Turn to Distinct Values. *Problems of Post-Communism*, 63(3), 146-158.; *Supra* note 20.

⁴⁵ *Ibid.*

It becomes evident that Russia as a realist actor, places great emphasis on state sovereignty and focuses less on human rights issues. The argument of Russia as a distinct civilization becomes increasingly important when considering the repeated argument of securing its citizens abroad as justifications for military interventions. The fact that international law only came to Russia in a time of complete authoritarianism hints at the nature of the Russian perspective on international law.

With the seemingly apparent contradictions between Russia's communications and its actual actions, one might see Russia using international law as a method to achieve its political gains but also as an attempt to influence international law and specifically push emerging doctrines such as the Responsibility to Protect, through precedents in a way that would not only justify its actions but also serve its future aspirations. With the Kosovo precedent, Russia has found itself in a comfortable position to do so, since any kind of condemnation of the West will simply be brushed off with reference to the case of Serbia. Despite the creation of customary law or the evolution of a norm requiring the acceptance of such by the international community, Russia does not cease attempting to create those. This conduct will be exceptionally conspicuous in the legal analysis of the case studies.

3. THE RUSSIAN APPROACH

The current complex situation on the European continent elucidates the importance of understanding Russia's security aspirations, including its perspective and challenges to international law. With its annexation of Crimea and tensions in eastern Ukraine, Russia "challenged the European security order at its core"⁴⁶ and has brought back a type of conflict that was deemed to be history on the European continent, consequently bringing about a polarization of international relations. Moscow, with its common emphasis on the importance of international law and sovereignty, evidently holds a perspective on its recent conduct that needs to be analysed.

Russia's understanding of international law differs from that of the West. This is only exemplified by its actions since 2007. When analysing Russia's official communication since 2007, certain common themes are consistently repeated and can be patently identified.⁴⁷ Russia's narrative on international law can be broken down into several core paradigms that are closely intertwined with its approach towards international relations. Below the most important themes that appear throughout all its formal communication ranging from its Foreign Policy Concepts to its UN Security Council appearances will be outlined and a consequent conclusion reached.

Russia sees itself as a non-aggressor. Russia positions itself as a country that has the utmost respect for international law and all its principles. Putin pointed out, that Russia is "*open to the world and that it does not have – and cannot have – any aggressive plans.*"⁴⁸ Affirmations of International law serving as the foundation for correct international relations are core messages in its official communication.⁴⁹ Promoting peace under the rule of international law is mentioned amongst the top priorities.⁵⁰

Russia identifies a deterioration of the status of international law by the West. This positioning of Russia's standpoint is continuously visible and particularly so concerning matters regarding interventions of western states. To name a few, in 2007, Putin stated "*We*

⁴⁶ EEAS. (2016). Shared Vision, Common Action: A Stronger Europe, A Global Strategy for the European Union's Foreign and Security Policy. Retrieved from http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf

⁴⁷ Marxsen, C. (2018). Cleavages in international law and the danger of a pull towards non-compliance. *Völkerrechtsblog*. Retrieved from <https://blog.apastyle.org/apastyle/2016/04/how-to-cite-a-blog-post-in-apastyle.html>

⁴⁸ *Supra* note 8.

⁴⁹ See foreign policy concept 2013 *Supra* note 36. And foreign concept 2016 *Supra* note 41.

⁵⁰ *Ibid.*

are seeing a greater and greater disdain for the basic principles of international law”.⁵¹ In 2015: “In recent decades the basic principles of international co-operation have been ignored ever more frequently” or in comments on Libya in 2016⁵² or on Syria in 2018, describing attacks coordinated by western states and led by the US as “unacceptable and lawless”.⁵³ Russia has continuously condemned interventions by the West and in doing so announces a devaluation of the UN Charter. While criticizing the West for its violations of international law, another theme can be identified. **Russia accuses the west of hypocrisy.** Essentially, Russia condemns the West for interpreting international law in its favour when it suits and when it comes to Russia applying a different set of interpretations to the same kind of situation. The West then denounces Russia. As Putin describes it: “If we apply different standards to the same kind of events, we will never be able to agree on anything”.⁵⁴ He provides further examples in the western interpretations of the coups in Yemen and in Ukraine.⁵⁵

Russia sees the West as driven by expansionism and geopolitical intentions. This notion finds its origins in the NATO expansions that are seen as a deep betrayal by Russia. In the final days of the Cold War, the Soviet Union and the United States negotiated an agreement for the Warsaw Pact to be dismantled and in exchange it would be guaranteed, that the North Atlantic Treaty Organization would not expand further and seize the encirclement of the USSR. While there are some western politicians such as the then-US foreign minister James Baker, that deny that any such promises were made, a recently declassified record of conversation shows that the Russians were at least led to believe that an expansion would not follow.⁵⁶ Nevertheless, it does represent the official Russian view and widespread public opinion within the country on this matter is also very negative.⁵⁷ However, at the time, this was seen as a first step in the West and the East coming towards each other. The consequence of the withdrawal of Soviet troops from Eastern Europe was unforeseen by the Soviet Union. Nationalist movements and revolts were coming about in the respective states throughout the

⁵¹ *Supra* note 12.

⁵² Russia condemns NATO strikes on Libya. (2011, May 25). *Radio Cadena Agramonte*. Retrieved from <http://www.cadenagramonte.cu/english/show/articles/5748:russia-condemns-nato-strikes-on-libya>

⁵³ A. R. (2018, April 14). Vladimir Putin calls US-led Syria strikes an 'act of aggression'. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2018/apr/14/insulting-russia-furious-over-syria-attacks-as-politician-likens-trump-to-hitler>

⁵⁴ Russian government, Presidential Executive Office. (2015, May 10). *Press statement and replies to journalists' questions following talks with Federal Chancellor of Germany Angela Merkel*[Press release]. Retrieved from <http://en.kremlin.ru/events/president/transcripts/49455>

⁵⁵ *Ibid.*

⁵⁶ Savranskaya, S., Blanton, T. S., & Zubok, V. M. (Eds.). (2010). *Masterpieces of history: the peaceful end of the Cold War in Eastern Europe, 1989*. Central European University Press.

⁵⁷ B. S. (n.d.). Ally or Adversary? Public Opinion of NATO in Post-Soviet Russia. *USC Center on Public Diplomacy*. Retrieved from <https://www.uscpublicdiplomacy.org/student-paper/ally-or-adversary-public-opinion-nato-post-soviet-russia>

Soviet Union and ultimately, the Soviet Union broke up. What followed was the quick expansion of NATO into the former Warsaw Pact member states and even further into the Baltic States. Given the history of those new NATO members, entering the alliance could have only been positive. Yet, from the Russian perspective, it was obviously seen as a deep betrayal.⁵⁸ Considering this, one might understand the statement of Vladimir Putin in 2005 when he referred to the collapse of the Soviet Union as “the greatest geopolitical catastrophe”.⁵⁹ The end of the Soviet Union effectively reversed almost three centuries of Russian expansionism within only a few consequent days. Consequently, Russia has been a strong opponent of any further eastern expansions of NATO and identified the trend of the West to continuously seek to enhance its members in order to encircle Russia. The analysis of the case studies, specifically the Russian rationale behind their actions will further solidify this premise.

