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# Justifying Aggression: Russia's 2020 Constitutional Amendments and the Invasion of Ukraine

Robert C. Blitt\*

## ABSTRACT

*Beyond the alluring promise of an enhanced social safety net for Russian citizens, President Vladimir Putin's constitutional amendments of 2020 betrayed a distinct preoccupation with fortifying Russia's international standing and crafting a new national identity. By Putin's own account, these amendments were necessary to steel the country against the malevolent action of international conspirators committed to Russia's downfall. As this Article posits, these specific constitutional changes systematically entrenched an exceptionalist vision of Russian sovereignty and a civilizational identity that left the country constitutionally untethered from international norms and institutions, saturated in religious fervor and visions of imperial glory, and poised for war.*

*Following a brief introduction, the first main part of this Article explores how enshrining constitutional supremacy, territorial integrity, and the doctrines of peaceful coexistence and noninterference sought to control the impact of international law and to revive Soviet-era legal*

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\* Toms Foundation Professor of Law, University of Tennessee College of Law. I am grateful to Jacques deLisle, Kim Lane Scheppele, and Jackie Ross for inviting a draft of this Article for review at the annual American Society of Comparative Law Works in Progress Workshop. I am indebted to all the participants who shared substantive feedback with me, and especially to Kim and to Greg Yudin for their detailed responses. This Article also benefited from additional feedback collected at a workshop sponsored by the American Society of International Law's Midwest Interest Group, organized by Charles Kotuby, Vera Korzun, and Ronke Odumosu-Ayanu. Finally, many thanks to the Vanderbilt team for their impressive attention to detail in readying this Article for print.

*norms used to dominate neighboring states. The second part turns to the constitutionalization of a new civilizational identity steeped in a heady—if selective—history of imperial entitlement, traditional values, and the protection of compatriots abroad. It argues that these provisions signaled a clear intention to break from Russia’s previous constitutional orientation in favor of confronting a perceived threat posed by unbridled Western “ultraliberalism” bent on destroying Russia’s national identity and security.*

*Unpacking how the twin ideas of sovereignty and civilizational identity have embedded themselves in Russia’s constitutional structure facilitates drawing a direct connection between the amended constitution and Kremlin foreign policy objectives. It further demonstrates how these principles equipped the Kremlin with constitutional succor in justifying its war of aggression against Ukraine. The Article concludes by situating the constitutional amendments within the larger trend of “autocratic legalism” and urging the international community to recognize the Kremlin’s constitutionally embedded motivations for war.*

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**“We need to use the United Nations Security Council [to protect international law] and believe that preserving law and order in today’s complex and turbulent world is one of the few ways to keep international relations from sliding into chaos. The law is still the law, and we must follow it whether we like it or not. Under current international law, force is permitted only in self-defense or by the decision of the Security Council. Anything else is unacceptable under the United Nations Charter and would constitute an act of aggression.”<sup>1</sup>**

—President Vladimir Putin, Sept. 11, 2013

**“I will not wake up [Foreign] Minister Lavrov at this hour . . . . Do not call it a war. It is called a special military operation in Donbas.”<sup>2</sup>**

—Vassily Nebenzya, Permanent Representative of the Russian Federation,  
8974th meeting of the UN Security Council, Feb. 23, 2022

## I. INTRODUCTION

In January 2020, Russian President Vladimir Putin surprised Russians and the international community by proposing a sweeping set of constitutional reforms aimed at improving “state structure and domestic policy.”<sup>3</sup> In his state-of-the-nation address, delivered to 1,300

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1. Vladimir Putin, *A Plea for Caution from Russia*, N.Y. TIMES (Sept. 11, 2013), <https://www.nytimes.com/2013/09/12/opinion/putin-plea-for-caution-from-russia-on-syria.html> [https://perma.cc/FK6X-3K5P] (archived Sept. 26, 2023).

2. Vasily Nebenzya, Permanent Representative of Russ. to the United Nations, Statement and Reply at UNSC Briefing on Ukraine (Feb. 23, 2022), in PERMANENT MISSION OF THE RUSSIAN FED’N TO THE UNITED NATIONS, <https://russiaun.ru/en/news/230222un> [https://perma.cc/2CJR-SGR4] (archived Sept. 26, 2023). See also U.N. SCOR, 77th Sess., 8974th mtg. at 14, U.N. Doc. S/PV.8974 (Feb. 23, 2022).

3. Vladimir Putin, President of Russ., Address to the Federal Assembly at the Manezh Central Exhibition Hall (Jan. 15, 2020), in OFF. INT. RES. OF THE PRESIDENT OF

legislators, government officials, and other invited guests, Putin explained that, while the “[p]otential [for Russia’s] 1993 Constitution is far from being exhausted,” amendments were necessary to secure “Russia as a rule-of-law welfare state where citizens’ freedoms and rights, human dignity and wellbeing constitute the highest value.”<sup>4</sup>

Despite the apparent emphasis on domestic comforts, Putin’s push for constitutional amendments signaled a distinct preoccupation with Russia’s international standing. He began outlining his proposed reforms by first asserting that “Russia can be and can remain Russia only as a sovereign state. Our nation’s sovereignty must be unconditional . . . Russia has returned to international politics as a country whose opinion cannot be ignored.”<sup>5</sup> To underscore this emphasis on sovereignty, Putin saluted the Russian government for “creat[ing] powerful reserves, which multiplies our . . . capability to protect . . . the national economy from any attempts of foreign pressure.”<sup>6</sup> With this external orientation established, Putin’s priority amendments sought to eliminate the potential domestic impact of decisions taken by international bodies regarding Russia’s international obligations and to prohibit a wide swath of government officials from maintaining foreign citizenship or residence permits.

Laying out his fuller vision of the constitutional changes necessary to secure Russia’s sovereignty, Putin suggested that his proposals should “by no means limit the discussion around possible amendments to the Constitution.”<sup>7</sup> At the same time, however, even this invitation betrayed Putin’s fixation on using the amendment process to secure Russia’s international standing. He cautioned that any proposed amendments respect the need to “create a solid, reliable and invulnerable system that will be absolutely stable in terms of the

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RUSS., <http://en.kremlin.ru/events/president/news/62582> [<https://perma.cc/A9WU-PURK>] (archived Sept. 26, 2023).

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*; Robyn Dixon, *Putin as Russia’s Supreme Leader? A Constitutional Rewrite Brings Out Some ‘Crazy’ Ideas*, WASH. POST (Feb. 23, 2020), [https://www.washingtonpost.com/world/europe/putin-as-russias-supreme-leader-constitutional-rewrite-brings-out-some-crazy-ideas/2020/02/23/1e0187ca-4cf6-11ea-967b-e074d302c7d4\\_story.html](https://www.washingtonpost.com/world/europe/putin-as-russias-supreme-leader-constitutional-rewrite-brings-out-some-crazy-ideas/2020/02/23/1e0187ca-4cf6-11ea-967b-e074d302c7d4_story.html) [<https://perma.cc/EL2X-GH4J>] (archived Sept. 26, 2023) (noting that when Putin “threw open the gates for Russians to propose changes to the country’s constitution, the rewrite frenzy was on—particularly among nationalists, social conservatives, chauvinists and militants, who all dream of a Russia even more strident and militaristic.”). Others expressed opposition to the “constitutional coup.” See, e.g., «Против конституционного переворота и узурпации власти» Манифест граждан России, NOVAYA GAZETA (Jan. 23, 2020), <https://novayagazeta.ru/articles/2020/01/23/83598-pokushenie-na-osnovnye-printsipy-ustroystva-gosudarstva> [<https://perma.cc/P4AS-KRCX>] (archived Sept. 26, 2023).

external contour and will securely guarantee Russia's independence and sovereignty.”<sup>8</sup>

Two months after his initial announcement, Putin delivered his much expanded twenty-four pages of revised amendments to the State Duma.<sup>9</sup> In advance of its second reading, Putin reminded lawmakers that his proposed constitutional changes were “long overdue and necessary” because:

They are aimed at strengthening our sovereignty, our traditions and our values – the foundation of our life . . . there are those who want to deter Russia and are ready to use any method for this . . . They are waiting for us to make a mistake or to slip up, losing our bearings or, worse still, getting bogged down in internal dissent, which is sometimes fanned, fueled and even financed from abroad.<sup>10</sup>

On this ominous note, the State Duma proceeded with what many observers described as an act of “highly choreographed political theater.”<sup>11</sup> Valentina Tereshkova, a deputy in President Putin's United Russia party and the first woman in space, proffered an additional last-minute proposal to reset presidential term limits, thus inviting President Putin to remain in power until 2036.<sup>12</sup> Taking quite literally

8. Putin, *supra* note 3.

9. AFP, *Putin Proposes to Enshrine God, Heterosexual Marriage in Constitution*, FRANCE 24 (Mar. 2, 2020), <https://www.france24.com/en/20200302-putin-proposes-to-enshrine-god-heterosexual-marriage-in-constitution> [https://perma.cc/V4EW-9XQ6] (archived Sept. 26, 2023).

10. Vladimir Putin, President of Russ., Speech at State Duma Plenary Session (Mar. 10, 2020), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/news/62964> [https://perma.cc/Z9NM-E6KY] (archived Sept. 26, 2023).

11. Patrick Reeve, *Russia's Parliament Opens Way for Putin to Stay in Power Beyond 2024*, ABC NEWS (Mar. 10, 2020), <https://abcnews.go.com/International/russias-parliament-opens-putin-power-2024/story?id=69504478> [https://perma.cc/Y9QE-CJYV] (archived Sept. 27, 2023); see also Andrew Roth, *Putin Backs Proposal Allowing Him to Remain in Power in Russia Beyond 2024*, GUARDIAN (Mar. 20, 2020), <https://www.theguardian.com/world/2020/mar/10/vladimir-putin-amendment-power-russia-2024> [https://perma.cc/PFN8-WDK7] (archived Sept. 26, 2023) (noting the issue of resetting presidential term limits “was resolved...in a series of choreographed political steps that took just over three hours.”).

12. Vladimir Putin Opens Door to Stay on as Russia's President, DEUTSCHE WELLE (Mar. 20, 2020), <https://p.dw.com/p/3Z9V5> [https://perma.cc/QKU6-FZRL] (archived Sept. 26, 2023). This fresh lease on term limits would place Putin behind only Peter the Great as the longest serving ruler since the establishment of Russia's tsardom. Mike Eckel, *Putin Opens the Door – Wide – to Staying on as President Past 2024*, RADIO FREE EUR./RADIO LIBERTY (Mar. 10, 2020), <https://www.rferl.org/a/putin-opens-the-door---wide---to-staying-on-as-president-past-2024/30480215.html> [https://perma.cc/6U35-PHB3] (archived Sept. 26, 2023). Scuttlebutt focused more on whether Putin had set up the eleventh-hour amendment to facilitate running again in 2024 and less on “whether Tereshkova had been set up to propose the change (it was generally assumed that she

Putin's directive to advance only amendments capable of securing political stability and safeguarding the country's sovereignty,<sup>13</sup> Tereshkova reasoned that "given [Putin's] enormous authority, this [term reset] would be a stabilizing factor for our society."<sup>14</sup>

Putin predictably endorsed Tereshkova's suggestion, and within a matter of hours, the Duma easily passed the final package of proposed amendments 383-0, with 43 abstentions.<sup>15</sup> In a matter of days—and without any meaningful opposition—Russia's upper house, the Federation Council,<sup>16</sup> all eighty-five regional parliaments,<sup>17</sup> and finally, Russia's Constitutional Court,<sup>18</sup> all consented to the changes.

had)." Elizabeth Teague, *Russia's Constitutional Reforms of 2020*, 5 RUSS. POLITICS (2020) 301 at 311.

13. Vladimir Putin, President of Russ., Meeting with Members of the Working Group on Drafting Proposals for Amendments to the Constitution at the Kremlin (Feb. 26, 2020), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/transcripts/62862> [<https://perma.cc/9L9X-UWXE>] (archived Sept. 26, 2023). Underlining this ongoing concern, Vyacheslav Volodin, the State Duma speaker, urged lawmakers "to rally behind Vladimir Putin against [the] foreign campaign to discredit the constitutional reforms." *Every Russian Regional Parliament Backs Changes Allowing Putin to Extend Rule*, REUTERS (Mar. 13, 2020), <https://www.reuters.com/article/us-russia-putin-idUSKBN210110> [<https://perma.cc/CQ3Q-5R6L>] (archived Sept. 26, 2023).

14. Anton Troianovski, *Putin Endorses Brazen Remedy to Extend His Rule, Possibly for Life*, N.Y. TIMES (Mar. 10, 2020), <https://www.nytimes.com/2020/03/10/world/europe/putin-president-russia.html> [<https://perma.cc/WD96-D4WAe>] (archived Sept. 26, 2023).

15. MPs from the opposition Communist Party abstained. *Next Stop the Regions: Russian Lawmakers Approve Final Bill on Amendments to Constitution*, RT (Mar. 11, 2020), <https://www.rt.com/russia/482810-russian-constitution-final-amendments-bill/> [<https://perma.cc/GEL9-WZWQ>] (archived Sept. 27, 2023). Communist Party opposition to the constitutional reforms continued in the leadup to the public vote. *Communists Campaign Against Reforms Giving Putin More Years in Power*, MOSCOW TIMES (June 5, 2020), <https://www.themoscowtimes.com/2020/06/05/communists-campaign-against-reforms-giving-putin-more-years-in-power-a70496> [<https://perma.cc/LR4Y-WBF5>] (archived Sept. 27, 2023).

16. Agence France-Presse, *Reforms that Could Allow Putin to Rule Until Age of 84 Approved by Russian Senators*, TELEGRAPH (Mar. 11, 2020), <https://www.telegraph.co.uk/news/2020/03/11/constitutional-reforms-could-let-putin-rule-84-approved-russian/> [<https://perma.cc/N682-MMLS>] (archived Sept. 27, 2023) (noting Russia's Federation Council voted 160 in favor, with one voting against and three abstaining).

