Russian Contributions to International Humanitarian Law

A contrastive analysis of Russia’s historical role and its current practice
Kölner Schriften zum Friedenssicherungsrecht
Cologne Studies on International Peace and Security Law
Études colognaises sur le droit de la paix et de la sécurité internationales

Herausgegeben von/Edited by/Éditées par

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Band/Volume 16
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Preface

I did not write this thesis myself! Of course, I have signed the statement of authorship and I can assure you that – at least in a legal sense – the following thesis was authored, written, and reworked only by myself. However, I have felt that many eyes were looking over my shoulder. While every written work starts with a first word that hits the page, a first sentence that crystallises, a first chapter that emerges, we never start from zero.

My interest in the post-Soviet space came with my grandmother’s heritage. Born in 1919 in a German village in today’s Ukraine, she was one of a lucky few in her family to survive Stalin’s purges. After an odyssey through a war-torn Europe she started her new life as a doctor in a small Bavarian village. Unfortunately, she never passed on the gift of the Russian language to my mother, but after all it was not her mother tongue either. The German immigrants in Ukraine had stubbornly clung to their language, custom, and religion. Thus, German was my grandma’s native language and I must admit that speaking Russian in a Bavarian hamlet near the Iron Curtain at the height of the Cold War would not have been the brightest idea. Through my grandma’s stories, however, I caught a keyhole glimpse of this strange land that lay to the east and about which I knew so little. Intrigued, the only thing I lacked was the key. So, I embarked on the tedious journey of studying Russian, and started to unlock the secrets of this mysterious region.

My grandma was not the only (imaginary) proof-reader of this thesis. From my mother, I have inherited a passion for history and languages. She was a teacher and – as all teachers do – she taught these subjects both in school and at home. From my father, I learnt about the beauty of words. His love for art and literature proved to me that language can do more than just convey cold facts. It is a warm, breathing, living organism that can tell a passionate story.

Hence, I would like to thank all my imaginary and actual proof-readers for their comments. I am grateful to my family, my friends (in particular Josef, who played a special role in all of this), and my colleagues for their input during our discussions. Equally, I would like to thank the scholars in this field, many of whom I have never met, but whose books, articles, and blog posts steered me through the endless sea of information. Likewise, I extend my gratitude to the people that I met in the course of my work.
and my travels in Russia, Ukraine, Azerbaijan, Armenia, Georgia, and the Baltic States, who helped me understand the similarities and differences in the post-Soviet region. And finally, I would like to thank my supervisor, Prof. Dr. Angelika Nußberger, who realised earlier than I that finding a topic – this topic – was as much a matter of the heart as it was a matter of the mind.

Yerevan, January 2020
I have chosen to render the Russian sources in Cyrillic script with the English translation in [brackets] rather than a transliteration in Latin script. For names and places, however, I have chosen the transliteration in Latin script. In instances where there are several versions of a transliterated name, for example, Kiev (Russian) or Kyiv (Ukrainian), I have chosen the transliteration according to the official local language. In the case of disputed territories, this inexorably contains a political statement, e.g. Donbass (Russian) or Donbas (Ukrainian), Lugansk (Russian) or Luhansk (Ukrainian). The battlefield of semantics was especially important for the war in eastern Ukraine. While I do not wish to bolster the ranks of these word-warriors, for reasons of practicality I had to settle for one transliteration. Dealing with the difficult questions of secession and annexation in this thesis, however, will at least allow me to provide the legal reasoning for my choice.