To conclude, all the above elaborated premises of the Russian communication:

1. Russia sees itself as a non-aggressor.
2. Russia identifies a deterioration of the status of international law by the West and accuses the West of hypocrisy.
3. Russia sees the West as driven by expansionism and geopolitical intentions.

–have one overarching element to it and solidify the hypothesis: “The course of action of the Russian Federation since 2007 is a result of perceived aggressions and double-standards”.

⁵⁸ *Supra* note 14.

⁵⁹ *Supra* note 15.

4. CASE STUDIES

The case studies provide a practical analysis of this research. The actions of the Russian states give a great indication of Russian security policy and its interpretation of international law. An additional linkage to Putin's speech grants the opportunity to link the personal predisposition of the leader, International Relations theory and international law in order to expound a system that describes contemporary Russian state practice. The case analysis is divided into four sections:

Firstly, a description of the relevant events and those that built up to the conflict will be provided.

Secondly, conflicts will be analysed by taking into account their relevance in terms of international relations

Thirdly, the application of international law will be analysed by taking into account the interpretations and justifications that have been brought forward.

Lastly, an overall conclusion deriving from the previous sections will be drawn and a linkage towards the hypothesis will be given per case, respectively.

4.1 Case Study I. Russo-Georgian war

*“If Kosovo is a special case, [Georgia] is also
a special case”*

-Dmitry Medvedev

4.1.1 Events

On August 7, 2008, Georgia responded to firing coming from South Ossetia by deploying military forces in an attempt to establish order. A day later, Russia started a five-day war with Georgia, helping the South Ossetians in order to “protect the lives of Russian citizens”. The attack came as a surprise to the international community.

The Soviet Union occupied Georgia in 1921 and henceforth, the country was a constituent republic of the Soviet Union. In the following year, the South Ossetian Autonomous District was established, within the territory of the Central Province of Georgia.⁶⁰ Additionally, a North Ossetian Autonomous District within the Russian borders was created which drew a

⁶⁰ P. R. (2008, August). *Russian Federation: Legal Aspects of War in Georgia*(Rep.). Retrieved <https://www.loc.gov/law/help/russian-georgia-war.php>

border between the Ossetians. After the dissolution of the Soviet Union, the regions South Ossetia and Abkhazia declared their independence but were not internationally recognized, leaving those regions as a part of Georgian territory, from the perspective of the international community.⁶¹ During the 1990s the Russian government supported a secession movement in the South Ossetian district, which aimed to unite with the (in Russian territory-lying), Northern Ossetian district. A conflict arose after the Georgians decided to attempt to regain control over the region. This caused between 2000 and 4000 casualties. Eventually in 1992 a Russian initiated ceasefire agreement was reached, yet all parties increased military presence around the region.

Relations between Georgia and Russia worsened in the upcoming years of the conflict⁶². In November 2006, a referendum, having the support of 90 percent of the voters, was held in South Ossetia to underline its independence from Georgia. As a consequence of the referendum, Russia proceeded to grant citizenship to South Ossetians and to offer them Russian passports.⁶³ Finally, in April 2008 Russia decided to commence “special relationships”⁶⁴ with South Ossetia which ultimately meant the recognition of the region as independent and sovereign. This encouraged the South Ossetian government, which was protected by the Russian forces, to commence the deportation of ethnic Georgians from the region.⁶⁵ On the first and second of August 2008, the South Ossetian forces bombed ethnic Georgian villages within the South Ossetian territory. Reciprocating the attacks, Georgia moved its forces into the region in order to secure its citizens and restore order.⁶⁶

The following day Russian forces with the help of Abkhazian forces, another separatist-controlled region within the Georgian territory, entered Georgia and attacked its military and infrastructure in South Ossetia and beyond⁶⁷ - leaving Georgian forces no option but to retreat. What followed was the increased military presence of Russia, the completion of deportation of Georgians from the territory and subsequently the recognition of independence of the pro-Russian South Ossetia as well as Abkhazia as sovereign states.⁶⁸ On August 26, 2008, after both chambers of the Russian legislature submitted to Russian President Medvedev their recommendations to recognize Abkhazia and South Ossetia as independent states, he signed official decrees on the recognition.

⁶¹ N. M. (2007, November). The region after the collapse of Soviet Union. Retrieved from http://www.irenees.net/bdf_fiche-analyse-728_en.html

⁶² *Singled Out Russia's Detention and Expulsion of Georgians*(Rep.). (2007, October). Retrieved <https://www.hrw.org/reports/2007/russia1007/russia1007webwcover.pdf>

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

4.1.2 Foreign policy goals

The motivation behind this war is less about the actual independence of South Ossetia but rather more general and symbolic. In order to understand the Russian invasion of Georgia, two main reasons can be outlined.

A certain historical background must be established in order to assess the Russian strategic relevance for the war.⁶⁹ Firstly, the Orange Revolution in Ukraine in 2004 was perceived as yet another attempt at the West's encirclement of Russia after the broken promise of the NATO expansions. The United States invested heavily in support of a western-oriented president in Ukraine in 2004.⁷⁰ While this was not responded to by the Russians, the talks about Georgian orientation towards the West were. In the beginning of 2008, Georgia held a referendum assessing the support for NATO membership, an option which was immediately condemned by Russia. Dmitri Olegowitsch Rogosin, Russian diplomat to NATO at the time even stated: *"As soon as Georgia gets some kind of prospect from Washington of NATO membership, the next day the process of real secession of these two territories from Georgia will begin."*⁷¹ From a geographical perspective, a Ukrainian and Georgian inclusion in NATO would have been tremendous for Russia's security and would have rendered it extremely vulnerable. Furthermore, what served as a major prelude to the Georgian war was the overwhelming western support for the independence of Kosovo.⁷² The criticism and warnings that followed from Russia when the events unfolded, unambiguously clarify the Kremlin's opinion about it. Putin stated: *"unified rules should be applied"*⁷³ he further referred to Cyprus, another state with similar situations within their borders and asked: *"Aren't you ashamed, Europeans, for having these double standards?"*⁷⁴ The most important quote, which accentuates the importance for the case of Georgia is the following: *"Other countries look after their interests. We consider it appropriate to look after our interests. We have done some homework and we know what we will do"*⁷⁵ At the time this quote was met with speculation about what Putin might have been referring to. Retrospectively,, it becomes apparent that the Russian president referred to Georgia and its secession-seeking regions - South Ossetia and

⁶⁹ Friedman, G. (2008). The Russo-Georgian War and the balance of power. *Stratfor Global Intelligence*, 12th August. Retrieved from <http://blog.cafewall.com/wp-content/uploads/2008/09/rus-v-geo-analysis.pdf>

⁷⁰ I. T. (2004, November 26). US campaign behind the turmoil in Kiev. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2004/nov/26/ukraine.usa>