17. *Every Russian Regional Parliament Backs Changes Allowing Putin to Extend Rule*, REUTERS (Mar. 13, 2020), <https://www.reuters.com/article/us-russia-putin-idUSKBN210110> [<https://perma.cc/S29T-CDTH>] (archived Sept. 27, 2023) (noting "[t]he list of 85 regions...includes two which are part of Russian-controlled Crimea, which Moscow annexed from Ukraine in 2014."); *All Russian Regions OK Constitutional Amendments Paving Way For Putin To Run Again*, RADIO FREE EUR./RADIO LIBERTY (Mar. 13, 2020), <https://www.rferl.org/a/all-russian-regions-ok-constitutional-amendments-allowing-putin-to-reelection/30485352.html> [<https://perma.cc/E35P-E2U6>] (archived Sept. 27, 2023) (taking note of opposition expressed by some regional parliamentarians).

18. *Conclusion of the Constitutional Court Regarding the Constitutionality of the Proposed Amendments to the Constitution*, CONST. CT. OF THE RUSS. FED'N (Mar. 16,



Although the COVID-19 pandemic prompted Putin to delay the public vote on the amendments from April to July 2020,<sup>19</sup> citizens overwhelmingly endorsed the sixty pages of amendments,<sup>20</sup> thus blessing the largest overhaul of Russia's contemporary constitution since its original ratification in 1993.

Most prominently reported among the constitutional changes were modifications to the country's social safety net and political power structure, as well as the addition of so-called "populist provisions."<sup>21</sup> This Article, however, mostly looks beyond these changes; instead, it posits that certain other amendments championed by the Kremlin—which at the time of ratification failed to garner critical media or scholarly attention—augured momentous foreign policy implications. Today, these amendments function as a justificatory framework of the highest order for legitimating Russia's self-styled "special military operation" in Ukraine. Specifically, these latter amendments unabashedly exhort a constitutional vision of Russia as a great power "whose opinion cannot be ignored,"<sup>22</sup> impelled to promulgate a new civilizational identity steeped in a heady—if selective—history of imperial entitlement and traditional values stretching back to the realm of Kievan Rus'.

To demonstrate the centrality of these constitutional provisions in Russia's foreign policy and its action against Ukraine, this Article analyzes two main themes that permeate the 2020 constitutional amendments: First, a muscular version of state sovereignty—including

2020), <http://doc.ksrf.ru/decision/KSRFDecision459904.pdf> [<https://perma.cc/4QV6-WA3Z>] (archived Sept. 27, 2023).

19. See *Executive Order Postponing the Vote on Amendments to the Constitution*, OFF. INT. RES. OF THE PRESIDENT OF RUSS. (Mar. 25, 2020), <http://en.kremlin.ru/events/president/news/63066> [<https://perma.cc/5NAC-UGDU>] (archived Sept. 27, 2023); *Executive Order Setting Date for National Vote on Russian Federation Constitutional Amendments*, OFF. INT. RES. OF THE PRESIDENT OF RUSS. (June 1, 2020), <http://en.kremlin.ru/events/president/news/63443> [<https://perma.cc/8BT6-DG2N>] (archived Sept. 27, 2023).

20. *Federal'nyi Konstitutsionnyi o Sovershenstvovanii Regulirovaniya Otdel'nykh Voprosov Organizatsii i Funktsionirovaniya Publichnoy Vlasti* [Law of the Russian Federation on Amendment to the Constitution of the Russian Federation], ROSSIISKAYA GAZETA [ROS. GAZ.] Mar. 16, 2020. In theory, the final amendments were culled from over 900 proposals considered by the 75-member working group on drafting proposals for amendments to the Constitution, established by President Putin the day after his January 2020 address to the Federal Assembly. Putin, *supra* note 13.

21. Included in this category are provisions that peg welfare and pension benefits to inflation. Maria Domańska, "Everlasting Putin" and the Reform of the Russian Constitution, CTR. FOR E. STUD. (OSW) (Mar. 13, 2020), <https://www.osw.waw.pl/en/publikacje/osw-commentary/2020-03-13/everlasting-putin-and-reform-russian-constitution> [<https://perma.cc/D995-566S>] (archived Sept. 27, 2023). Many viewed these social benefits and populist provisions as calculated by Putin to get people to the ballot boxes. *Russia's Putin Wants Traditional Marriage and God in Constitution*, BBC NEWS (Mar. 3, 2020), <https://www.bbc.com/news/world-europe-51719764> [<https://perma.cc/NH7D-QYHK>] (archived Sept. 27, 2023).

22. Putin, *supra* note 3.

the entrenchment of constitutional supremacy, territorial integrity, and non-interference—that embeds an exceptionalist vision of Russia untethered from international norms and institutions. And second, an overhauled Russian national identity—drenched in imperial glory and global power, religious fervor, and the protection of compatriots abroad<sup>23</sup>—that is premised on opposition to Western “ultraliberalism” and further enshrines the State’s claimed exceptionalism.

As illustrated below, it is these newly constitutionalized twin ideas—sovereignty and national identity—that have furnished the Kremlin with constitutional succor in defense of its war of aggression against Ukraine. Each of these themes is addressed, in turn, by discussing the nature and substance of the relevant constitutional amendments and highlighting their direct linkage to Kremlin foreign policy and its proffered rationales in defense of its ongoing war. The Article concludes by situating the constitutional amendments within the larger trend of “autocratic legalism” identified by Kim Lane Scheppele, Javier Corrales, and others.<sup>24</sup> As an outgrowth of this, the Article urges the international community to place greater emphasis on a concerted international response that recognizes the constitutionally embedded motivations for Russia’s invasion and the urgency of sustaining an effective deterrence against aggression validated on constitutional grounds, unbounded by international norms, and conceivably poised to threaten the sovereignty of states beyond Ukraine alone.

## II. OVERVIEW: THE CONSTITUTIONAL AMENDMENTS OF 2020

To facilitate the reader’s consultation of the sovereignty- and national identity-related amendments discussed herein, the table below sets out the full text of the relevant provisions. The provisions directly impacting Russia’s state sovereignty are denoted by shading.

Article	Provision
67(2.1)	The Russian Federation ensures protection of its sovereignty and territorial integrity. Any actions (except delimitation, demarcation, and re-demarcation of the state border of the Russian Federation with bordering states) aimed at alienation of the part of the territory of the Russian Federation, as well as calls upon such actions, are precluded.

23. There is a deep literature around this issue, with various scholars attaching specific labels to help better explain Russia’s exceptionalism: hybrid, conservative, missionist. Setting aside the specialized terms, recognition of this general phenomenon is clear across the board.

24. See Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545 (Mar. 2018).

Article	Provision
67.1(1)	The Russian Federation is the legal successor of the Union of SSR [Soviet Socialist Republics] within its territory, and a legal successor (legal continuator) of the Union of SSR as regards membership in international organisations and their bodies, participation in international treaties, and as regards obligations of the Union of SSR foreseen by international treaties and its active assets outside the territory of the Russian Federation.
67.1(2)	The Russian Federation, united by the millennium history, preserving the memory of the ancestors who conveyed to us ideals and belief in God, as well as continuity of development of the Russian State, recognizes the unanimity of the State that was established historically.
67.1(3)	The Russian Federation honors the memory of the defenders of the Fatherland and ensures protection of historical truth. Diminution of the heroic deed of the people defending the Fatherland is precluded.
67.1(4)	Children are the most important priority of the state policy of Russia. The state creates conditions contributing to comprehensive spiritual, moral, intellectual and physical development of children, upbringing of their patriotism, civic consciousness and respect towards elders. The State, ensuring priority of family upbringing, undertakes to fulfil parental obligations towards children left without care.
69(3)	The Russian Federation provides support to compatriots living abroad in exercising their rights, ensuring protection of their interests and preserving all-Russian cultural identity.
72(1)(g)(1)	The following shall be within the joint jurisdiction of the Russian Federation and constituent entities of the Russian Federation: . . . protection of the family, maternity, fatherhood and childhood; protection of marriage as a union of a male and a female; creation of conditions for decent upbringing of children in a family, and for fulfilling by children of legal age of their obligation to take care of parents;
79	Decisions of international bodies, taken on the basis of provisions of international treaties of the Russian Federation in their interpretation that contradicts the Constitution of the Russian Federation, shall not be executed in the Russian Federation.

Article	Provision
79.1	The Russian Federation takes measures to preserve and strengthen international peace and security, to ensure peaceful coexistence of the states and peoples, and to prevent intervention into internal affairs of a State.
83(f)(3)	The President of the Russian Federation: . . . shall bring to the Council of Federation the proposition to terminate in accordance with the federal constitutional law the powers of the President of the Constitutional Court of the Russian Federation, the Vice-president of the Constitutional Court of the Russian Federation and the judges of the Constitutional Court of the Russian Federation, the Chief Justice of the Supreme Court of the Russian Federation, deputy chief justices of the Supreme Court of the Russian Federation and judges of the Supreme Court of the Russian Federation, presidents, vice-presidents and judges of the cassation and appeal courts in the event of them committing a violation tarnishing the honor and dignity of [a] judge, as well as in other situations established by federal constitutional law demonstrating impossibility for a judge to continue discharging of its powers;
125(5)(1)(b)	The Constitutional Court of the Russian Federation . . . in the order established by the federal constitutional law shall resolve the issue of possibility to execute decisions of interstate bodies, adopted on the basis of international treaties of the Russian Federation in their interpretation contradicting the Constitution of the Russian Federation, as well as of possibility to execute decision of foreign or international (interstate) court, foreign or international mediation court (arbitrage) imposing obligations on the Russian Federation, in the event if this decision contradicts the basis of public order of the Russian Federation[.]

### III. CONSTITUTIONALIZING MUSCULAR STATE SOVEREIGNTY & RUSSIAN EXCEPTIONALISM

#### A. “Constitutional” Supremacy: Rejecting the Legal Hierarchy of Russia’s 1993 Constitution and Vanquishing Judicial Independence to Prioritize Kremlin Foreign Policy Goals

Russia’s 1993 constitution declared that “[t]he universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of the state’s legal system.”<sup>25</sup> While this provision remains unchanged after 2020, the text of Articles 79 and 125 now mandate the Constitutional Court to render unenforceable any decision issued by an international body where the Court finds its implementation would be contrary to Russia’s constitution.<sup>26</sup> These amendments bring into doubt the enforceability of international treaty obligations undertaken by Russia, as well as the meaningful operation of certain rights-based provisions of the constitution, including pre-existing Article 46, which still stipulates that “everyone shall have the right to appeal, according to international treaties of the Russian Federation, to international bodies for the protection of human rights and freedoms . . . .”<sup>27</sup> In short, the ability to file an effective appeal to an international body is now diminished by the reality that Russia’s judiciary may simply elect to discount any resulting ruling favorable to the plaintiff.<sup>28</sup>

Already, at the end of 2015, the Russian government had moved to endorse the Constitutional Court’s decision to forgo enforcement of any “interstate human rights protection institution’s decision” where the Court found such enforcement would contradict the Russian Constitution.<sup>29</sup> But rather than merely codify this narrow approach

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25. KONSTITUTSIYA ROSSIĖSKOĖ FEDERATSII [KONST. RF] [CONSTITUTION] art. 4 (Russ.).

26. *Id.* at art. 12. The writing may have already been on the wall. In 2010, Valery Zorkin, president of the Constitutional Court of the Russian Federation, observed that: “The Strasbourg Court is competent to indicate errors in legislation to countries, but in the event where judgments of the [European Court of Human Rights (ECtHR)] are directly contradictory to the Russian Constitution, the country must follow its national interests.” Maria Issaeva, Irina Sergeeva & Maria Suchkova, *Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent Developments and Current Challenges*, 8 SUR: INT’L J. ON HUM. RTS. 67, 80 (Dec. 2011).

27. KONSTITUTSIYA ROSSIĖSKOĖ FEDERATSII [KONST. RF] [CONSTITUTION] art. 46(3) (Russ.).

28. A similar disposition may await other constitutional provisions. For example, amended art. 69(1), ostensibly guarantees “the rights of the indigenous minority peoples according to the universally recognised principles and norms of international law and international treaties and agreements of the Russian Federation.” KONSTITUTSIYA ROSSIĖSKOĖ FEDERATSII [KONST. RF] [CONSTITUTION] art. 69(1) (Russ.).

29. *Federal’nyi Zakon RF o Vnesenii Izmenil v Federal’nyi Konstitutsionnyi Zakon “O Konstitutsionnom Sude Rossiiskoi Federatsii”* [Federal Law of the Russian

targeting only decisions of *interstate human rights protection institutions* (such as the European Court of Human Rights), Putin's constitutional amendments deepen the Court's newfound ability in two troubling ways.

In the first instance, amended Article 79 authorizes the Court to decline the enforcement of *any decision* flowing from *any* international body if deemed contrary to the Russian Constitution. This more expansive authority is exacerbated by the fact that the 2020 amendments convert certain matters previously addressed at the level of federal law—that is to say, statutes beholden to Russia's international obligations—to a supreme, constitutionalized status above those international obligations. This is the case, for example, with the newly minted constitutional obligations to protect “historical truth” and to prohibit “diminution of the heroic deed of the people defending the Fatherland.”<sup>30</sup> In effect, the constitution now encompasses a far wider range of norms deemed “fundamental” and therefore worthy of protection against international scrutiny.

