

Michael Riepl

Russian Contributions to International Humanitarian Law

A contrastive analysis of Russia's historical role
and its current practice



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INTERNATIONAL PEACE
AND SECURITY LAW



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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

Preface

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

Transliteration

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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List of Abbreviations

AP I	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977
AP II	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
AP III	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
APMBC	Anti-Personnel Mine Ban Convention
ARSIWA	Articles on State Responsibility for Internationally Wrongful Acts
Art	Article, Articles
ATT	Arms Trade Treaty
BBC	British Broadcasting Corporation
CA	Common Article
CCM	Convention on Cluster Munitions
CCRF	Criminal Code of the Russian Federation (1996)
CCW	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
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CNN	Cable News Network
CRF	Constitution of the Russian Federation (1993)
DNR	Донецкая Народная Республика [Donetsk People's Republic]
DGO	Deutsche Gesellschaft für Osteuropakunde
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EJIL	European Journal of International Law
et al	et alia
et seq	et sequitur
FRY	Former Republic of Yugoslavia

List of Abbreviations

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
ICI	Independent International Commission of Inquiry on the Syrian Arab Republic
IIFMCG	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

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