⁷¹ C. L. (2008, March 11). Russia warns against Georgia NATO membership. *Reuters*. Retrieved from <https://www.reuters.com/article/us-russia-nato-georgia/russia-warns-against-georgia-nato-membership-idUSL1185178620080311>

⁷² Russia warns US over Kosovo move. (2008, February 19). *BBC News*. Retrieved from <http://news.bbc.co.uk/2/hi/europe/7252512.stm>

⁷³ L. H. (2008, February 15). Kosovo breakaway illegal, says Putin. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2008/feb/15/russia.kosovo>

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

Abkhazia. Russia's appeals to leave Kosovo in its state of informal autonomy instead of independence were left unheard. From Russia's perspective, the norm of Europe since World War II to not alter national borders was thus through the independence of Kosovo, violated. This firstly left Russia assuming the United States' interest in shifting Russia's near-abroad (Ukraine) to a pro-western orientation and thus to achieve the encirclement of Russia. And secondly, Russia acknowledged the lack of reciprocation that met with its appeals about Kosovo.⁷⁶

Thus, by the Russo-Georgian war, Russia achieved a number of things. First of all, the geopolitically valuable **regions of South Ossetia and Abkhazia were sure to be loyal to Russia** and allow Russian military presence, so that even if Georgia joined NATO, only part of its initial border with Russia would remain Georgian. Dmitry Medvedev commented the following to this regard: "*Russia cannot feel comfortable in a situation where military bases are increasingly being built around it*".⁷⁷ Secondly, by showing the effectiveness of the Russian army, and the readiness to deploy it, **Russia proved to the world the credibility of its army**.⁷⁸ Most importantly though, **Russia has proved its influence in its region** and has made sure to follow its promised change of foreign policy from the 2007 Munich speech. Russia has shown that it is able to use military force in its region and that no other actor can do so, from a Realist point of view this demonstrates Russia's power in the region and its sphere of influence.

4.1.3 International law

This case study will outline the main legal arguments brought forward by the Russian Federation for justifying its intervention in Georgia and consequently analyse their standing in terms of international law as well as their potential challenge towards norms of international law in order to derive a bigger picture of Russia's perspective on those arguments

The use of force, as previously outlined, is limited to types of situations. Either, states are acting under a Security Council mandate⁷⁹ or in cases of individual or collective self-defence.⁸⁰ Yet, international law remains an evolving discipline that is subject to progressive change. It is, apart from treaties, evolving through actions and how those are responded to by

⁷⁶ *Supra* note 15.

⁷⁷ Russian government, Presidential Executive Office. (2008, September 12). *Transcript of the Meeting with the Participants in the International Club Valdai*[Press release]. Retrieved from <http://en.kremlin.ru/events/president/transcripts/1383>

⁷⁸ *Ibid.*

⁷⁹ U.N. Charter art. 42.

⁸⁰ U.N. Charter art. 42.

the international community⁸¹ which elucidates the relevance of the precedent of the Serbia-bombings. The Russian-Georgian war could be categorized as the first humanitarian intervention without a UN Security Council mandate since the above described actions in Serbia. With the Russo-Georgian war one can identify a second instance of outer-UN system interference under the umbrella of humanitarian intervention, rattling onto the formal framework of armed peacekeeping.⁸²

The Russian president at the time, Dmitry Medvedev commented on the event as follows:

The Georgian leadership, in violation of the UN Charter and their obligations under international agreements and contrary to the voice of reason, unleashed an armed conflict victimizing innocent civilians. The same fate lay in store for Abkhazia. Obviously, they in Tbilisi hoped for a blitz-krieg[...]⁸³

[...]And it was Russia who at that time put an end to the eradication of the Abkhaz and Ossetian peoples. Our country came forward as a mediator and peacekeeper insisting on a political settlement.⁸⁴

It becomes apparent that the Russian president seeks to justify the actions in Georgia by assisting the respective regions in their self-defence venture. Moreover, the actions of Georgia were described as an act of aggression.⁸⁵ Both, the definition of “act of aggression” and the military assistance to self-defence actions have certain requirements to be fulfilled in order to be valid under international law.

I. An act of aggression

The definition of Aggression has been established in 1967 and adopted by the United Nations General Assembly:

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.⁸⁶

Evidently, an act of aggression requires one state to use armed forces against another state. Furthermore, the UN Security Council is to recognize an act of aggression after the evaluation of the circumstances of a military incursion.⁸⁷ This leaves one to conclude that the

⁸¹ Reisman, W. M. (1984). International incidents: Introduction to a new genre in the study of international law (p.3). *Yale J. Int'l L.*, 10, 1.

⁸² Hafkin, G. (2010). The Russo-Georgian War of 2008: Developing the Law of Unauthorized Humanitarian Intervention After Kosovo. *BU Int'l LJ*, 28, 219.

⁸³ Russian government, Presidential Executive Office. (2008, August 26). *Statement by President of Russia Dmitry Medvedev*[Press release]. Retrieved from <http://en.kremlin.ru/events/president/transcripts/1222>

⁸⁴ *Ibid.*

⁸⁵ *Supra* note 60.

⁸⁶ Aggression, S. C. (1974). Definition of aggression, United Nations General Assembly Resolution 3314 (XXIX). *United Nations, New York*.

⁸⁷ *Supra* note 60.

circumstance of an act of aggression, at least under the realm of international law, does not apply in this case, as the Russian president suggested.

II. Military assistance

The military intervention of foreign troops in an internal armed conflict has certain requirements. It must be mentioned, that even though South Ossetia declared its independence from Georgia, it was not recognized as such, internationally. Thus, the region remained an integrated part of the country rendering any foreign intervention that was not sanctioned for by the Georgian government a violation of state sovereignty under article 2.4 of the UN Charter:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.⁸⁸

Apart from the already described prohibitions on the use of force, the International Court of Justice (hereinafter: ICJ) had already assessed unilateral humanitarian intervention in a case involving the United States' actions in Nicaragua as illegal.⁸⁹

While international law allows for the use of force to be legal in certain conditions, such as absolute necessity, it does not suffice to have the state with interest, unilaterally assess if the necessity requirement was met.⁹⁰ If Russia wanted to use this justification appositely, it would have had to establish that the measures taken were in response to damage that Russia suffered and were reasonable and proportionate.⁹¹ It is clear though, that Russian territory was not at risk and that the Russian forces did not only attack military installations but furthermore the infrastructure of Georgia.

III. Responsibility to Protect

Russian peacekeeping forces had been in the region since 1992 and relations were worsening in the recent years before the conflict, The European Parliament, in its resolution, even acknowledged the peacekeepers to be biased and partial.⁹²

⁸⁸ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: <https://www.refworld.org/docid/3ae6b3930.html> [accessed 15 May 2019]

⁸⁹ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits*, International Court of Justice (ICJ), 27 June 1986, available at: <https://www.refworld.org/cases,ICJ,4023a44d2.html> [accessed 15 May 2019]

⁹⁰ *Supra* note 60.