Second, amended Article 125(5)(b) reinforces this sweeping approach to decoupling Russia from international law by further empowering the Court to reject decisions of foreign or international judicial or arbitral tribunals imposing obligations on the Russian Federation.<sup>31</sup> In these latter cases, however, the measure of incompatibility with Russian law is not premised on the Russian Constitution. Instead, the Court is authorized to order non-enforcement based on the decidedly vaguer and likely less onerous

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Federation on Amendments to the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”], ROSSIĬSKAYA GAZETA [ROS. GAZ.] Dec. 15, 2015, *as reprinted in* VENICE COMM’N, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)006-e) [<https://perma.cc/X629-69QX>] (archived Sept. 27, 2023) (translation provided by the Constitutional Court of the Russian Federation). The law came on the heels of a Russian Constitutional Court decision to decline enforcement of a controversial ECtHR decision that challenged the supremacy of the Russian Constitution. Iryna Marchuk, *Flexing Muscles (Yet Again): The Russian Constitutional Court’s Defiance of the Authority of the ECtHR in the Yukos Case*, EJIL TALK (Feb. 13, 2017), <https://www.ejiltalk.org/flexing-muscles-yet-again-the-russian-constitutional-courts-defiance-of-the-authority-of-the-ecthr-in-the-yukos-case/#more-14980> [<https://perma.cc/XDG2-RPN9>] (archived Sept. 27, 2023). As the Council of Europe’s (CoE) Venice Commission has observed, “even if the amending law of December 2015 had never been enacted, the legal status quo concerning the relationship between the ECHR and Russian law would remain that expressed in the July 2015 Decision.” COUNCIL OF EUR., DRAFT FINAL OPINION ON THE AMENDMENTS TO THE FEDERAL CONSTITUTIONAL LAW ON THE CONSTITUTIONAL COURT 6 (2016).

30. KONSTITUTSIYA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] art. 67.1(3) (Russ.). These provisions are addressed in Part IV(B) below.

31. *Id.* Federal’nyi Konstitutsionnyi o Sovershenstvovanii Regulirovaniya Otdel’nykh Voprosov Organizatsii i Funktsionirovaniya Publichnoy Vlasti [Law of the Russian Federation on Amendment to the Constitution of the Russian Federation], ROSSIĬSKAYA GAZETA [ROS. GAZ.] Mar. 16, 2020.

standard that a given decision merely conflicts with the foundations of public order in Russia.<sup>32</sup>

Assessing the constitutional amendments before the 2022 invasion of Ukraine, Lauri Mälksoo correctly identified their intention “to strengthen Russia’s territorial integrity, state continuity (and succession) with the Soviet Union, and reshape the Constitution’s relationship to the country’s international legal obligations.”<sup>33</sup> But Mälksoo appeared to downplay the potential impact of this change by suggesting that the amendments represented something less than “a backlash to the international legal order” and that, in any case, they primarily sought to cement constitutional supremacy.<sup>34</sup> This assessment runs contrary to that of Talia Khabrieva, the co-chair of the working group that drafted the constitutional amendment proposals and President Putin’s official representative for reviewing the draft law promulgating the amendments.<sup>35</sup> According to Khabrieva, the “changes to the Basic Law may be assessed as quite serious transformations approaching a constitutional reform in their significance and depth,” including: “a change in the dichotomy of the national legal system established in the Constitution . . . : the *ratio of its openness and protection against external influences*, including through incorporation into the Constitution of the formula of proportionality of universal, supranational, and national legal values, principles, and norms.”<sup>36</sup>

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32. Yulia Ioffe observes that “[w]hile the Russian Federation is neither the only state where constitution prevails over international treaties . . . nor the only state which attempted to ignore international decisions . . . the scale of international decisions that Russia may try to dismiss will be incomparable.” Yulia Ioffe, *The Amendments to the Russian Constitution: Putin’s Attempt to Reinforce Russia’s Isolationist Views on International Law?*, EJIL TALK (Jan. 29, 2020), <https://www.ejiltalk.org/the-amendments-to-the-russian-constitution-putins-attempt-to-reinforce-russias-isolationist-views-on-international-law/> [https://perma.cc/P7MX-VYU9] (archived Sept. 28, 2023). The amended language also appears to broaden the basis for identifying incompatibilities, moving away from the narrower grounds limiting “the rights and freedoms of man and citizen” or contradicting “the principles of the constitutional system of the Russian Federation” to barring execution of judgments that are deemed “contrary to the Constitution.” COUNCIL OF EUR., OPINION OF THE EUROPEAN COMMISSION FOR THE DEMOCRACY THROUGH LAW ON THE “DRAFT AMENDMENTS TO THE CONSTITUTION” 11, 13 (2020).

33. Lauri Mälksoo, *Current Developments: International Law and the 2020 Amendments to the Russian Constitution*, 115 AM. J. INT’L L. 78, 79 (2021).

34. *Id.* at 93.

35. T. Ya. Khabrieva, *Constitutional Reform in Russia: Searching for National Identity*, 90 HERALD OF THE RUSSIAN ACAD. OF SCI. 273, 282 (2020). Khabrieva is also co-chair of the working group tasked with monitoring implementation of the constitutional amendments. *Khabrieva Talia Biography*, THE INST. OF LEGIS. & COMPAR. L. UNDER THE GOV’T OF THE RUSS. FED’N, <https://web.archive.org/web/20220313201427/https://izak.ru/en/managment/> [https://perma.cc/R9JW-2Y6P] (archived Sept. 28, 2023).

36. Khabrieva, *supra* note 35, at 277–78.

Ultimately, while these provisions might appear reasonable in the context of a political system characterized by strong constitutional rights protections and judicial independence,<sup>37</sup> this is not the case with contemporary Russia. Despite a standing constitutional commitment that bestows “supreme value” to individual rights and freedoms, Russia’s Constitutional Court “has done little to transform Russian society through the implementation of political or social rights. Instead, the Court has upheld legislation strengthening authoritarian governance” and turning its back on these rights.<sup>38</sup>

Undergirding this reality, Russia’s judiciary has continued to grapple with the Soviet legacy of *telefonnoye parvo*, or “telephone justice,”<sup>39</sup> leaving serious doubt over its independence.<sup>40</sup> Over a decade ago, the UN Special Rapporteur on the independence of judges and lawyers expressed concern “about the many reported attempts by [Russian] State authorities and private actors alike to exercise control over the judicial system.”<sup>41</sup> The Rapporteur further observed that “the interference is reportedly usual and constitutes a major factor in the forces that undermine the independence and impartiality of the

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37. Indeed, many such states maintain a national constitution as the apex of the domestic legal hierarchy. As the CoE’s Venice Commission has pointed out, “there is a wide variety as to the status of the ECHR in domestic law in relation to constitutional provisions.” COUNCIL OF EUR., AMENDMENTS TO THE FEDERAL CONSTITUTIONAL LAW ON THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION 9 (2016). President Putin is well aware of this reality. Addressing Russia’s Constitutional Court justices shortly after legislators extended the Court’s ability to decline enforcement of ECtHR decisions, he noted: “[W]e did not create anything new here; many European countries actually share the same path.” *Meeting with Constitutional Court Judges*, OFF. INT. RES. OF THE PRESIDENT OF RUSS. (Dec. 14, 2015), <http://en.kremlin.ru/events/president/news/50925> [<https://perma.cc/8PAQ-DM57>] (archived Sept. 28, 2023).

38. William Partlett & Mikhail Krasnov, *Russia’s Non-Transformative Constitutional Founding*, 15 EUR. CONST. L. REV. 644, 646 (2019). In fact, “the Court has increasingly justified the underimplementation of these rights on the basis of Russia’s own traditions.” *Id.*, at 651.

39. Alena Ledeneva, *Telephone Justice in Russia*, 24 POST-SOVIET AFF. 324, 324–350 (2008). Ledeneva defines the phenomenon as “the practice of making an informal command, request, or signal in order to influence formal procedures or decision-making.” *Id.* at 326. Aleksandr Solzhenitsyn described telephone justice thusly: “In his mind’s eye the judge can always see the shiny black visage of truth—the telephone in his chambers. This oracle will never fail you, as long as you do what it says.” Jeffrey Kahn, *The Search for the Rule of Law in Russia*, 37 GEO. J. INT’L L. 353, 385 (2006).

40. The CoE Vienna Commission has noted “that the Constitutional Court of the Russian Federation has demonstrated a certain openness to dialogue with the European Court of Human Rights.” At the same time, it has expressed “great concern” at the Court’s willingness to deem non-executable an ECtHR judgment concerning “exclusively the question of payment of sums of money as just satisfaction,” leaving it to comment that “actual concrete implementation” will be determinative of “adverse effects on the Russian international obligations under the ECHR.” COUNCIL OF EUR., *supra* note 32, at 16, 17.

41. Gabriela Knäul, Rep. of the Special Rapporteur on the Independence of Judges and Lawyers on Its Twenty-Sixth Session, ¶¶ 15–16, U.N. Doc. A/HRC/26/32/Add.1 (April 30, 2014).



judicial system.”<sup>42</sup> There is confirmation that this trend exists even at the pinnacle of Russia’s judicial system. As Mälksoo has concluded, rather than seeking an interpretative methodology that permits coexistence between international law and Russia’s constitution, the Constitutional Court has appeared to “artificially construct[]” conflict between the two as “a pretext to justify the government’s preferred outcome.”<sup>43</sup>

Concerns over the dearth of judicial independence are rendered more acute given additional constitutional amendments that leave Russia’s judiciary increasingly beholden to Russia’s executive branch. Article 83 now empowers the President to seek the dismissal of sitting judges, including Constitutional Court judges, “in the event of them committing a violation tarnishing the honour and dignity of judge, as well as in other situations established by federal constitutional law demonstrating impossibility for a judge to continue discharging of its powers.”<sup>44</sup>

Consolidating executive authority in this manner has plainly diminished the prospect of an independent judiciary that might challenge Kremlin actions relating to the war in Ukraine or its framing of constitutional supremacy. Indeed, evidence continues to mount that the judiciary is serving as an unflinching ally in the Kremlin’s campaign to silence any anti-war sentiment.<sup>45</sup> For example, to safeguard the Kremlin’s narrative of a “special military operation” in Ukraine, Russian courts have readily endorsed new laws<sup>46</sup>

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42. *Id.* Similar findings continue to characterize the Russian judiciary. For example, in 2016 a group of CoE Commissioners for Human Rights questioned Russia’s ability to achieve an “accessible, effective, transparent and credible justice system” due to “issues related to non-enforcement of court decisions, obstacles to the international system of human rights protection, insufficient judicial independence and excessive prosecutorial powers.” In their view, “unless the Russian judiciary becomes more independent, concerns will not be assuaged.” KOMMERSANT, *As Long as the Judicial System of the Russian Federation Does Not Become More Independent, Doubts About its Effectiveness Remain*, COUNCIL OF EUR. (Feb. 25, 2016), <https://www.coe.int/en/web/commissioner/-/as-long-as-the-judicial-system-of-the-russian-federation-does-not-become-more-independent-doubts-about-its-effectiveness-remain> [https://perma.cc/5J7T-RP5V] (archived Sept. 28, 2023).

43. Mälksoo, *supra* note 33, at 93.

44. Previously, terminating a judge for defaming “the honour and dignity of a judge” required the Federation Council to act upon a “recommendation of the Constitutional Court of the Russian Federation, approved by the majority of no less than two-thirds of the total number of judges.” Eur. Consult. Ass., Russian Federation Constitution, Doc. No. (2021); *see also* KONSTITUTSIYA ROSSIĬSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 83 (Russ.).

45. *Russia: Release Municipal Councilor put on Trial for Criticizing Russian Aggression in Ukraine*, AMNESTY INT’L (June 1, 2022), <https://www.amnesty.org/en/latest/news/2022/06/russia-release-municipal-councilor-put-on-trial-for-criticizing-russian-aggression-in-ukraine/> [https://perma.cc/YH66-HUZZ] (archived Sept. 28, 2023).

46. The changes to Russia’s criminal code “prevent the discrediting of the armed forces of the Russian Federation during their operations to protect the interests of the

championing the absurd notions that media personalities,<sup>47</sup> local officials,<sup>48</sup> school teachers,<sup>49</sup> priests,<sup>50</sup> food bloggers living abroad,<sup>51</sup> and others,<sup>52</sup> threaten Russia's national security through the spread of "knowingly false information," and that factually-grounded information posted to platforms like Wikipedia risks inciting "mass public disorder."<sup>53</sup>

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Russian Federation and its citizens, maintaining international peace and security." Convictions under the code provide for penalties "up to 10 years in prison", with the "distribution of fake news about the Russian military that leads to 'serious consequences'" triggering sentences of up to 15 years. The legislation also bans "calls against the use of Russian troops to protect the interests of Russia" and "for discrediting such use", as well as "calls for sanctions against Russia." *Putin Signs 'Harsh' Law Allowing Long Prison Terms For 'False News' About Army*, RADIO FREE EUR./RADIO LIBERTY (Mar. 5, 2022), <https://www.rferl.org/a/russia-military-false-news/31737627.html> [https://perma.cc/VT2H-RP23] (archived Sept. 28, 2023).

47. *Russian Court Orders Arrest in Absentia of Top Journalist Over 'Fakes'*, VOA NEWS (May 6, 2022), <https://www.voanews.com/a/russian-court-orders-arrest-in-absentia-of-top-journalist-over-fakes-/6560800.html> [https://perma.cc/T43A-5XFH] (archived Sept. 28, 2023); Yevgenia Albats, *Marina Ovsyannikova: The Normal Response of a Normal Person*, MOSCOW TIMES (May 26, 2022), <https://www.themoscowtimes.com/2022/05/26/marina-ovsyannikova-the-normal-response-of-a-normal-person-a77810> [https://perma.cc/5J3E-FMX8] (archived Sept. 28, 2023).

48. *Russian Councillor Says She's Not Afraid After Anti-War Speech*, REUTERS (Mar. 28, 2022), <https://www.reuters.com/world/europe/russian-councillor-says-shes-not-afraid-after-anti-war-speech-2022-03-28/> [https://perma.cc/4VPD-VLNT] (archived Sept. 28, 2023).

49. Matthew Loh, *Russian Teachers Are Being Punished for Making Anti-War Comments After Their Own Students Reported Them*, BUS. INSIDER (Apr. 7, 2022), <https://www.businessinsider.com/russian-teachers-ukraine-war-reported-own-students-anti-war-remarks-2022-4?op=1> [https://perma.cc/AU78-4EVN] (archived Sept. 28, 2023).