For the sake of readability, I have opted for a simplified transliteration that does not render all the special characters of the Cyrillic alphabet. Hence, I will refer to Pavel Felgengauer instead of Pavel Fel’gengauer, Donetsk instead of Donets’k etc.
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<td>AP II</td>
<td>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977</td>
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<td>AP III</td>
<td>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) of 8 December 2005</td>
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<td>APMBC</td>
<td>Anti-Personnel Mine Ban Convention</td>
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<td>ARSIWA</td>
<td>Articles on State Responsibility for Internationally Wrongful Acts</td>
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<td>Art</td>
<td>Article, Articles</td>
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<td>ATT</td>
<td>Arms Trade Treaty</td>
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<td>BBC</td>
<td>British Broadcasting Corporation</td>
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<td>CA</td>
<td>Common Article</td>
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<td>CCM</td>
<td>Convention on Cluster Munitions</td>
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<td>CCW</td>
<td>Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects</td>
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<tr>
<td>CERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>CNN</td>
<td>Cable News Network</td>
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<tr>
<td>DNR</td>
<td>Донецкая Народная Республика [Donetsk People’s Republic]</td>
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<tr>
<td>DGO</td>
<td>Deutsche Gesellschaft für Osteuropakunde</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>EJIL</td>
<td>European Journal of International Law</td>
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<td>et seq</td>
<td>et sequitur</td>
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<td>FRY</td>
<td>Former Republic of Yugoslavia</td>
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FSB  Федеральная служба безопасности [Federal Security Service]
GC I  Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949
GC II  Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949
GC III  Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949
GC IV  Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949
GGE  UN Group of Governmental Experts
GRU  Главное управление Генерального штаба Вооружённых Сил Российской Федерации [Main Directorate of the General Staff of the Armed Forces of the Russian Federation]
HJIL/ ZaöRV  Heidelberg Journal of International Law/ Zeitschrift für ausländisches öffentliches Recht und Völkerrecht
HR  Hague Regulations
HRW  Human Rights Watch
HVO  Croatian Defence Council
IAC  International armed conflict
ibid  ibidem
ICC  International Criminal Court
ICJ  International Court of Justice
ICL  International criminal law
ICRC  International Committee of the Red Cross
ICTR  International Criminal Tribunal for Rwanda
ICTY  International Criminal Tribunal for the Former Republic of Yugoslavia
IHFFC  International Humanitarian Fact-Finding Commission
IHL  International humanitarian law
IICI  Independent International Commission of Inquiry on the Syrian Arab Republic
IIFFMCG  Independent International Fact-Finding Mission on the Conflict in Georgia
ILC  International Law Commission
IMT  International Military Tribunal
ITLOS  International Tribunal for the Law of the Sea
List of Abbreviations

JIT Joint Investigation Team
KSSO Командование сил специальных операций [Special Operations Forces Command]
LAWS Lethal Autonomous Weapons Systems
LBU Law of Burial and Undertaking
LNR Луганская Народная Республика [Luhansk People’s Republic]
MGIMO Московский государственный институт международных отношений [Moscow State Institute of International Relations]
MP Member of Parliament
MSF Médecins sans frontières
n Note; footnote
NATO Northern Atlantic Treaty Organization
NGO Non-governmental organization
NIAC Non-international armed conflict
NKVD Народный комиссариат внутренних дел [People's Commissariat for Internal Affairs]
ODIHR Office for Democratic Institutions and Human Rights
OHCHR Office of the United Nations High Commissioner for Human Rights
OMON Отряд мобильный особого назначения [Special Purpose Mobile Unit]
ORF Österreichischer Rundfunk
OSCE Organization for Security and Co-operation in Europe
OSCE PA Parliamentary Assembly of the Organization for Security and Co-operation in Europe
OSCE SMM Organization for Security and Co-operation in Europe – Special Monitoring Mission (in Ukraine)
OTP Office of the Prosecutor
OVV Dutch Safety Board
p Page
P5 The Five permanent members of the UN Security Council (China, France, Russia, UK, US)
PACE Parliamentary Assembly of the Council of Europe
para Paragraph
PDPA People's Democratic Party of Afghanistan
PHR Physicians for Human Rights
PMC Private military company
List of Abbreviations

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<tr>
<td>PSC</td>
<td>Private security company</td>
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<td>PMSC</td>
<td>Private military and security company</td>
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<tr>
<td>POW</td>
<td>Prisoner of war</td>
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<tr>
<td>PR</td>
<td>Public Relations</td>
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<tr>
<td>RF</td>
<td>Russian Federation</td>
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<tr>
<td>RSFSR</td>
<td>Russian Soviet Federative Socialist Republic</td>
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<td>SBU</td>
<td>Служба безопасности Украины [Security Service of Ukraine]</td>
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<tr>
<td>SMM</td>
<td>Special Monitoring Mission</td>
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<td>SOM</td>
<td>South Ossetian Militias</td>
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<tr>
<td>SWP</td>
<td>Stiftung Wissenschaft und Politik</td>
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<tr>
<td>TPNW</td>
<td>Treaty on the Prohibition of Nuclear Weapons</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNCLOS</td>
<td>UN Convention for the Law of the Sea</td>
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<td>UNESCO</td>
<td>United Nations Educational, Scientific, and Cultural Organization</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>US</td>
<td>United States</td>
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<tr>
<td>USSR</td>
<td>Union of Soviet Socialist Republics</td>
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<tr>
<td>UXO</td>
<td>Unexploded ordnance</td>
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<tr>
<td>VCLT</td>
<td>Vienna Convention on the Law of Treaties</td>
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<tr>
<td>VRS</td>
<td>Army of the Republika Srpska</td>
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<td>v</td>
<td>versus</td>
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<tr>
<td>VDV</td>
<td>Воздушно-десантные войска России [Russian Airborne Forces]</td>
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