⁹¹ *Ibid.*

⁹² European Union: European Parliament. *Resolution of 5 June 2008 on the situation in Georgia*, 5 June 2008, P6_TA(2008)0253, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0253+0+DOC+XML+V0//EN>

Arguably the most relevant justification for the war remains the protection of Russian citizens abroad. Medvedev described it as follows:

[...]when it comes to choosing between protecting people's lives and protecting the economy, you can understand why we made the choice we did [...] protecting the lives and the dignity of Russian citizens, wherever they are, is the *raison d'être* of the Russian state.⁹³

The Russian Foreign Minister Sergey Lavrov justified the need for the use of force the following way:

under the Constitution [the president] is obliged to protect the life and dignity of Russian citizens, especially when they find themselves in the armed conflict. And today he reiterated that the peace enforcement operation enforcing peace on one of the parties which violated its own obligations would continue until we achieve the results. According to our Constitution there is also responsibility to protect – the term which is very widely used in the UN when people see some trouble in Africa or in any remote part of other regions. But this is not Africa to us, this is next door. This is the area, where Russian citizens live. So the Constitution of the Russian Federation, the laws of the Russian Federation make it absolutely unavoidable to us to exercise responsibility to protect.⁹⁴

In order to assess this claim, two notions must be elaborated: Firstly, **the Responsibility to Protect**. The justification attempts to claim the internationally accepted conduct to protect a state's citizens using military means if need be. This notion is common and has established precedence in international customary law.⁹⁵ The term “genocide” has been chosen at other place, possibly to exacerbate the given situation.⁹⁶ The legal argument here can be traced to the notion of “Responsibility to Protect”. As a result of the atrocities in the Balkans that have been criticized as violations of the prohibition of the use of force by Russia and other actors⁹⁷, as well as the Rwandan genocide, the United Nations sought to find a way to react to such cases in a way that remains within an international legal framework. Consequently, the concept of Responsibility to Protect was developed. The United Nations states: “*sovereignty is not just protection from outside interference – rather is a matter of states having positive responsibilities for their population's welfare*”⁹⁸ Eventually, the responsibility to protect was included in the outcome document of the UN world summit meeting in 2005, reading as follows: “*Each individual State has the responsibility to protect its populations from*

⁹³ *Supra* note 77.

⁹⁴ Interview by Minister of Foreign Affairs of the Russian Federation Sergey Lavrov to BBC. (2008, August 9). Retrieved from https://argentina.mid.ru/news/2008/-/asset_publisher/xN4dO17LPB79/content/09-08-2008-interview-by-minister-of-foreign-affaires-of-the-russian-federation-sergey-lavrov-to-bbc-moscow-august-9-2008

⁹⁵ Gordon, D. J. (1977). Use of force for the protection of nationals abroad: the Entebbe incident. *Case W. Res. J. Int'l L.*, 9, 117.

⁹⁶ Umland, A. (2008). A Shield of A Passport: Moscow Uses Russian Citizenship as a Tool for Recollecting the Empire's Lands. *Russia profile*, 21.

⁹⁷ *Supra* note 33.

⁹⁸ *Ibid.*

genocide, war crimes, ethnic cleansing and crimes against humanity.”⁹⁹ Continuing and emphasizing the involvement of the United Nations as follows: “*The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means*”¹⁰⁰ It must be noted that the doctrine is still under development and remains subject of precedent and customary law for further evolution.¹⁰¹

Incidentally, there are some issues with the Foreign Minister Lavrov who brought forward the Responsibility to Protect as a justification. Mr. Lavrov, apparently intertwined the duty of a state to protect its citizens within its territory and the responsibilities that states have for populations outside its borders.¹⁰² The Responsibility to Protect concerns the protection of citizens of a state within its own borders. Other states (the international community) are to assist in this and take appropriate action if the state fails to protect its population. Evidently, direct action in a foreign country to protect nationals outside a state’s territory does not fall under the notion of Responsibility to Protect.¹⁰³ Yet for the sake of argument, even if the Responsibility to Protect would have been applicable, Russia would have had to lay demonstrate the existence of further requirements,¹⁰⁴ which are to be established in order to conduct the intervention legally. Amongst them are:

The seriousness of threat – Russia had to establish that the Georgians were committing or were about to commit, acts of genocide, war crimes, ethnic cleansing or crimes against humanities. The evidence for that does not point towards a conclusion that Georgia was “manifestly failing” to protect its citizens from these acts.¹⁰⁵

Primary purpose – the intervention must follow the primary purpose of protecting the civilians. Besides the previously explained political gains, one can deduce the exceeding of this requirement by the simple fact that Russia established its control over Abkhazia which was not under any threat.¹⁰⁶

Last Resort - While the argument of the intervention being an act of last resort appears to be questionable due to the attacks outside the concerned territories, it has to be mentioned that

⁹⁹ UN General Assembly, *2005 World Summit Outcome : resolution / adopted by the General Assembly*, 24 October 2005, A/RES/60/1, available at: <https://www.refworld.org/docid/44168a910.html>

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² Evans, G. (2008). Russia, Georgia and the responsibility to protect. *Amsterdam LF*, 1, 25.

¹⁰³ *Ibid.*

¹⁰⁴ International Commission on Intervention and State Sovereignty., Evans, G. J., Sahnoun, M., & International Development Research Centre (Canada). (2001). *The responsibility to protect: Report of the International Commission on Intervention and State Sovereignty*. Ottawa: International Development Research Centre.

¹⁰⁵ *Supra* note 102.

¹⁰⁶ *Ibid.*

Russia did make an attempt for the Security Council to call for a ceasefire, which could not be agreed upon.¹⁰⁷

Proportionality – Considering that Russia attacked Georgia beyond the territories of Abkhazia and South Ossetia, as well as the attacks on infrastructure and the deployment of an excessive amount of troops¹⁰⁸, the intervention cannot be considered proportional.

Furthermore, and as already established, the intervention under the notion of Responsibility to Protect, has no legal authority unless it is sanctioned by the Security Council.

Secondly, **the issuing of passports in Abkhazia and South Ossetia** must be elaborated to fully comprehend the scope of Russia's previously mentioned claim. Georgian citizenship law does not allow for dual-citizenship. This means the acquisition of a second citizenship, such as Russian, inevitably results in the loss of Georgian citizenship.¹⁰⁹ In 2002, Russia adopted a new Citizenship Law which reformed the former complex system of citizenship application and simplified the procedure for citizens of previous Soviet Union states. The new procedures did not require certain residency requirements.¹¹⁰ Abkhazia and South Ossetia enjoyed even looser requirements. NGOs with close relations to the Russian government offered a service to the citizens and handled the required paperwork, which led to circa 90 percent of South Ossetians becoming Russians.¹¹¹ Furthermore, the South Ossetian government passed its own law, contradicting the Georgian citizenship law by allowing for the citizens of the region to possess dual-citizenship, ultimately allowing for South Ossetian and Russian citizenship. Russia, at last by actively providing the separatists with passports, ceased to be an impartial presence in the regions.