50. Sophia Ankel, *Russia Arrested an Orthodox Church Priest Who Said Troops Fighting Ukraine Are Going to Hell, Reports Say*, YAHOO NEWS (June 9, 2022), <https://news.yahoo.com/russia-arrested-orthodox-church-priest-114611838.html> [https://perma.cc/6SPN-VFDW] (archived Sept. 28, 2023). This dissenting view runs afoul of the Moscow Patriarchate's lockstep support for the Kremlin's foreign policy goals. See Robert C. Blitt, *Religious Soft Power in Russian Foreign Policy: Constitutional Change and the Russian Orthodox Church*, BERKLEY CTR. FOR RELIGION, PEACE & WORLD AFF. (May 21, 2021), <https://berkleycenter.georgetown.edu/events/religious-soft-power-in-russian-foreign-policy> [https://perma.cc/G858-DD78] (archived Sept. 28, 2023).

51. *Russian Court Issues Arrest Warrant For Food Blogger Over Posts On Ukraine War*, RADIO FREE EUR./RADIO LIBERTY (May 24, 2022), <https://www.rferl.org/a/russia-ukraine-war-food-blogger-arrest-warrant/31865732.html> [https://perma.cc/7HY2-JE2W] (archived Sept. 28, 2023).

52. *'I Have Done Everything I Could': Russian Anti-War Protesters Speak Out*, RADIO FREE EUR./RADIO LIBERTY (June 4, 2020), <https://www.rferl.org/a/russian-anti-war-protetters-ukraine-repression/31883494.html> [https://perma.cc/B6ZF-MJ9G] (archived Sept. 28, 2023).

53. *Wikimedia Foundation Appeals Russian Court Decision on Removal of Wikipedia Information Related to the Russian Invasion of Ukraine*, WIKIMEDIA FOUND. (June 13, 2022), <https://wikimediafoundation.org/news/2022/06/13/wikimedia-foundation-appeals-russian-court-decision-on-removal-of-wikipedia-information->

These examples of judicial endorsement of the criminalization of even fact-based dissent illustrate a more sweeping trend. One year into the war, Russian authorities had arrested nearly 20,000 individuals for expressing opposition to the war, with thousands of court cases underway for allegedly “discrediting” Russian armed forces, including over 500 criminal trials.<sup>54</sup> This individual liability—with the specter of up to fifteen years in prison—comes alongside the shuttering of the last vestiges of civil society operating in Russia, including storied human rights organizations like Memorial International<sup>55</sup> and the Moscow Helsinki Group,<sup>56</sup> and independent media outlets such as *Novaya Gazeta* and *Ekho Moskvy* (Echo of Moscow) radio.<sup>57</sup>

Faced with this reality, in the wake of the 2020 amendments, the Russian judiciary’s role in validating the Kremlin’s vision of constitutional supremacy is twofold. First, it represents the spear tip for legalizing the removal of international law as a potential brake on Kremlin action. Second, it legitimates the constitutional prohibition on Kremlin-defined “falsification”—meting out punishment to individuals and organizations challenging the war under the guise of constitutional imperative.

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related-to-the-russian-invasion-of-ukraine/ [https://perma.cc/NW7T-BN5E] (archived Sept. 28, 2023).

54. Robyn Dixon, *Russians Snitch on Russians Who Oppose War with Soviet-Style Denunciations*, WASH. POST (May 30, 2023), <https://www.washingtonpost.com/world/2023/05/27/russia-denunciations-arrests-informants-war/> [https://perma.cc/KH8F-TBWP] (archived Sept. 28, 2023). For earlier accounts of the domestic fallout from Russia’s war, see Shira Pinson & Yuliya Talmazan, *Russians Opposed to War in Ukraine Face Their Own Battle: Kremlin’s Crackdown on Anti-War Protest*, NBC NEWS (June 12, 2022), <https://www.nbcnews.com/news/world/russians-opposed-war-ukraine-face-battle-kremlins-crackdown-anti-war-p-rcna29981> [https://perma.cc/V3P2-PRCB] (archived Sept. 28, 2023).

55. *Russia Lurches Toward ‘Total Repression’ as Supreme Court Rules to Shut Memorial*, RADIO FREE EUR./RADIO LIBERTY (Dec. 28, 2021), <https://www.rferl.org/a/russia-memorial-international-supreme-court-closed/31629548.html> [https://perma.cc/J3WT-JEK2] (archived Sept. 29, 2023).

56. Evgenia Novozhenina, *Russia’s Oldest Human Rights Organization Shut Down by Court*, GLOBE & MAIL (Jan. 25, 2023), <https://www.theglobeandmail.com/world/article-russias-oldest-human-rights-organization-shut-down-by-court/> [https://perma.cc/DT93-TMVG] (archived Sept. 29, 2023).

57. Anna Cooban, *More Russian Media Outlets Close as Moscow Cracks Down*, CNN (Mar. 4, 2022), <https://www.cnn.com/2022/03/04/media/russia-media-crack-down/index.html> [https://perma.cc/3PZZ-XB8E] (archived Sept. 29, 2023). Numerous foreign media outlets “have withdrawn correspondents or stopped reporting in Russia” following introduction of the “false information” statute. Steven Lee Myers, *With New Limits on Media, Putin Closes a Door on Russia’s Openness*, N.Y. TIMES (Mar. 7, 2022), <https://www.nytimes.com/2022/03/07/world/europe/russia-ukraine-putin-media.html> [https://perma.cc/E622-3PPZ] (archived Sept. 29, 2023).

B. *Protecting Russian Sovereignty and Territorial Integrity:  
Consolidating Kremlin Control at Home and Abroad*

The push to secure the supremacy of domestic law over international law is but one facet of the Kremlin's broader effort to assert a muscular and unfettered version of state sovereignty under the amended constitution. To be certain, Putin has long advocated for this understanding, but its ensuing policy implications are now backed by constitutional authority. Prior to the constitutional amendments, the Kremlin had maintained—and the Russian Constitutional Court had upheld—a longstanding, if informal, “absolutist vision of national sovereignty” designed to resist efforts by local internal entities within the Russian Federation to assert any form of independence.<sup>58</sup> This practice of so-called “sovereign democracy” is premised on the notion that “any decrease in the federal government’s power would ineluctably lead to the disintegration of Russia.”<sup>59</sup> As such, sovereign democracy demands that the Kremlin retain “full state sovereignty, that is full control . . . over [Russia’s] borders and territory as well as over the price of oil and the use of natural resources.”<sup>60</sup> This vision is now cemented under Article 67(2.1), which asserts that “[t]he Russian Federation ensures protection of its sovereignty and territorial integrity. Any actions . . . aimed at the alienation of the part of the territory of the Russian Federation, as well as calls upon such actions, are precluded.”<sup>61</sup>

Alongside this internal manifestation, sovereign democracy operates in a similar manner on the international plane. Not only does it entail “a more independent role for Russia in world affairs,”<sup>62</sup> but also, through the constitutional amendment, it signals to the international community the non-negotiable nature of Russia’s territorial conquest. This outward-facing sovereignty, informed at least in part by the USSR’s legacy,<sup>63</sup> comes with extraterritorial implications that include the purported right of intervention premised

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58. William W. Burke-White, *Power Shifts in International Law: Structural Realignment and Substantive Pluralism*, 56 HARV. INT’L L.J. 1, 51 (2015).

59. Mikhail Antonov, *Theoretical Issues of Sovereignty in Russia and Russian Law*, 37 REV. CENT. & E. EURO. L. 95, 110 (2012).

60. Katja Ruutu, *Future, Past and Present in Russian Constitutional Politics: Russian Constitutions in a Conceptual-Historical Perspective*, 35 REV. CENT. & E. EURO. L. 77, 108 (2010) (quoting a 2006 statement by Vladislav Surkov, the Deputy Head of the President’s Chancellery).

61. KONSTITUTSIYA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] art. 67.1(2.1) (Russ.).

62. Ruutu, *supra* note 60, at 108.

63. For example, under the Brezhnev Doctrine, the Soviet Union’s bloc relationships were considered “strictly the internal affairs of bloc countries” immune from outside interference. Bernard A. Ramundo, *Czechoslovakia and the Law of Peaceful Coexistence: Legal Characterization in the Soviet National Interest*, 22 STAN. L. REV. 963, 974 (1970).

on Russia's "perceived sphere of influence . . . in the post-Soviet space."<sup>64</sup>

President Putin's framing here is instructive. From his perspective, certain Soviet republics did not abandon the union in 1991 with "what they came with."<sup>65</sup> Instead, these newly independent states "took along with them historical Russian lands as well."<sup>66</sup> As one scholar has previously concluded, "For Russia, sovereignty is the international legal articulation of underlying preferences for freedom of action within its own territory and its expanding regional influence."<sup>67</sup> In short, Russia's newly minted constitutional take on sovereignty provides first principles justification for intervention to repair perceived historic wrongs, despite any international norms—or borders—to the contrary.

Not only does the constitutional mandate to protect "sovereignty and territorial integrity" therefore effectively cement Russia's 2014 occupation and annexation of Crimea but also, in the Kremlin's view, it leaves open the possibility of additional future actions based on similar kinds of historic claims to territory alluded to above. Indeed, Mälksoo concludes that Article 67(2.1) confirms the Kremlin's readiness "to unilaterally . . . ignore its international legal obligations" and sends an unambiguous message about outstanding territorial claims.<sup>68</sup> The implications of this provision go further still, inasmuch as it also suggests a constitutionally blessed obligation to pursue foreign intervention purporting to ensure the protection of Russian compatriots. For the Kremlin, these compatriots living abroad represent a vital manifestation of Russian sovereignty. As discussed below, this eventuality is of acute relevance in the context of Ukraine and its restive Donbas territory.

In addition to these external assertions of muscular sovereignty, Article 67(2.1) also green-lights the Kremlin's all-encompassing need to control even *narratives* around sovereignty. As such, any act or expression that dares to question the legitimacy of Russian sovereignty or territorial claims is constitutionally prohibited. This constitutional shield around the practical and conceptual dimensions of sovereignty has validated efforts to further enlarge the sweep of the criminal code provisions noted above beyond mere "falsification" tied to expressions of opposition to the war. Acting on the need to defend its sovereignty, the Kremlin is no longer merely limited to prosecuting "fake news" about Russian armed forces; rather, it wields this constitutional mandate to prohibit even expressions of support for political or

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64. Burke-White, *supra* note 58, at 51.

65. Mälksoo, *supra* note 33, at 81.

66. *Id.*

67. Burke-White, *supra* note 58, at 52.

68. In the case of Japan, for example, Mälksoo notes "that further negotiations concerning the Kurile Islands will be futile." Mälksoo, *supra* note 33, at 82.

economic sanctions as harmful to sovereignty and indeed—following an amendment to the original laws noted above—*all* public action criticizing *any* exercise of power abroad by *any* of Russia’s state bodies.<sup>69</sup>

*C. Non-interference & Peaceful Coexistence: Additional Constitutional Tools to Undercut International Law and Put Russian Sovereignty First*

Rounding out the sovereignty-focused amendments, Article 79.1 now establishes that Russia takes “measures to preserve and strengthen international peace and security, to ensure peaceful coexistence of the states and peoples, to prevent intervention into internal affairs of a State.” This provision merits unpacking for two key reasons: First, it constitutionalizes a Soviet approach to international law previously described as “depreciat[ing] the existing process of international norm-formation . . . to enlarge the role . . . reserved for the Soviet Union in those processes.”<sup>70</sup> Second, it constitutionalizes the Kremlin’s long-standing prioritization and misuse of nonintervention in the context of its own contemporary international engagement. As elaborated below, both concepts of peaceful coexistence and non-interference play a central role in framing the Kremlin’s approach to sovereignty and providing a justificatory framework for its invasion of Ukraine.

1. Historical Background: Peaceful Coexistence

The invocation of “peaceful coexistence” in the context of international law—and specifically its historical use by the Soviet Union—has been the focus of much academic and policy literature. Its constitutional revival in 2020, a quarter century after the demise of the Soviet Union, is grounds for revisiting the doctrine to understand its past function and contemporary implications. Scholars have described the invention of peaceful coexistence as an affirmative effort “to restructure the international legal order in the Soviet interest rather

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69. *Russia Criminalizes Independent War Reporting, Anti-War Protests*, HUM. RTS. WATCH (Mar. 7, 2022), <https://www.hrw.org/news/2022/03/07/russia-criminalizes-independent-war-reporting-anti-war-protests> [https://perma.cc/B48P-Z8HC] (archived Sept. 29, 2023); *Prinyaty popravki ob otvetstvennosti za feyki o rabote rossiyskikh gosorganov za rubezhom*, GOSUDARSTVO DUMA (Mar. 22, 2022), <http://duma.gov.ru/news/53773/> [https://perma.cc/23JE-AG94] (archived Sept. 29, 2023). See discussion *supra* notes 46–53 and accompanying text.

70. This formalized constitutional endorsement is equally notable because it reinforces President Putin’s parallel effort to premise Russia’s contemporary national identity on a rehabilitated Soviet past. Leon S. Lipson, *The Soviet View of International Law*, in READINGS IN INT’L LAW FROM THE NAVAL WAR COLL. REV. 1947–1977 101, 111 (Richard B. Lillich & John Norton Moore eds., 1980).

than merely to attenuate the impact of international legal constraints upon the foreign policies of the Soviet Union.”<sup>71</sup> Its origins tie back to the earliest days of the Russian Revolution, with roots tracing to “the framework of Marxist ideology.”<sup>72</sup> Originally, the Bolshevik leadership intended peaceful coexistence to function as a sort of “‘peace break’, during which proletarian revolution would be preserved in Russia while it spread to Europe.”<sup>73</sup> Framed as a proto-foreign policy, however, this doctrine functioned to ensure “a measure of revolutionary security . . . designed to protect proletarian revolution from the superior forces of the German army.”<sup>74</sup>

Practically applied, the marriage between “the customary . . . idea of ‘coexistence’ in classical international law”<sup>75</sup> and growing Soviet power translated into a formula for ratifying an emerging communist empire’s blunt dominion over neighboring states. Illustrating this approach, Georgii Chicherin, head of the People’s Commissariat for Foreign Affairs of the Russian Soviet Federative Socialist Republic, hailed the 1920 Treaty of Tartu between Estonia and the Russian Soviet Federative Socialist Republic as the “first experiment in peaceful coexistence with bourgeois states.”<sup>76</sup> But within the short span of twenty years, independent Estonia fell to Soviet domination. Inasmuch as Estonia effectively “ceased to exist [as a sovereign state] . . . it became unnecessary to coexist with her.”<sup>77</sup>

While scholars may differ on how much weight to attribute to these early manifestations of peaceful coexistence,<sup>78</sup> by the early 1950s and Nikita Khrushchev’s ascent to power, this doctrine came to be cemented in Soviet international engagement<sup>79</sup> and Communist party policy.<sup>80</sup> This period also witnessed the first textual reference to

71. Ramundo, *supra* note 63, at 964–965.

72. Russell H. Fifield, *The Five Principles of Peaceful Co-Existence*, 52 AM. J. INT’L L. 504, 504 (1958).

73. Jon Jacobson, *WHEN THE SOVIET UNION ENTERED WORLD POLITICS* 17 (1994) (ebook).

74. *Id.* at 18.

75. Boris Meissner, *The Soviet Concept of Coexistence and the European Security Conference*, 19 MODERN AGE 364, 365 (1975).

76. Jacobson, *supra* note 73, at 17.

77. Lipson, *supra* note 70, at 109.

78. See Meissner, *supra* note 75, at 366 (arguing peaceful coexistence became a “form of strategy [for fomenting] world revolution,” shielding the USSR from international interference as it consolidated power).

79. Lipson, *supra* note 70, at 109 (observing that, since 1956, as “a principle of international law [peaceful coexistence has been] pressed vigorously by Soviet representatives at international meetings of governmental and nongovernmental organizations.”).

80. According to Ivo Lapenna, “only the sanctioning of ‘peaceful co-existence’ by the Twentieth Party Congress [in 1956] as a formal guiding principle of Soviet foreign policy, with a content in conformity with the present needs of the U.S.S.R., gave to this concept weight and political importance.” Ivo Lapenna, *The Legal Aspects and Political*

peaceful coexistence in an international treaty, specifically a 1954 agreement between China and India recognizing “Five Principles of Peaceful Coexistence.”<sup>81</sup> This was rapidly followed the same year by a joint declaration issued by the USSR and China, proclaiming that “the two governments would strictly observe the Five Principles in their relations not only with countries in Asia and the Pacific but also with other states.”<sup>82</sup> In 1956, during the fateful twentieth Congress of the Communist Party of the Soviet Union, Khrushchev—in addition to denouncing Stalin’s cult of personality—“designated the ‘Leninist principle of the peaceful coexistence of states with different social systems’ as the general guideline of Soviet foreign policy.”<sup>83</sup> Khrushchev later described this principle as “a form of intensive economic, political and ideological struggle of the proletariat against the aggressive forces of imperialism in the international arena.”<sup>84</sup>

Leonid Brezhnev’s subsequent interpretation of peaceful coexistence posited that any intervention to secure “the progressive development of society—the cause of peace, democracy and socialism”—was ipso facto legal.<sup>85</sup> Accordingly, he framed any opposition to such intervention as violative of international law.<sup>86</sup> Unpacking this lopsided approach further, the Soviets did not intend for peaceful coexistence to relay “relationships of trust, friendship, agreement, or free communication between the peoples of the ‘peacefully coexisting’ states.”<sup>87</sup> Nor did the term equate with a global condemnation of all war. Rather, national liberation wars and civil wars were framed as “permissible means of giving impetus to the process of world revolution.” In addition, peaceful coexistence permitted wars in defense of socialist states and “the use of force outside of the context of war in the ‘peaceful road to socialism.’”<sup>88</sup>

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*Significance of the Soviet Concept of Co-Existence*, 12 INT’L & COMPAR. L.Q. 737, 738 (1963).

81. The five principles are: “(1) mutual respect for each other’s territorial integrity and sovereignty; (2) mutual non-aggression; (3) mutual non-interference in each other’s internal affairs; (4) equality and mutual benefit; and (5) peaceful co-existence.” Agreement between the Republic of India and the People’s Republic of China on Trade and Intercourse between the Tibet Region of China and India, China-India, Apr. 29, 1954, 299 U.N.T.S. 57.

82. Fifield, *supra* note 72, at 506; Edward McWhinney, *Peaceful Co-Existence and Soviet-Western International Law*, 56 AM. J. INT’L L. 951, 954 (1962) (observing “[t]he five primary principles of peaceful co-existence, as set out in a current leading Soviet textbook on international law are indicated as having first been verbalized in that precise form in the so-called *Pancha Shila*” also known as the *Agreement Between the Republic of India and the People’s Republic of China on Trade and Intercourse Between the Tibet Region of China and India*). *Id.* at 953.

83. Meissner, *supra* note 75, at 366.

84. Lipson, *supra* note 70, at 109.

85. Ramundo, *supra* note 63, at 971.

86. *See id.*

87. Lipson, *supra* note 70, at 108.

88. Meissner, *supra* note 75, at 367; *see also* Lipson, *supra* note 70, at 108.



Peaceful coexistence, through its allowance for “socialist internationalism,” therefore allowed “and legally justified intervention in order to save another socialist state from itself.”<sup>89</sup> Translated into practice, this framing provided international legal rationalization for the Soviet Union to retain an unfettered right “to invade any ‘socialist’ country whenever the rulers in Moscow decide[d] that capitalism threaten[ed] to replace socialism.” Indeed, this rationalization is on stark display when parsing through the Soviet Union’s proffered justifications for its invasions of Hungary in 1956 and Czechoslovakia in 1968.<sup>90</sup>

Western jurists at the time may have accepted, at least *in abstracto*, the validity of the concepts bundled under the banner of peaceful coexistence, including non-aggression and mutual respect for territorial integrity and sovereignty. But they could not abide the “failure of the Soviet jurists to elaborate and develop and explain these primary principles in terms of concrete secondary principles immediately utilizable for the purpose of resolving international crises.”<sup>91</sup> Absent these vital elaborations, Western scholars of international law considered peaceful coexistence “as self-serving and so flexible as to render it unrecognizable as law,” and branded it “a Soviet foreign policy instrument designed, developed, and maintained solely to promote Soviet interests, not to ensure minimum world order.”<sup>92</sup> As Edward McWhinney cautioned in 1962, the Soviet approach reflected:

[A] conscious depreciation of the role of historical practice between states (custom) as a source of international law; and a very drastic attempt to limit, if not to reject altogether, the role of international agencies—whether the United Nations General Assembly, the Security Council, or even the World Court—in the fashioning or creation of new international law rules and principles.<sup>93</sup>

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89. James P. Terry, *Moscow’s Corruption of the Law of Armed Conflict: Important Lessons for the 21st Century*, 53 NAVAL L. REV. 73, 102 (2006).

90. Harry Schwartz, *The Khrushchev/Brezhnev Doctrine at Helsinki*, N.Y. TIMES (Aug. 5, 1975), <https://timesmachine.nytimes.com/timesmachine/1975/08/05/76378107.html?pageNumber=26> [https://perma.cc/9UWV-C59C] (archived Sept. 29, 2023).

91. McWhinney, *supra* note 82, at 954.

92. Terry, *supra* note 89, at 124 n.231.

93. McWhinney, *supra* note 82, at 955.

Writing in the early 1960s, Leon Lipson reached a similarly damning conclusion:

What counts . . . is not that the principle . . . shall mean anything at all. What counts is that something under the name of “the Principles of Peaceful Coexistence” should win recognition—without definition, preferably—as lying at the heart of international law . . . [such] that it should be acknowledged that the process of defining [the principles] requires the participation and consent of the Soviet Union; and by implication, that any principle or doctrine of international law that has not been accepted by the Soviet Union as part of . . . “the Principles of Peaceful Co-existence” has to be rejected as being for that reason invalid.<sup>94</sup>

Commentary by Soviet jurists confirms that peaceful coexistence was less about fostering meaningful relations and more about nurturing an elastic norm that rendered the Soviet Union an obligatory arbiter of substantive international law, capable of manipulating the fabric of that law to ensure Soviet freedom of action. In the words of one Soviet expert, peaceful coexistence was never meant “to maintain the status quo” or convey “diminution of the ideological struggle,” as between the West and socialism;<sup>95</sup> rather, it was intended to function as “an important form of the struggle against imperialism.”<sup>96</sup> Writing in 1948, a leading Soviet jurist and later ICJ justice corroborated this selective functionalist approach, declaring: “Those institutions of international law which can facilitate the execution of the stated tasks of the USSR are recognized and applied by the USSR, and those institutions which conflict in any manner with these purposes are rejected by the USSR.”<sup>97</sup>

Advocating peaceful coexistence—a “specifically Soviet invention”<sup>98</sup>—as a central component of international law, while refusing to elaborate any concrete definition for the term, served two key functions for the Soviets. First, any definitional clarity would be made contingent upon “the participation and consent of the Soviet

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94. Lipson, *supra* note 70, at 112. Bernard Ramundo was blunter: “it is generally felt in the West that the vagueness and ambivalence of the component principles portend mischievous ease of characterization in the Soviet interest.” Ramundo, *supra* note 63, at 968.

95. Meissner, *supra* note 75, at 368 (quoting the Soviet specialist on coexistence, Yegorov).

96. *Id.*

97. O.J. Lissitzyn, *The Soviet View of International Law*, 61 INT’L L. STUD. 90, 91–92 (1980).

98. McWhinney, *supra* note 82, at 951. Soviet theorists staked out “an historical line of development for the concept of peaceful co-existence stemming from the earliest roots of Soviet legal theory.” *Id.* at 952.

Union.”<sup>99</sup> And second, the Soviet Union could reject any putative norm it disfavored on the premise that it was at odds with the notion of peaceful coexistence.<sup>100</sup> Put bluntly, “under the law of peaceful coexistence force [could] validly be used against both capitalist and socialist states whenever it [was] deemed to be necessary in . . . the interest of the Soviet Union.”<sup>101</sup> Invoking this doctrine to its fullest political end, the Kremlin could repudiate or apply any international norm “whenever convenient because ‘laws and the norms of law [were] subordinated to [Soviet prioritization] of the class struggle and the laws of ‘social development.’”<sup>102</sup>

## 2. Historical Background: Noninterference

At its most basic level, nonintervention “refers to the political integrity of states” and is intended to shield “state sovereignty against external coercion.”<sup>103</sup> Stated differently, if sovereignty entails a right to conduct affairs free from outside interference, “non-intervention as the absence of interference in the sovereign authority and structures of the state is its substantiation and manifestation.”<sup>104</sup> The principle of nonintervention (or noninterference)<sup>105</sup> traces its roots back to the eighteenth century, although it remains “questionable how far [nonintervention] was reflected in the practice of states before the nineteenth century.”<sup>106</sup> In either case, the “long and noble textual foundation” that underpins nonintervention<sup>107</sup> distinguishes it from the decidedly twentieth century invention<sup>108</sup> of “peaceful coexistence,”

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99. Lipson, *supra* note 70, at 112.

100. *Id.*; see also McWhinney, *supra* note 82, at 956.

101. Ramundo, *supra* note 63, at 973.

102. Schwartz, *supra* note 90.

103. Russell Buchan & Nicholas Tsagourias, *The Crisis in Crimea and the Principle of Non-Intervention*, 19 INT’L CMTY. L. REV. 165, 193 (2017).

104. *Id.* at 172.

105. The term ‘nonintervention’ is more commonly used, “although ‘noninterference’ is also used. While the two terms seem to be interchangeable, ‘interference’ may suggest a wider prohibition, especially when used alongside ‘intervention.’” Maziar Jamnejad & Michael Wood, *The Principle of Non-Intervention*, 22 LEIDEN J. INT’L L. 345, 347 n.7 (2009).

106. *Id.* at 349.

107. Lori Fisler Damrosch, *Politics Across Borders: Nonintervention and Nonforcible Influence Over Domestic Affairs*, 83 AM. J. INT’L L. 1, 6. From the Soviet perspective, “socialist states” were excluded “from direct application of the ‘peaceful coexistence’ theory among themselves. This contextualization also prohibited: (a) withdrawal from the ‘socialist community’ and (b) any deviation from the Soviet model of orthodox-communist totalitarian socialism.” Meissner, *supra* note 75, at 370. This approach has modern reverberations in the Kremlin’s understanding of its entitlement to influence political and religious affairs in other sovereign states in the “near abroad.”

108. As Lapenna rightly notes, the idea of coexistence on the international plane to describe relations between states is not novel and can be traced back centuries. “What is really new is the extent and manner of the use of the term ‘peaceful co-existence’ in

of which nonintervention is considered a vital part. Reinforcing this important distinction, the UN Charter expressly recognizes the obligation of nonintervention, while remaining silent on the centrality, or even relevance, of peaceful coexistence under international law.<sup>109</sup>

While the concepts of peaceful coexistence and noninterference are indeed distinct, it is crucial to recognize how the selective invocation of noninterference did much of the heavy lifting to advance the distinctly political objectives embedded into the Soviet concept of peaceful coexistence. Fleshing out this connection is critical for identifying continuity between Soviet and contemporary Russian practice and, moreover, for underscoring the challenges these doctrines present as newly cemented constitutional norms validating the invasion of Ukraine.

Legal arguments proffered by the Soviet Union in the face of two military interventions—in Hungary in 1956 and Czechoslovakia in 1968—provide a useful window into how a skewed conception of nonintervention operated in tandem with peaceful coexistence to justify unilateral armed intervention in violation of the UN Charter.<sup>110</sup> Following its intervention in Hungary, Soviet diplomats stridently opposed international efforts to bring the situation before the United Nations Security Council (UNSC). Relying on peaceful coexistence and nonintervention, the USSR's UN ambassador proclaimed, “events have fully confirmed . . . the fundamental need for the peaceful coexistence of States . . . . But one of the prerequisites . . . is strict observance of the principle of non-interference in the domestic affairs of other States.”<sup>111</sup> Beyond invoking the non-interference principle enshrined

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the present-day world, the Soviet pretensions to an exclusive ‘socialist’ foreign policy based allegedly on ‘peaceful co-existence’ as opposed to ‘the imperialist policy of aggression,’ [and] the political shade which, for this very reason, became attached to the expression. . . . It is not the word ‘co-existence’, which is new, but the confusion about its meaning.” Lapenna, *supra* note 80, at 741.