IV. Recognition of Abkhazia and South Ossetia

In late-August 2008, the Russian President signed official decrees on recognizing the two regions Abkhazia and South Ossetia. The recognition was justified in a noteworthy manner. The former Soviet Union law, which allows for constituent republics to secede after conducting a referendum, was used.¹¹² According to the justification, Abkhazia and South Ossetia remained in the Soviet status, because they did not conduct referendums while they were autonomous republics in Georgia. This in return, would render the regions independent

¹⁰⁷ *Ibid.*

¹⁰⁸ Nichol, J. (2009, March). Russia-Georgia conflict in August 2008: Context and Implications for US interests (p.15). LIBRARY OF CONGRESS WASHINGTON DC CONGRESSIONAL RESEARCH SERVICE.

¹⁰⁹ *Supra* note 60

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

from Georgia and make them sovereign states with such status under international law.¹¹³ As the US Library of Congress puts it:

The Chairman of the Federation Council of the Russian Federation [...] reference[d] to a former Soviet law, which allowed a constituent republic to leave the Soviet Union after conducting a secession referendum. According to him, the fact that Abkhazia and South Ossetia did not have individual referendums while they were autonomous republics within Georgia preserves their former Soviet status, separates them from independent Georgia, and makes them subjects of international law and sovereign states.¹¹⁴

Russia in its documents on recognition and as a legal basis, cites the U.N. General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States.¹¹⁵ This declaration, includes the principle of self-determination but underlines the application of it in the context of ending colonialism. It has to be mentioned, that it also includes the obligation to resist the use of force against other states.

Considering the elaborated aspects, one can conclude that the intervention in Georgia was illegal. Russia's legal justifications do not hold up, but instead create odds with the legal documents that are being cited and the actions that Russia undertook:

1. Georgia did not undertake an **act of aggression** as the requirements established by the UN were not met.
2. The legal basis for deploying **military assistance** to South Ossetia was invalid. Firstly, it does not have the status of a state. Secondly, unilateral humanitarian interventions are not legal.
3. **The Responsibility to Protect** does not pass as a valid justification, as all of the requirements were not met, not forgetting the lack of Security Council consent.

Taking into account Russia's weak stance on human rights combined with its foreign policy aspirations the justifications of "securing its citizens" become highly implausible, even more so when considering the targeted supply of passports to the citizens, which arguably could be seen as the means to deploy that legal argument.

4.1.4 Case Study Conclusions

The Russo-Georgian war served as a wake-up call for the West. Russia proved its relevance in the world-stage and countered the West's influence and aspirations. It showed that the United States, Georgia's most important partner, does not have hegemony in the region; instead it is

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ 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, A/RES/2625(XXV), available at: <https://www.refworld.org/docid/3dda1f104.html> [accessed 15 May 2019]

Russia that is able to deploy military force in Georgia, no other state can do so. This effectively renders Russia's sphere of influence to extend to Georgia. Georgian and Ukrainian wishes to join the NATO were set back and in the process, Russia gained strategically valuable military presence in the two respective regions and created a precedent for the invasion of Ukraine. The justifications referring to the protection of its citizens, taking into account the large-scale distribution of passports to the "stateless" persons in South Ossetia and Abkhazia, is the exact precedent for Russian tactics in Eastern Ukraine. While the Russo-Georgian war was a huge success in terms of international relations and foreign policy, the legal justifications and challenges to international law remained weak. Russia lost itself in contradicting legal arguments and could barely remain within the realm of legitimacy. It becomes evident, that the legal arguments did not hold any merit. The attempts to reference customary law such as the Kosovo-case or to develop norms further remained unsuccessful. Firstly, the reference to the Responsibility to Protect was baseless. Secondly, there is no acceptance of such by the international community, preventing any further development of the principle. The case Russia makes in the legal justifications of the Georgian war, underline the importance of the United Nations system. It can be observed, that the unilateral interpretation of norms, especially emerging norms, as well as military intervention without legal sanction of such, poses high risks and creates insecurity.

4.2 Case Study II. Ukraine Crisis

"I didn't care, until then you needed the
Ukrainians in NATO. What for?"

-Vladimir Putin

4.2.1 Events

Ukraine became independent in 1991. Ukraine's first President, Leonid Kravchuk had a pro-Western approach to Foreign policy and steered the country away from Russia.¹¹⁶ In 1994 Leonid Kuchma became president and attempted to increase relations with Russia. For a decade, Kuchma stayed president and established economic stability in the country. Eventually in 2004 Viktor Yanukovich ran against Viktor Yushchenko – former prime minister. Yanukovich was announced as the emerging winner, although international election observers discovered irregularities in the elections. This led to protests by Yushchenko supporters that are known under the name of the Orange Revolution. Yanukovich' home

¹¹⁶ M. R. (n.d.). Ukraine crisis. *ENCYCLOPÆDIA BRITANNICA*. Retrieved from <https://www.britannica.com/topic/Ukraine-crisis>

town was in the predominantly ethnic Russian eastern Ukraine. His voters affirmed to secede in case of the results being overturned.¹¹⁷ The Ukrainian Supreme Court eventually decided the last round of the elections would be repeated and Yushenko won. His presidency was suffering from struggles such as inner-party divisions and parliamentary disputes with Yanukovich. Eventually, Yanukovich became president in 2010 and sought to improve the relations with Russia by granting Russian leases and most importantly discontinuing the progress of the NATO membership.¹¹⁸ During his presidency, he has been accused of politically motivated prosecutions against dissenting politicians. Finally, in 2013 Ukraine became the international centre of attention as it was struck by major protests in its capital, Kiev. Protestors demanded the overthrow of the Pro-Russian President Viktor Yanukovich after the discontinuation of agreements with the European Union. Instead, Yanukovich moved to further orientate the country towards Russia. Despite the massive unrest, the president did not back down. Russia promised economic favours to the administration. Eventually, in February 2014 police forces opened fire on the protesters leading to casualties. In the meantime, Yanukovich having lost his political support fled the country leading to the parliament voting to remove the president from power and setting elections for May.¹¹⁹ In late February, pro-Russian gunmen seized political buildings in Crimea. On the first of March the Russian parliament approved Putin's request to use force in Ukraine to protect Russian interests.¹²⁰ With Russian support, on the 16th of March, Crimea's secession referendum voted to join Russia with the support of 97% of voters. In April, pro-Russia separatist rebels began seizing territory in eastern Ukraine and fighting between the military emerged and intensified over time.¹²¹ After the rebels in Eastern Ukraine started losing, Russian forces covertly intervened in the region during August, to support the pro-Russian rebels.¹²² Putin, bringing forward historical claims of Ukraine being Russia, brought about a low point in relations with the West. Russian forces remained in Eastern Ukraine until their significant withdrawal in late September.¹²³

4.2.2 Foreign policy goals

The Russo-Georgian war was six years before the Russian invasion of Ukraine. The West again sought to expand its member list. The timing underlines the idea that again – Russia

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ Ukraine crisis: Timeline. (2014, November 13). *BBC News*. Retrieved from <https://www.bbc.com/news/world-middle-east-26248275>