109. “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter.” U.N. Charter art. 2, ¶ 7.

110. The Soviets’ military interventions in Hungary and Czechoslovakia—dubbed “Operation Whirlwind” and “Operation Danube”—were premised on a claimed “joint international duty” to protect socialist achievements. See Current Time, *Putin Signs ‘Harsh’ Law Allowing Long Prison Terms For ‘False News’ About Army*, RADIO FREE EUR./RADIO LIBERTY (Mar. 5, 2022), <https://www.rferl.org/a/russia-military-false-news/31737627.html> [<https://perma.cc/4VH7-WT72>] (archived Sept. 24, 2023); *Stenographic record of a 4 November 1956 meeting of Party activists*, WILSON CTR. (Nov. 11, 2011), <https://digitalarchive.wilsoncenter.org/document/stenographic-record-4-november-1956-meeting-party-activists> [<https://perma.cc/PEG4-PJYG>] (archived Dec. 9, 2023) (noting the overriding objective to “preserve socialist achievements” in Hungary in the face of “counterrevolutionary armed forces.”).

111. U.N. SCOR, 11th Sess., 746 mtg. at 25, U.N. Doc. S/PV. 746 (Oct. 28, 1956). Reinforcing this view, Indian prime minister Indira Gandhi later similarly observed, “The principle of non-interference by one country in the internal affairs of another

in the UN Charter, the Soviets reasoned that the UNSC's authority to "investigate any dispute or any situation which might lead to international friction" did not apply because the situation in Hungary was "arising inside a country and not affecting its relations with other States."<sup>112</sup> In other words, it was a purely internal socialist concern, falling within the USSR's jurisdiction, but not the UNSC's.

After failing to prevent the UNSC from taking up the matter, the Soviets predictably vetoed a draft resolution calling on the USSR to desist from "any form of intervention, particularly armed intervention in the internal affairs of Hungary."<sup>113</sup> UNSC members then moved to "call an emergency special session of the General Assembly . . . to make appropriate recommendations concerning the situation in Hungary."<sup>114</sup> Confronted with this second resolution, the Soviet ambassador again protested: "We have already stated that any examination of the 'situation in Hungary' . . . constitutes an act of intervention in the domestic affairs of Hungary."<sup>115</sup>

Remarkably, in the Soviet view, no incompatibility existed between their own armed intervention in the country and their description of the situation as a *purely internal matter not affecting Hungary's relations with other states*. In this way, while the Soviets wielded the principle of non-interference to foreclose international scrutiny, they simultaneously reasoned that their own armed intervention was wholly legitimate because the Hungarian Government was compelled to "liquidat[e] the counter-revolutionary uprising, and it appealed to the Government of the Soviet Union for assistance. It is perfectly clear that all these actions . . . are an internal affair of the Hungarian State, and the United Nations . . . is in no way entitled to interfere in these matters."<sup>116</sup>

As numerous diplomats observed during the UNSC's deliberations,<sup>117</sup> the Soviet position appeared to contradict not only the UN Charter, but also the socialist block's Warsaw Pact, according to which state parties pledged to "adher[e] to the principle of respect for the independence and sovereignty of the others and non-interference

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constitutes the very basis of peaceful coexistence." U.N. SCOR, 57th Sess., 1441 mtg. at 12, U.N. Doc. S/PV. 1441 (Aug. 21, 1968).

112. U.N. SCOR, U.N. Doc S/PV. 746, *supra* note 111, at 5.

113. U.N. S.C., United States of America: Revised Draft Resolution, U.N. Doc. S/3730/Rev.1 (Nov. 4, 1956) (vetoed by USSR).

114. S.C. Res. 120, ¶ 3 (Nov. 4, 1956) (adopted at the 754th meeting by 10 votes to 1, USSR voting against).

115. U.N. SCOR, 11th Sess., 754 mtg. at 13, U.N. Doc. S/PV. 754 (Nov. 4, 1956); *see also* U.N. SCOR, U.N. Doc S/PV. 746, *supra* note 111, at 24 ("any such discussion is a gross breach of Article 2 of the Charter, which prohibits any intervention by the United Nations in the domestic affairs of Member States.").

116. U.N. SCOR, U.N. Doc S/PV. 746, *supra* note 111, at 4 (emphasis added).

117. *Id.* at 15.

in their internal affairs.”<sup>118</sup> Nevertheless, the Soviets baked this double standard into their framing of peaceful coexistence. As Bernard Ramundo has explained: “[F]raternal assistance by a socialist state is not affected by the coexistence principle of nonintervention; the socialist-internationalism principle of nonintervention that governs is qualitatively different because of the common commitment to the building of socialism and Communism and includes the obligation to render fraternal assistance.”<sup>119</sup>

A decade after its Hungary intervention, the Soviet Union again opposed the UNSC’s consideration of another Soviet military intervention, this time in Czechoslovakia. According to the USSR, once again Soviet action came in response to a Czech appeal “for assistance . . . to combat a threat . . . to the socialist social order and the constitutional State system of Czechoslovakia.”<sup>120</sup> But unlike the 1956 intervention, the Czech government explicitly communicated to the USSR its objection to the Soviet armed intervention, calling for “the illegal occupation of Czechoslovakia [to] be stopped without delay and all armed troops [to] be withdrawn from Czechoslovakia.”<sup>121</sup>

Even while the Soviet delegation rejected as “fictitious” and “groundless” any UN justification for scrutinizing Czechoslovakia’s “purely internal affair[s],”<sup>122</sup> it posited multiple bases for validating its own armed intervention. Among these, the Soviets argued that “fraternal socialist countries [needed to] render[] assistance to the Czechoslovak people in its struggle against . . . the imperialist Powers’ attempts to turn that country from the socialist path.”<sup>123</sup> Importantly, the Soviet justification for intervention was as much about saving the entire socialist project as it was about saving Czechoslovakia: “By rendering assistance to the Czechoslovak people the allied socialist States are performing their international duty not only towards the fraternal Czechoslovak people but towards all forces acting for peace, democracy, and the national liberation of peoples.”<sup>124</sup> According to this logic, because Czechoslovakia’s internal situation impacted “the vital

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118. Treaty of Friendship, Cooperation and Mutual Assistance art. 8, May 14, 1955, 219 U.N.T.S. 2962 [hereinafter Warsaw Pact].

119. Ramundo, *supra* note 63, at 970.

120. U.N. SCOR, U.N. Doc. S/PV 1441, *supra* note 111, at 1.

121. *Id.* at 13. Even while making this statement, the Czech ambassador took pains to distinguish his country’s situation from Hungary’s a decade prior: “I think it is erroneous to compare developments in Czechoslovakia nowadays with Hungary . . . what happened in Hungary was a counter-revolution which was crushed by the Soviet Army.” *Id.* at 28–29.

122. *Id.* at 20.

123. *Id.* at 7. Elsewhere, the Soviet Union asserted an obligation to prevent the possibility of “counter-revolutionary forces” in Czechoslovakia “entering into an agreement with . . . foreign powers hostile to socialism.” *Id.*

124. *Id.* at 24.

interests of the other socialist countries,”<sup>125</sup> the Soviet Union claimed an exclusive right of intervention capable of overriding any general obligation of sovereign equality or international objection, including even from the state ostensibly being “saved.”

The USSR’s position that Soviet military intervention, however unwanted, did not run afoul of the principle of non-interference also relied on a claim that the threat of any Western interference was so grave, it endangered nothing less than “the foundations of European peace.”<sup>126</sup> Thus, in the USSR’s view, its armed intervention was essential to preserve world peace: “Nobody can have the slightest doubt that the preservation of peace in Europe is of decisive significance . . . to averting the threat of the outbreak of a new world war . . . . It is this problem . . . which motivates . . . the European socialist countries.”<sup>127</sup> Of course, this claim does great violence to the Soviets’ parallel demand that the UNSC be denied the same (and then, only non-armed) right of interference, despite it retaining “primary responsibility for the maintenance of international peace and security” under the UN Charter.<sup>128</sup>

### 3. Peaceful Coexistence and Noninterference in Putin’s Russia

Under the umbrella of peaceful coexistence as understood by the USSR, the principle of nonintervention entailed different rules for different actors. While the doctrine prohibited capitalist states from intervening, it invited socialist states to do so under certain circumstances. Although contemporary Russia has shed the historical veneer of socialist rhetoric attached to peaceful coexistence, it has preserved intact its underlying asserted ability to selectively justify or reject the lawfulness of intervention under international law.

As part of its ideological overhaul of peaceful coexistence, Russia no longer speaks in terms of securing Soviet socialist influence as against capitalism. Instead, the framing of the overarching struggle is defined in terms of securing and empowering a “Russian World” and Russian civilization across the post-Soviet geography as against the threat of “Nazification” and toxic Westernization channeled through ultraliberalism and “unipolarity.” To implant this narrative, Putin accuses Ukraine of committing genocide against ethnic Russians in Donbas and ties contemporary Ukrainian opposition to Russian influence back to the Ukrainian nationalists who aligned themselves with the Nazis during World War II to fight against Soviet

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125. *Id.* at 8.

126. *Id.*

127. *Id.*

128. U.N. Charter art. 24, ¶ 1.

domination.<sup>129</sup> In this way, the Nazification of Ukraine is the modern personification of evil that once again threatens Russia as it did during World War II. This threat is compounded by simultaneously associating Ukraine with all-corrupting Western norms poised to destroy traditional Russian Orthodox values. As RIA Novosti, a state-run news agency, summarized, Ukraine's "de-Nazification" demanded liquidation of Ukraine's leadership and erasure of the name Ukraine because its nationalism fundamentally represented "an artificial anti-Russian construct, which does not have any civilizational content of its own, and is a subordinate element of a foreign and alien civilization."<sup>130</sup>

Within this modified ideological framework, the Kremlin's impetus for reviving peaceful coexistence cloaks the same distinctly political—arguably even existential—objectives advanced by the Soviet Union. Likewise, the Kremlin's contemporary rhetorical changes have done nothing to reduce or correct the Soviets' heavy reliance on a skewed application of the principle of non-intervention. Russia's claimed entitlement to the post-Soviet space, like the Soviet claim to the socialist world before it, necessarily functions to exclude non-Russian influence, whether it relates to international human rights and other criticism directed at Russia, or warming ties between the West and adjacent "near abroad" territories.<sup>131</sup>

The specter of foreign intervention is a longstanding ideological hallmark of the Putin era. The Kremlin has declared foreign intervention as responsible for inflicting a foundational flaw on Russia's 1993 constitution. Indeed, it wielded this claim as a central impetus for advancing the constitutional amendments of 2020. During one telling exchange early in the amendment process, Konstantin Kosachev, Chairman of the Federation Council Committee on International Affairs, explained that the 1993 constitution "was written when the unshakable Soviet sovereignty was lost, but Russia

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129. Rachel Treisman, *Putin's Claim of Fighting Against Ukraine 'Neo-Nazis' Distorts History, Scholars Say*, NAT'L PUB. RADIO (Mar. 1, 2022), <https://www.npr.org/2022/03/01/1083677765/putin-denazify-ukraine-russia-history> [https://perma.cc/JSU9-B4AD] (archived Sept. 26, 2023); Izabella Tabarovsky, *Statement on the War in Ukraine by Scholars of Genocide, Nazism and World War II*, JEWISH J. (Feb. 27, 2002), <https://jewishjournal.com/news/worldwide/345515/statement-on-the-war-in-ukraine-by-scholars-of-genocide-nazism-and-world-war-ii/> [https://perma.cc/L3LG-EY5R] (archived Sept. 26, 2023).

130. Anne Applebaum, *Ukraine and the Words That Lead to Mass Murder*, ATLANTIC (Apr. 25, 2022), <https://www.theatlantic.com/magazine/archive/2022/06/ukraine-mass-murder-hate-speech-soviet/629629/> [https://perma.cc/HF6N-QNLC] (archived Sept. 26, 2023).

131. The term is used to describe Russia's relations with other former Soviet republics. Elias Götz, *Near Abroad: Russia's Role in Post-Soviet Eurasia*, 74(9) EUR.-ASIA STUD. 1529, 1530 (2022). See *infra* Part V; The Concept of the Foreign Policy of the Russian Federation, APPROVED by Decree of the President of the Russian Federation No. 229, Mar. 31, 2023, <https://www.mid.ru/print/?id=1860586&lang=en> [https://perma.cc/5MYQ-9U7T] (archived Dec. 9, 2023).



had no time to find a new one . . . . For many years, our country resembled a living organism without skin and, moreover, affected by the aggressive external environment.”<sup>132</sup> Putin heartily endorsed this sentiment: “You are right; this [amendment process] is directly related to upholding our sovereignty and suppressing attempts to interfere in our domestic affairs.”<sup>133</sup> Other government officials have reinforced this view, justifying the sovereignty amendments discussed here on the grounds that “international bodies are increasingly inclined to follow a broad interpretation of their mandate and to adopt politicised decisions. We want to defend ourselves from this kind of abuse.”<sup>134</sup>

Even before the 2020 amendments, however, the principle of nonintervention served as a central tool for Kremlin foreign policy to push back against the authority of international norms, particularly in the realm of human rights, and to advocate in favor of multipolarity within the international system. For example, Russia’s 2016 Foreign Policy Concept (FPC) pledged a commitment “to universal democratic values, including human rights and freedoms.”<sup>135</sup> But it hobbled the substance of those rights by rendering them contingent upon a relativist assertion of “due regard for each State’s national context, culture, history and values.”<sup>136</sup> Moreover, tepid support for these norms only came alongside the Kremlin’s objection to what the FPC characterized as “attempts to use human rights theories to exert political pressure and interfere in internal affairs of States, including with a view to destabilizing them and overthrowing legitimate governments.”<sup>137</sup>

In staking out this position, the Kremlin contradicted longstanding international human rights norms as well as the position of Putin’s predecessor, Boris Yeltsin. The Vienna Declaration and Program of Action, issued by consensus at the landmark 1993 UN World Conference for Human Rights, concluded that, “While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and

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132. Putin, *supra* note 13.

133. *Id.*

134. Interview by Izevestia Newspaper with Ivan Soltanovsky, Permanent Representative of Russ. to the Council of Eur. (May 8, 2020), in THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N, [https://archive.mid.ru/en/web/guest/foreign\\_policy/rso/coe/-/asset\\_publisher/uUbe64ZnDjso/content/id/4116819](https://archive.mid.ru/en/web/guest/foreign_policy/rso/coe/-/asset_publisher/uUbe64ZnDjso/content/id/4116819) [https://perma.cc/JE4Y-73R4] (archived Sept. 28, 2023).

135. Ob utverzhdenii Kontseptsii vneshney politiki Rossiyskoy Federatsii [On the Approval of the Foreign Policy Concept of the Russian Federation], SOBRANIE ZAKONODATEL’SIVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2016, No. 640, art. 45.

136. *Id.*

137. *Id.*

cultural systems, to promote and protect all human rights and fundamental freedoms.”<sup>138</sup> More egregiously, the FPC’s manipulation of noninterference to constrict the legitimacy of international human rights scrutiny baldly rejected the Russian Federation’s previous view, pronounced at the adoption of the Vienna Declaration:

[H]uman rights are not the internal affair of any State. In the past, it was precisely our country, the former Soviet Union, that initiated the sad tendency of evading control and criticism by invoking sovereignty and non-interference in internal affairs. We spread this cunning idea throughout the world, pressing it on many. Alas, our resourceful disciples are still numerous and active.<sup>139</sup> For this precise reason, we feel especially responsible . . . to record, in the final document, that the defense of all human rights is a subject of legitimate concern to the international community and that, notwithstanding the specific circumstances of different States, every one of them has a responsibility, notwithstanding those specific circumstances, to promote and defend all human rights and fundamental freedoms.<sup>140</sup>

This powerful rebuke of the misuse of noninterference in the context of human rights pulled the curtains back on decades of Soviet practice whereby, “[f]rom Stalin to Chernenko without interruption, the term human rights was preceded by the word so-called, and when written, surrounded by quotation marks. Human rights were officially presented as a sly, demagogical invention of the capitalist West in its struggle against socialist countries.”<sup>141</sup>

In seeking to translate the FPC’s theory into practice, Putin has sought to rekindle the same Soviet tendency that Yeltsin’s administration had rightly rejected as “cunning” and “sad.”<sup>142</sup> In doing so, the Kremlin has doubled down on Soviet-style nonintervention to justify a much more sweeping attack—on both international and

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138. World Conference on Human Rights, *Vienna Declaration and Programme of Action*, ¶ 5, U.N. Doc. A/CONF.157/23 (June 25, 1993).

139. The Russian delegate may have been referring to efforts of OIC states and others to hamstring the declaration. See Robert C. Blitt, *The Organization of Islamic Cooperation’s (OIC) Response to Sexual Orientation and Gender Identity Rights: A Challenge to Equality and Nondiscrimination Under International Law*, 28 TRANSNAT’L L. & CONTEMP. PROBS. 89, 111–14 (2018) (discussing the OIC’s prior and contemporary efforts to pushback against the Vienna Declaration’s consensus language).

140. World Conference on Human Rights, *supra* note 138 (statement by Serguei Kovalev from the Russian Federation on behalf of Eastern Europe).

141. SARAH B. SNYDER, HUMAN RIGHTS ACTIVISM AND THE END OF THE COLD WAR: A TRANSNATIONAL HISTORY OF THE HELSINKI NETWORK 143 (2011) (ebook).

142. World Conference on Human Rights, *supra* note 138 (statement by Serguei Kovalev from the Russian Federation on behalf of Eastern Europe).

regional levels—against universal human rights norms, the stability of international institutions, and even the very legitimacy of international engagement and oversight. Borrowing from the Soviet playbook, while the Kremlin destabilizes universal human rights and claims “noninterference” to preclude international scrutiny of its asserted internal affairs, it invokes the same human rights norms against adversaries to justify its own interference abroad, even including the use of armed force. This seemingly irreconcilable approach is readily explicable when viewed through the lens of peaceful coexistence.

At the United Nations (UN), Russia has endorsed myriad initiatives aimed at distorting the universality of human rights and misrepresenting foundational norms including freedom of religion or belief, free expression, and equality and nondiscrimination. The most notorious of these efforts have sought to install “traditional values” as a basis for qualifying human rights,<sup>143</sup> to prohibit “defamation of religion,”<sup>144</sup> and to reject any international protection for rights premised on sexual orientation and gender identity.<sup>145</sup> In addition, Putin has sought to insinuate his skewed vision of human rights into the international human rights mechanisms themselves. For example, as part of Russia’s successful campaign for a UN Human Rights Council (UNHRC) seat in 2020,<sup>146</sup> the Kremlin produced a glossy

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143. See Robert C. Blitt, *Russia’s ‘Orthodox’ Foreign Policy: The Growing Influence of the Russian Orthodox Church in Shaping Russia’s Policies Abroad*, 33 U. PA. J. INT’L L. 363, 441–48 (2011).

144. See *id.* at 442–53.

145. For example, Russia was one of four non-OIC states that voted against the UNHRC’s landmark 2011 Resolution 17/19 expressing “grave concern at acts of violence and discrimination...committed against individuals because of their sexual orientation and gender identity.” Five years later, in its own version of cancel culture, Russia joined a failed attempt in the UN General Assembly to sink the UNHRC’s establishment of an Independent Expert on Sexual Orientation and Gender identity. See Blitt, *supra* note 139, at 160, 178. On the domestic side, Russia’s shortcomings implementing the International Covenant on Civil and Political Rights (ICCPR) has attracted the scrutiny of the UN’s Human Rights Committee. See Hum. Rts. Comm. Rep., U.N. Doc CCPR/C/RUS/CO/7 at 4, 8–9 (Apr. 28, 2015) (expressing concerns with the periodic report of the Russian Federation, including discrimination on the grounds of sexual orientation and gender identity, freedom of expression, and combating extremism). See also *On Russia’s Position at the 69th Session of the U.N. General Assembly*, THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N (Sept. 23, 2014), [https://www.mid.ru/en/web/guest/general\\_assembly/-/asset\\_publisher/lrzZMhfoYRUj/content/id/1299603](https://www.mid.ru/en/web/guest/general_assembly/-/asset_publisher/lrzZMhfoYRUj/content/id/1299603) [https://perma.cc/WR4P-LBH5] (archived Sept. 28, 2023) (asserting, “[i]t is unacceptable to allegedly protect the so-called sexual minorities and, by doing that...aggressively impose a certain lifestyle and a set of values which can be insulting to a considerable part of society.”).

146. A majority of UN member states elected Russia to the UNHRC during the plenary meeting of the 75th session of the UN General Assembly in October 2020. Every state that voted in favor of Russia’s successful bid must reckon with the imprudence of that decision. *U.N. Election of the Human Rights Council*, GEN. ASSEMBLY OF THE UNITED NATIONS (Oct. 13, 2020)

brochure pledging to advance objectives antithetical to the international human rights regime,<sup>147</sup> including:

- normalizing the invocation of “non-interference” as a means of evading state obligations to promote and protect human rights, despite longstanding international practice<sup>148</sup> and Russian undertakings to the contrary;<sup>149</sup>
- prioritizing “national, cultural and historical specificities and values of each State,”<sup>150</sup> despite the duty of States to uphold human rights *regardless* of such specificities in accordance with the 1993 Vienna Declaration and Program of Action; and
- “[s]trongly oppos[ing] . . . attempts to falsify history”<sup>151</sup> and “preventing insult to the religious feelings of believers,” despite both priorities embodying *springboards for* human rights violations.<sup>152</sup>

To be certain, gifting the Kremlin a prestigious international platform like the UNHRC damaged the integrity of the international human rights system by casting doubt on the universality of human rights and fueling the retrograde notion that noninterference operates

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<https://www.un.org/en/ga/75/meetings/elections/hrc.shtml> [https://perma.cc/9BVS-DHWT] (archived Sept. 28, 2023).

147. *Candidacy of the Russian Federation for election to the United Nations Human Rights Council for 2021-2023*, THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N (Jan. 29, 2020), [https://www.mid.ru/web/guest/rossia-prava-celoveka/-/asset\\_publisher/Z02tOD8Nkusz/content/id/4013134?p\\_p\\_id=101\\_INSTANCE\\_Z02tOD8Nkusz&\\_101\\_INSTANCE\\_Z02tOD8Nkusz\\_languageId=en\\_GB](https://www.mid.ru/web/guest/rossia-prava-celoveka/-/asset_publisher/Z02tOD8Nkusz/content/id/4013134?p_p_id=101_INSTANCE_Z02tOD8Nkusz&_101_INSTANCE_Z02tOD8Nkusz_languageId=en_GB) (brochure on file with the author).

148. Robert C. Blitt, *Equality and Nondiscrimination Through the Eyes of an International Religious Organization: The Organization of Islamic Cooperation’s (OIC) Response to Women’s Rights*, 34 WIS. INT’L L.J. 755, 783–84 (2017) (tracking the consistent rejection of non-interference claims relating to human rights matters).

149. Thirty years ago, OSCE participating States—including Russia—emphasized “that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern.” As such, they “categorically and irrevocably declare[d] that [these] commitments...are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.” *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE Preamble*, ORG. FOR SEC. & COOP. IN EUR. (OSCE) (Oct. 4, 1991), <https://www.osce.org/files/f/documents/2/3/14310.pdf> [https://perma.cc/8ARY-79SX] (archived Sept. 28, 2023).

150. THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N, *supra* note 145.

151. The UN Human Rights Committee has previously raised concerns regarding the compatibility of Russia’s domestic efforts to criminalize the falsification of history with ICCPR article 19. Hum. Rts. Comm., Report on Follow-up to Concluding Observations of the Human Rights Committee, 4–5, U.N. Doc. CCPR/C/119/2 (May 18, 2017).

152. For more on the phenomenon of defamation of religion, see Robert C. Blitt, *The Bottom Up Journey of “Defamation of Religion” from Muslim States to the United Nations: A Case Study of the Migration of Anti-Constitutional Ideas*, 56 STUD. L., POL. & SOC’Y 121 (2011).

to preempt international scrutiny of these rights. But the Kremlin's framing of its international human rights "priorities" also betrayed a larger plan informed by the Soviet approach to peaceful coexistence. This framing sought to create a world where Russia wields noninterference to reject scrutiny of human rights concerns arising in Russia, while claiming a right of interference in other countries, ironically couched in human rights terms, to advance its own foreign policy objectives and national identity-building project.

*The Human Rights Situation in Certain Countries*, a 303-page document published by Russia's Ministry of Foreign Affairs, provides a deeper dive into how the Kremlin harnesses the premise of peaceful coexistence to unleash an upside-down dimension wherein the international human rights framework is bent to Russia's will. Indeed, the report's very premise betrays the logical fallacy underpinning the Russian approach: Ignoring its own overt "intervention" into the internal affairs of other states, the report purports to criticize internal human rights conditions in those select states "that list themselves among advanced democracies claiming to set standards in the area of protection of human rights."<sup>153</sup> Willfully ignoring this double standard—and without any irony—the Ministry's report hypocritically denounces the use of human rights to justify "interference in internal affairs of independent states,"<sup>154</sup> designating this conduct as one of four overriding human rights challenges. According to the report, the three remaining priority challenges confronting international human rights are:

1. "[B]lasphemous efforts . . . to erase historical memory" that have prompted "a systemic policy of falsification and distortion of history, including . . . distorting the role of the USSR in defeating Nazism and fascism"<sup>155</sup>;
2. "[F]requent attacks against traditional values organized by those who propagate ultraliberal ideas"<sup>156</sup>; and
3. As an outgrowth of these challenges, a "seriously aggravated" human rights situation for national minorities and ethnic groups, namely, "the Russian-speaking population in the Baltic countries and Ukraine."<sup>157</sup>

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153. THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, HUMAN RIGHTS SITUATION IN CERTAIN COUNTRIES 4 (2020), [https://www.mid.ru/en/web/guest/foreign\\_policy/humanitarian\\_cooperation/-/asset\\_publisher/hB3NYd16mBFC/content/id/4025481](https://www.mid.ru/en/web/guest/foreign_policy/humanitarian_cooperation/-/asset_publisher/hB3NYd16mBFC/content/id/4025481) [https://perma.cc/K9UU-5NHF] (archived Sept. 29, 2023) [hereinafter CERTAIN COUNTRIES].

154. *Id.*

155. *Id.*

156. *Id.* at 4-5.

157. *Id.* at 5.

For the Kremlin, the simple solution to these four challenges is premised on two actions. The first is “respect for sovereignty, non-interference and non-use of human rights as an instrument of political pressure.” And the second is “draw[ing] international public attention to . . . human rights violations observed in . . . countries . . . try[ing] to ‘export’ democratic and human rights standards invoking their universal character and actively criticiz[ing] the human rights situation in dissenting countries pursuing independent foreign policy agendas and asserting their own historical, cultural, and religious values and norms.”<sup>158</sup>

Restating this proposition strikingly illustrates how the Kremlin has revived the Soviet Union’s peaceful coexistence playbook, modifying only its socialist facade, while preserving a subjective implementation of noninterference. Instead of protecting noble proletariat socialist interests from the ruthless capitalist, Russia today seeks to defend its civilization and traditional values against the ultraliberal West (and “Nazis”) bent on spreading corrosive “neoliberal” LGBTQ (and “Nazi”) values. This contemporary version of peaceful coexistence cordons off from any Western influence the “post-Soviet” space, including the asserted ecclesiastical jurisdiction of the Russian Orthodox Church of the Moscow Patriarchate (Moscow Patriarchate), where Russian civilization and traditional values have a foothold.<sup>159</sup> Within this exclusive sphere, the “collective West” must cease criticizing Russia (and other “dissenting countries”) for perceived human rights violations and other conduct based on the principle of nonintervention and the need to respect “historical, cultural, and religious values and norms.”<sup>160</sup>

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158. Ironically, to achieve this, the report makes “special reference to very substantive studies...prepared by the Chinese Human Rights Research Society” (elsewhere in the report referred to as the “China Society for Human Rights Studies”), an organization widely recognized as controlled by the Chinese government. Highlighting this thinly veiled relationship, the report relies on human rights reporting ostensibly provided by the “Society” (see report footnotes 539, 547, 556, 580, 588, and 592), but which in fact is published directly by China’s State Council Information Office. See STATE COUNCIL INFO. OFF. OF THE PEOPLE’S REPUBLIC OF CHINA, HUMAN RIGHTS RECORD OF THE UNITED STATES IN 2018 (2019); see also Katrin Kinzelback, *Human Rights in Chinese Foreign Policy: A Battle for Global Public Opinion*, in HANDBOOK ON HUMAN RIGHTS IN CHINA (Sarah Biddulph & Joshua Rosenzweig eds. 2019) (noting the Chinese Society for Human Rights Studies is “a government controlled, non-governmental organization (GONGO) ...set up specifically to promote the PRC’s propaganda on human rights questions.”); Sui-Lee Wee & Stephanie Nebehay, *At U.N., China Uses Intimidation Tactics to Silence Its Critics*, REUTERS (Oct. 6, 2015), <https://www.reuters.com/investigates/special-report/china-softpower-rights/> [<https://perma.cc/V2NC-M7PE>] (archived Sept. 29, 2023) (reporting how China leverages its position at the UN to blunt criticism of its poor human rights record.).