¹²⁰ *Ibid.*

¹²¹ M. F. (2014, September 3). Everything you need to know about the Ukraine crisis. *Vox*. Retrieved from <https://www.vox.com/2014/9/3/18088560/ukraine-everything-you-need-to-know>

¹²² *Ibid.*

¹²³ *Ibid.*

sought to contain western influence and increase its own in the process. Russia as a Realist state cannot allow for a geopolitically valuable country like Ukraine to become a member of a western alliance.¹²⁴ Putin in an interview stated:

[...] I didn't care, until then you needed the Ukrainians in NATO. What for? I didn't touch them. They wanted to go to Europe, I said, 'Great, go to Europe.' But why did you need them in NATO?¹²⁵

From the Russian perspective, the repeated attempts of Russia's encirclement are seen as hostile acts that can only be replied to by hard power, the following excerpt from Putin's speech concerning Ukraine solidifies this premise:

After all, [the West] were fully aware that there are millions of Russians living in Ukraine and in Crimea. They must have really lacked political instinct and common sense not to foresee all the consequences of their actions. Russia found itself in a position it could not retreat from. If you compress the spring all the way to its limit, it will snap back hard. You must always remember this.¹²⁶

Russia once again saw the need to establish its hegemony in the region and to counter the influence of the West. Vladimir Putin describes the action as a matter of last expedience and just as in the Georgian-case, the Kremlin refers to the precedent of Kosovo in justifying its actions attempting to illuminate hypocrisy in western criticism:

We keep hearing from the United States and Western Europe that Kosovo is some special case. What makes it so special in the eyes of our colleagues?¹²⁷

Effectively, through the Ukrainian crisis, Russia achieved a number of things. Firstly, it annexed Crimea and has thus **gained an invaluable geopolitical territory**, as can be seen by the recent Kerch strait incident. The Kerch strait is the waterway between mainland Russia and Crimea, which is now under Russian control. In November 2018 Russia intercepted three Ukrainian ships in the region and subsequently completely closed the access to the Sea of Azov. This leads to secondly: **Russia increased its high level of influence in the region**, which was already high before the annexation of Crimea due to Ukrainian dependency on gas exports.¹²⁸ Now, Russia can effectively cut off part of Ukraine's access to the sea with little effort. Thirdly, **Russia created a second precedent for countering western ambitions** in its sphere of influence.

¹²⁴ *Supra* note 14.

¹²⁵ D. S. (2016, September 29). ONE LAST INTERVIEW. *Tabletmag*. Retrieved from <https://www.tabletmag.com/jewish-news-and-politics/214621/one-last-interview>

¹²⁶ Russian government, Presidential Executive Office. (2014, March 18). *Address by President of the Russian Federation* [Press release]. Retrieved from <http://en.kremlin.ru/events/president/news/20603>

¹²⁷ *Ibid.*

¹²⁸ R. N. (2018, October 17). Eastern Europe is trying to break its dependence on Russian gas. Western Europe is doing the opposite. *The Washington Post*. Retrieved from https://www.washingtonpost.com/world/2018/10/17/eastern-europe-is-trying-break-its-dependence-russian-gas-western-europe-is-doing-opposite/?noredirect=on&utm_term=.ee0c3a89a319

4.2.3 International law

This case study will outline the main legal arguments brought about or forward by the Russian Federation for justifying its intervention in Ukraine and consequently analyse their standing in terms of international law as well as their potential challenge towards norms of international law in order to derive a bigger picture of Russia's perspective on those.

I. Protecting Russians abroad

As previously mentioned, Russia is a strong adversary of using the grounds of humanitarian reasons as a justification of the unsanctioned use of force. A prime example could be seen by Mr. Lavrov in the UN Security Council in 1999 condemning the use of force by NATO against the Republic of Yugoslavia. Mr. Lavrov explained: "*Attempts to justify the NATO strikes with arguments about preventing a humanitarian catastrophe in Kosovo are completely untenable.*"¹²⁹ More recently, in the 2013 Foreign Policy Concept, under the section "Rule of Law in International Relations" one can read:

It is unacceptable that military interventions and other forms of interference [...] which undermine the foundations of international law based on the principle of sovereign equality of states, be carried out on the pretext of implementing the concept of "responsibility to protect"¹³⁰

If both these clear stances on sovereignty of states in connection with humanitarian intervention are considered, it becomes even more questionable to see the justifications that have been brought forward after the Russian intervention in Ukraine. In an UN Security Council meeting requested by Russia, the state elaborated on its invitation to deploy armed forces "*until the civic and political situation in Ukraine can be normalized.*"¹³¹ This was sanctioned by the prime minister of Crimea and Mr. Yanukovich the, (as Russia sees it¹³²), then-legitimate president despite his removal from office. The federation further justified its presence by stating the request, which discusses the "*threat against the lives of Russian citizens [...] and members of the military contingent of the armed forces of the Russian Federation [...]*"¹³³. In the following Security Council meeting, an interesting comparison has been outlined by Mr. Churkin, Russia's ambassador to the UN:

[D]oes anyone really think that Russia could allow a repeat of what happened there in central and eastern Ukraine, where millions of Russians live? I would recall that, years

¹²⁹ UN Security Council, *Report of the Security Council*, 24 March 1999, S/PV.3988, available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/kos%20SPV3988.pdf>

¹³⁰ *Supra* note 36.

¹³¹ UN Security Council, *Report of the Security Council*, 1 March 2017, S/PV.7124, available at: <https://www.securitycouncilreport.org/un-documents/document/spv7124.php>

¹³² *Ibid.*

¹³³ *Ibid.*

ago, the United States took over Grenada. President Reagan said that they were defending American citizens who resided there. That was 1,000 people, and there was no threat to those citizens from Grenada. We have millions living there. They have concerns¹³⁴

Mr. Churkin refers here to the Maidan protests and rhetorically states that Russia would not allow for such a situation to arise again for ethnic Russians in Ukraine, effectively acting as some sort of protector of them. It can certainly be identified that the rhetoric has a strong suggestion (if not only) towards humanitarian justifications.

II. Intervention by invitation

Yet one can assume that the real **legal** justification remains the invitation by the supposedly legitimate president of Ukraine:

[...] Mr. Aksyonov, Prime Minister of Crimea, went to the President of Russia with a request for assistance to restore peace in Crimea. According to available information, the appeal was also supported by Mr. Yanukovych, whose removal from office, we believe, was illegal.¹³⁵

By claiming Mr. Yanukovych' legitimacy, Russia effectively denies itself any violation of sovereignty of state as effectively, by the claims of Russia, it has been legitimately invited and thus acted under international law and its norms. The humanitarian elaborations thus merely serve as explanatory purposes that seek to build up to why Russia followed the consequent invitation in the first place.¹³⁶ Thus one can conclude that the invitation and the humanitarian arguments put forward are an intertwined argument which keeps Russia's stance on Jus Contra Bellum legitimate (at least from its own perspective).

Naturally, in order to arrive at a conclusion of how Russia sees or uses international law it is then, essential to analyse how admissible is Russia's claim of seeing Yanukovych as the legitimate president. Either it served as a Trojan horse covering the actual purpose of seceding Crimea from Ukraine to serve geopolitical aspirations or as Russia claims, the lives of ethnic Russians were to be protected and were put first and foremost and the stationing of troops was sanctioned resulting from a friendly president's call for help.

Intervention by invitation is an established legal doctrine and certain requirements are to be met in order for the intervention to be deemed legitimate. When considering the 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, one can outline the following:

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Constitution of Ukraine* [Ukraine], 28 June 1996, available at: <http://www.refworld.org/docid/44a280124.html>

1. Generally, the consent of one state towards another allowing it to commit an act which would in case of absence of said consent, be illegal, has to remain within the limits of the expressed consent¹³⁷. In this case it becomes interesting to consider again the wording of the letter by Yanukovych which the Russian delegation brought forward:

[...] Russia to use the armed forces of the Russian Federation to establish legitimacy, peace, law and order and stability in defence of the people of Ukraine.¹³⁸

One can undoubtedly identify that Russia exceeded the limits of that consent, not least when the referendum was eventually conducted by the Russian forces¹³⁹.

2. Consent has to be given by an agent or person, authorized to do so **on behalf of the state**.¹⁴⁰ Further, who or rather what agent is to allow the consent depends on the matter: “*Different officials or agencies may have authority in different contexts*”.¹⁴¹ This leads one to analyse the domestic legal situation in Ukraine in order to find if it was Yanukovych’s discretion to express consent in the first place, putting on hold for now, the question of his legitimacy at the time.

Article 85 of the 1996 constitution of Ukraine veritably provides for such a scenario¹⁴² and clearly sets out who holds the remainder of the power to grant consent for foreign troops to be admitted to Ukraine:

The Verkhovna Rada of Ukraine shall have the following powers: [...] admitting units of armed forces of other states to the territory of Ukraine¹⁴³

Evidently the president of Ukraine, legitimate or not, is not in a position to give consent for foreign troops to enter Ukrainian territory, instead it is the Verkhovna Rada (Ukrainian Parliament), which then could potentially grant the president the authority. This did not happen. In fact, the parliament removed the president from his seat but did not act in a way that would fulfil the conditions of the legal framework that is to be followed in such cases as

¹³⁷ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, available at: <https://www.refworld.org/docid/3ddb8f804.html> [accessed 15 May 2019]

¹³⁸ UN Security Council, *Report of the Security Council* (p.4), 3 March 2017, S/PV.7125, available at: <https://undocs.org/S/PV.7125>

¹³⁹ Putin says plan to take Crimea hatched before referendum. (2015, March 9). *Reuters*. Retrieved from <https://www.reuters.com/article/us-ukraine-crisis-putin-crimea-idUSKBN0M51DG20150309>

¹⁴⁰ Marxsen, C. (2015). International Law in Crisis: Russia's Struggle for Recognition. *German Yearbook of International Law*, 58, 2016-05.

¹⁴¹ *Supra* note 137.

¹⁴² *Supra* note 140.

¹⁴³ *Ibid.*

laid out in article 111 of the 1996 Constitution of Ukraine.¹⁴⁴ The article describes an ornate and lengthy undertaking to impeach the sitting president. Despite the unconstitutional removal of the president in February 2014, a wide acceptance of the consequences could be observed, leaving Russia as one of the few states that did not accept the outcome. Furthermore, while this chaotic removal could be seen as a reason for Russia to refuse to recognize the removal of the president, it is evident, that Yanukovich was in exile at the time, again hindering the validity of an admissible claim for intervention by invitation since he could consequently not be recognized as the legitimate government in exile according to the norms of international law.¹⁴⁵

When considering the above, one can conclude that the legal justification under the doctrine of intervention by invitation, does not have deep grounding. Firstly, the authority for the invitation was assumed by the wrong agent (the president, instead of the parliament) and secondly, and arguably most importantly, the limits of the consent were clearly exhausted. This, combined with the reports of Putin's aspirations for the secession of Crimea **predating** the actual letter¹⁴⁶ by the president, paints a clear picture on the illegality of the deployment of forces in the territory of Ukraine.

Even when considering the Ukrainian president's dismissal as unconstitutional, this circumstance does not merely result in justifying him as the legitimate source of authority for an invitation. To exhaust the case for Russia, one should consider that while from the Russian perspective, it could be said that an invitation sanctioned by parliament would simply not have been possible and thus the only remaining source of legitimacy (the president) was assumed. This approach even has backing by some academics, such as Georg Nolte. He brings forward the idea that a fairly elected government with general international acceptance, can, despite having lost effective control, be seen as preserving the right to invite foreign troops.¹⁴⁷ Evidently the field is still developing and thus presents a prime opportunity for Russia to challenge the norms in this very field. Yet one can still identify the ill-intent which is evident through the exceeding of the invitational limits, as well as the aspirations for Crimea. Thus, the assumption of Russia using the invitation as a "Trojan horse" can be seen as proven.

¹⁴⁴ *Ibid.*

¹⁴⁵ Talmon, S. (1999). Who is a legitimate government in exile? Towards normative criteria for governmental legitimacy in international law. *The Reality of International Law. Essays in Honour of Ian Brownlie*, 499-537.

¹⁴⁶ See: Statement of Russian representative at *Supra* note 138 (p.4). And: *Supra* note 139.

¹⁴⁷ Nolte, G. (2010). Intervention by invitation. *Max Planck Encyclopedia of Public International Law*.

III. Self-Determination/Referendum

Russia's argument was repeatedly based on the right of the Crimean people to have a right to self-determination. In the Security Council Mr. Churkin declared:

[T]he reunification of Russia and Crimea,[...] through a free referendum, the people of Crimea have fulfilled what is enshrined in the Charter of the United Nations and a great number of fundamental international legal documents – their right to self-determination.¹⁴⁸

Yet, as pointed out by Christian Marxsen: “*international law does not provide a legal basis for a right to secession outside the colonial context.*”¹⁴⁹ While there is a debate to exceptions about this, these remain under the condition that the internal self-determination was not possible due to human rights violations,¹⁵⁰ which would invalidate a claim of the right in the case of Crimea. It must be mentioned however, that while international law does not grant the right to secession, it also does not forbid secession itself.¹⁵¹ It only does so, when the secession is a result of outside intervention. Interestingly, this is established through the International Court of Justice's advisory opinion about the declaration of independence of Kosovo.¹⁵²

Russia seeks to alter the notion of remedial secession. This could already be observed in the Russo-Georgian war by the recognition of Abkhazia and South Ossetia. Mr. Churkin clarified the stance on the matter of secession under international law in a Security Council meeting concerning Crimea:

In each particular case, one must seek the right balance between the principles of territorial integrity and the right to self-determination. It is clear that the achievement of the right to self-determination in the form of separation from an existing State is an extraordinary measure. However, 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.¹⁵³

This can be seen as a drastic change of interpretation. In 2008, Russia explained its stance on remedial secession in the proceedings of the International Court of Justice.¹⁵⁴ Russia

¹⁴⁸ UN Security Council, *Report of the Security Council* (p.4), 19 March 2014, S/PV.7144, available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7144.pdf

¹⁴⁹ Marxsen, C. (2015). *International Law in Crisis: Russia's Struggle for Recognition*. *German Yearbook of International Law*, 58, 2016-05.

¹⁵⁰ *Ibid.*

¹⁵¹ Oppenheim, L. (2018). *International law. A treatise* (para.209) (Vol. 2). BoD–Books on Demand.

¹⁵² *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion)*, General List No. 141, International Court of Justice (ICJ), 22 July 2010, available at: <https://www.refworld.org/cases,ICJ,4c5151002.html>

¹⁵³ UN Security Council, *Report of the Security Council*, 13 March 2014, S/PV.7134, available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7134.pdf

¹⁵⁴ *Supra* note 149.

elaborated the requirements to have to be “[...][E]xtreme circumstances, such as an outright armed attack by the parent State, threatening the very existence of the people in question”.¹⁵⁵

The above description clearly does not require an armed attack. It merely requires the threat of such.¹⁵⁶

Evidently, the intervention of Russia in Ukraine was illegal under international law. The Russian legal claims are contradictory and without merit. A similitude to the Russo-Georgian war can be diagnosed:

1. Russia, against its own principles, uses the argument of **protecting Russians abroad**. This argument, as also established in the previous case study does not hold legal merit.
2. The **intervention by invitation** argument was not accurate mainly for two reasons: Firstly, the limit of the consent that was given to the Russian troops to be deployed in Ukraine was exceeded. Secondly, the consent was given by a person without the authority to do so.
3. The Russian interpretation of the **right to self-determination** not only contradicted itself to a previously established stance on the matter but furthermore substantially deviated from the international consensus. Furthermore, it has been established that the right to secession does not have a legal basis

The hypocrisy of the statements highlights the political motivation behind Russia’s actions as opposed to a legal or humanitarian one.

4.2.4 Case Study Conclusions

Russia found itself in a position to reassert what it broadcasted in 2008 – Russia’s sphere of influence extends to its near abroad and attempts by western expansion to respective regions are dealt with in a realist manner. The build-up of events such as the immense pro-Western public opinion and the consequent economic promises by Russia to the pro-Russian President reinforces this notion. In addition to the balance of power, Russia gained a strategically important territory. In the case of Crimea, the approach towards international law became increasingly evident: Russia uses international law as a means of achieving its political aspirations. While the intervention in Georgia already suggested, that the legal justifications are used as a cloak for the state’s actions, the Ukraine case manifests this proposition. Russia by not accepting the removal of Yanukovich, again took an opposing stance on a matter that was subject to otherwise-consensus by the international community.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

5. CONCLUSIONS

This paper set out to answer the research question: Russia approaches international relations and the closely connected international law, specifically jus ad bellum and the principle of self-determination since 2007. In order to do so a critical analysis of the official Russian position as well Russia's actions has been carried out.

The established hypothesis: The course of action of the Russian Federation since 2007 is a result of perceived aggressions and double-standards of the west can be seen as practically proven due the following findings of the case studies:

Russia, by its repeated references to the broken promises of NATO expansions, already provides the source of its course of action. What followed was the expansion of the European Union towards the east bringing about western-orientated opinions that Russia sees as predecessor of NATO membership. While a weakened-Russia could not counter the first expansions, it could so in 2008 and reacted after the affirmations of the alliance towards Georgia, by invading Abkhazia and South Ossetia. In 2004 the West supported the Orange Revolution and with the United States' involvement in supporting western-orientated affairs leading up to the pro-Russian president escaping the country, yet another limit was reached. The geopolitically important Crimea was taken and mainland Ukraine destabilized.

It is evident, that the change of Russia's foreign policy and the aggressions in Georgia and Ukraine were attempts to re-establish influence in parts of its former Soviet sphere. It has to be observed though, that Russia does not, except for Crimea, annex the territories it seeks to control. On the one hand, an annexation would make a harder case for legal justification but furthermore, such a move would have given western-leaning politicians an effortless playing-field. Annexation would cripple Russia's aspirations. Russia's desired status for the "problem-countries" – those that are western leaning, is that of a frozen conflict as those countries are unlikely to join NATO.

Classical realist, Hans J. Morgenthau argued that the importance of international norms for states is only important to the beneficiaries of those and those who would benefit from a change will seek to bring about that change.¹⁵⁷ Russia's approach to international law resembles this approach. It becomes evident, that Russia uses international law and its norms as an apparatus to achieve or justify its international undertakings that are based on its

¹⁵⁷ Morgenthau, H. J. (2017). Positivism, functionalism, and international law. In *The Nature of International Law* (pp. 159-184). Routledge.

political aspirations. This approach is most evident in two incessantly appearing approaches. Firstly, Russia routinely contradicts itself. This ranges from the condemnation of the NATO intervention in Kosovo only to then continue to use it as a precedent for Russian intervention itself; – over the countless reverences for international law and the importance of the UN Security Council in Russia’s foreign policy concepts and speeches, despite its repeated unilateral actions and violations of international norms; -to warnings about “*creative applications of international law on the pretext of implementing the concept of responsibility to protect*”¹⁵⁸, which is precisely what Russia did - twice.

Secondly, Russia continuously points the finger at the West. The broken promise of the NATO-expansions is still prevailing rhetoric for Russia’s state officials and apart from the legal claim, the political argument of the Kosovo precedent has served Russian state officials on numerous occasions.

It can be concluded, that the hypothesis of this thesis is proven theoretically, as outlined in the chapter “Russia’s approach”, as well as practically by the practical analysis through the case studies.

Russia appears to have no regard for the value of international norms. Its expressed respect for the UN system and the Security Council can be revealed by its veto power, allowing it increased influence on matters of highest importance. Russia acts merely from the perspective of its state interest. This phenomenon has been described as a characteristic of realist actors. In fact, as Shirley V. Scott points out about realism:

The process of international politics is accounted for by the concept of power and international law is regarded as having no intrinsic significance¹⁵⁹

This is further underlined by the experience of Russia’s repeated amendments of state-positions on matters such as the requirements for the Responsibility to Protect – depending on which interpretation is currently aligned with the policy-aspirations of the case. If one seeks to understand the Russian foreign policy, the prime focus should lie on the issues of state interest. Russia is not a state that would act through morality, despite its many references to humanitarian justifications. One conclusion can be presumed with certainty: Any western attempt to influence Russia’s near abroad will cause a reaction purely based on Russia’s realist nature as opposed to norms of international law.

¹⁵⁸ Russia, The Ministry of Foreign Affairs of the Russian Federation. (2013). *Concept of the Foreign Policy of the Russian Federation*. Moscow: Russian government. Retrieved at: http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptICk6BZ29/content/id/122186

¹⁵⁹ Scott, S. V. (1994). International Law as Ideology: Theorizing the Relationship between International Law and International Politics. *Eur. J. Int'l L.*, 5, 313.

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