159. As a corollary, the operation of Russia’s peaceful coexistence also shields other “dissenting countries” from Western intervention.

160. THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N, HUMAN RIGHTS SITUATION IN CERTAIN COUNTRIES (2021) [hereinafter HUMAN RIGHTS REPORT].

Alongside the Kremlin's entitlement to freely operate in this post-Soviet space, it asserts a continuing right to interfere in the internal affairs of states further afield. Here, the Kremlin uses allegations of human rights violations to conveniently cloak the advancement of its strategic interests,<sup>161</sup> insisting, for example, that the West embrace Russia's narrative of an unsullied victory during the Great Patriotic War to combat the scourge of Nazism. Further, it demands that rights protections be abandoned for certain vulnerable groups and individuals—be they religious, sexual/gender, or other—in the name of protecting Russia's honor and its vision of Christian civilization and traditional values. Finally, the Kremlin's rebooted version of peaceful coexistence demands that Western states protect the human rights of Russia's compatriots as “seriously aggravated” national minorities.<sup>162</sup> For the Kremlin, these protections necessarily include ensuring the unfettered activity of Kremlin-backed media outlets,<sup>163</sup> such as RT and Sputnik, and their myriad disinformation campaigns,<sup>164</sup> as well as shielding the Moscow Patriarchate's monopoly over Orthodoxy within

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161. This is not intended to suggest that certain Russian claims are invalid, but only to illustrate that it conveniently ignores the principle of non-interference when making these claims.

162. CERTAIN COUNTRIES, *supra* note 153.

163. This while the Kremlin severely limited or shuttered access to independent sources of news in Russia, whether by law, threat, or intimidation. *See, e.g.*, Zdravko Ljubas, *RSF to Russia: Stop Media Repression*, ORGANIZED CRIME & CORRUPTION REPORTING PROJECT (May 5, 2021), <https://www.occrp.org/en/daily/14345-rsf-to-russia-stop-media-repression> [<https://perma.cc/4N2U-QWDA>] (archived Sept. 19, 2023) (noting “journalists and NGOs around the world called on Russia to stop suppressing independent media [and stressed that] Russian independent media, and investigative journalism in particular, is under grave threat.”); *Russia: Kremlin Designates Dozhd TV “Foreign Agent” in Yet Another Attack on Press Freedom*, AMNESTY INT’L (Aug. 21, 2021), <https://www.amnesty.org/en/latest/news/2021/08/kremlin-designates-dozhd-tv-foreign-agent-in-yet-another-attack-on-press-freedom/> [<https://perma.cc/HHQ6-HBGA>] (archived Sept. 19, 2023) (noting that Russia is “decimating unbiased reporting and investigative journalism.”). Writing prior to her 2004 murder, Anna Politkovskaya (from the now banned *Novaya Gazeta*) recognized the brewing atmosphere for what it was: “We are hurtling back into a Soviet abyss, into an information vacuum that spells death from our own ignorance. . . . working as a journalist [demands] total servility to Putin. Otherwise, it can be death, the bullet, poison, or trial—whatever . . . Putin’s guard dogs, see fit.” Robert Coalson, *Fifteen Years After Her Murder, Journalists Say Politkovskaya’s Fears Have Been Realized*, RADIO FREE EUR./RADIO LIBERTY (Oct. 6, 2021), <https://www.rferl.org/a/russia-politkovskaya-murder-putin/31496138.html> [<https://perma.cc/JHU5-3RLZ>] (archived Sept. 19, 2023).

164. *See, e.g.*, Gordon Ramsay & Sam Robertshaw, The Policy Institute at the King’s College of London, *WEAPONISING NEWS: RT, SPUTNIK AND TARGETED DISINFORMATION* (2018), <https://www.kcl.ac.uk/policy-institute/assets/weaponising-news.pdf> [<https://perma.cc/H27L-PB59>] (archived Sept. 19, 2023). *See generally* EUVSDISINFO, <https://euvsdisinfo.eu/reading-list/#> [<https://perma.cc/JD89-ELYT>] (archived Sept. 20, 2023) (providing a collection and analysis of Russian disinformation campaigns).

its self-declared traditional territory outside of Russia.<sup>165</sup> Perhaps not coincidentally, as of 2020, each of these Kremlin interests abroad is now hard-coded into Russia's constitution.

#### 4. Russia's Contemporary Application of Noninterference in Ukraine

Ultimately, the case of Ukraine offers a striking example of how the Kremlin today has adapted the constitutionalized doctrines of peaceful coexistence and noninterference to pursue the same international objectives of power and control previously sought by the Soviet Union. Framing Russia's national interests through this lens facilitates Kremlin justifications for interference in Ukraine's domestic policy affairs, even including armed intervention, while also providing a ready-made legal construct to preclude the intervention of other states and the UNSC.

Although Russia's history of interference in Ukraine's internal affairs is much longer,<sup>166</sup> following the Euro-Maidan Revolution of 2014, it has consistently criticized and delegitimized Ukrainian authorities and alleged a raft of human rights abuses. For example, the Kremlin's 2014 *White Book on Violations of Human Rights and the Rule of Law in Ukraine* took aim at Ukraine's internal affairs, positing that an unconstitutional coup d'état put into power a Ukrainian government that undertook "widespread and gross violations of human rights and freedoms."<sup>167</sup>

The Kremlin's widely condemned 2014 decision to engage in direct armed intervention in Ukraine and its subsequent annexation of Crimea did not signal the end of Russia's intervention in that

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165. See, e.g., THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, HUMAN RIGHTS SITUATION IN UKRAINE (2023), [https://mid.ru/en/foreign\\_policy/humanitarian\\_cooperation/1448658/](https://mid.ru/en/foreign_policy/humanitarian_cooperation/1448658/) [<https://perma.cc/N6G7-AU3C>] (archived Sept. 20, 2023). This document was intended as "a further effort...to draw attention of the international community to a grim human rights situation in Ukraine with no signs of its improvement at this point." *Id.* Likewise, the Ministry of Foreign Affairs' *White Book on Violations of Human Rights and the Rule of Law in Ukraine*, is critical of human rights developments that impact Russia's national interests, namely: restrictions on Russia media, including the use of "counterpropaganda against Russia"; intolerance directed at the Ukrainian Orthodox Church of the Moscow Patriarchate; and ethnic and linguistic discrimination against Russians, including vandalism against Soviet monuments. THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, WHITE BOOK ON VIOLATIONS OF HUMAN RIGHTS AND THE RULE OF LAW IN IN UKRAINE (2014) [hereinafter WHITE BOOK], <http://static.kremlin.ru/media/events/eng/files/41d4da83fd4fce188b83.pdf> [<https://perma.cc/2YS8-B5YJ>] (archived Sept. 20, 2023).

166. "Of all the democracies in the region, though, none has suffered as much from Russian interference as Ukraine." Fernando Casal Bértoa & Zsolt Enyedi, *Ukraine, Russia, and the Bear Hug of Authoritarianism*, FOREIGN POL'Y (Mar. 21, 2022), <https://foreignpolicy.com/2022/03/21/russia-war-ukraine-authoritarianism-domestic-politics/> [<https://perma.cc/Z6S6-VHZZ>] (archived Sept. 20, 2023).

167. WHITE BOOK, *supra* note 165, at 63.



country.<sup>168</sup> Even while demurring, “[b]ut this is not our affair of course,”<sup>169</sup> Putin and other Russian officials consistently demanded the government of Ukraine take “steps towards restoring the economy and economic ties”<sup>170</sup> with the breakaway Luhansk and Donetsk People’s Republics (LPR and DPR) and “adopt a new constitution and put it to a referendum.”<sup>171</sup> Russian Foreign Minister Sergey Lavrov similarly denied any Russian interference in Ukraine’s internal affairs, even while offering that the country’s internal tensions could be resolved simply by complying with Kremlin diktats, devolving centralized power to enhance regional autonomy, and thereby ensuring greater protection for Russian interests:

We are convinced that this is absolutely correct way to achieve this . . . [T]he Ukrainian foreign ministry repl[ies] to us that Russian propositions are a provocation and interference into domestic affairs because they propose ideas which are incompatible with the foundations of the Ukrainian national identity. What ideas? Firstly, federalization, and secondly, official language. I do not know why they are incompatible with foundations of Ukrainian national identity.<sup>172</sup>

During the period following the annexation of Crimea in 2014, Russia’s Ministry of Foreign Affairs continued to release human rights reports on Ukraine, asserting that the “Kyiv authorities adopt[ed] legislative acts contrary to the rules of national law and international obligations,” including measures that impinged upon media outlets, members of public organizations, internally displaced persons, the Russian-speaking population, and “clergy and parishioners of the

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168. See, e.g., *Putin Acknowledges Russian Military Servicemen Were in Crimea*, RT (Apr. 17, 2014), <https://www.rt.com/news/crimea-defense-russian-soldiers-108/> [<https://perma.cc/C297-UT8E>] (archived Sept. 20, 2023) (according to Putin, “Crimean self-defense forces were of course backed by Russian servicemen. They acted very appropriately, but as I’ve already said decisively and professionally.”).

169. See, e.g., *Vladimir Putin Answered Journalists’ Questions on the Situation in Ukraine*, OFF. INT. RES. OF THE PRESIDENT OF RUSS. (Mar. 4, 2014), <http://en.kremlin.ru/events/president/news/20366> [<https://perma.cc/9NUB-LQUC>] (archived Sept. 20, 2023) [hereinafter *Putin Answered Journalists’ Questions*]. Elsewhere, after elaborate comments on Ukraine’s internal affairs, Putin remarked “Certainly, we are not going to intervene. It is not our business to impose a particular behaviour on Ukraine. But we have the right to express our opinion.” *Direct Line with Vladimir Putin*, Apr. 16, 2015, <http://en.kremlin.ru/events/president/news/49261> [<https://perma.cc/SW64-6ADL>] (archived Jan. 2, 2024).

170. *Direct Line*, *supra* note 169.

171. *Putin Answered Journalists’ Questions*, *supra* note 169.

172. MICHAEL KOFMAN, KATYA MIGACHEVA, BRIAN NICHIPORUK, ANDREW RADIN, OLESYA TKACHEVA & JENNY OBERHOLTZER, LESSONS FROM RUSSIA’S OPERATIONS IN CRIMEA AND EASTERN UKRAINE 47 (2017).

canonical Ukrainian Orthodox Church [(Moscow Patriarchate)].<sup>173</sup> This scrutiny of and interference in Ukraine's internal affairs even encompassed taking Ukraine's government to task for its anti-corruption measures, labeling them "ineffective in practice and [unable] to successfully overcome deep-rooted corruption in the Ukrainian state."<sup>174</sup> It also, rather specifically, criticized the "extremely unfavorable conditions for residents of [the Donbas that] impede the payment of pensions to them."<sup>175</sup>

Perhaps most dramatically, however, four events following 2014 best encapsulated the Kremlin's disdain for sovereignty and the principle of nonintervention as applied in the context of its actions in Ukraine. First, in 2018, Russia opted to support elections in the separatist regions of Donetsk and Luhansk conducted without the Ukrainian government's consent.<sup>176</sup> Sweden's UN ambassador described the event as "an attempt to redraw borders in Europe, backed by military power."<sup>177</sup> France's ambassador called the initiative "a flagrant attempt to undermine the sovereignty of the Ukrainian State [and urged] Russia [to] use its influence with the separatist entities to suspend the organization of the so-called elections."<sup>178</sup> At the OSCE, the United States argued the elections signaled a "continued effort to institutionalize and legitimize Russia's puppet 'People's Republics'" and called on Russia to disavow their results.<sup>179</sup>

For its part, Russia lamented that representatives from DPR and LPR were not invited to brief the UN Security Council on the planned elections.<sup>180</sup> Following the vote, the Kremlin communicated its respect for the "declaration of the will of the people of Donbass" and lauded the legitimacy of the elections as confirmed by "the unanimous opinion of the many observers from over 20 countries" who monitored the

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173. THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, THE HUMAN RIGHTS SITUATION IN UKRAINE (2020), [https://mid.ru/en/foreign\\_policy/humanitarian\\_cooperation/1437006/](https://mid.ru/en/foreign_policy/humanitarian_cooperation/1437006/) [<https://perma.cc/F9XJ-VDFW>] (archived Sept. 20, 2023).

174. *See id.*

175. *See id.*

176. In 2014, Russia declined to support a Security Council statement that would have criticized elections held in the Luhansk and Donetsk regions as running counter to the provisions of the Minsk Protocol. *See Russia Says it Blocked UN Statement on Elections in Donetsk, Luhansk as 'Inadequate'*, TASS (Nov. 3, 2014), <https://tass.com/russia/757991> [<https://perma.cc/AZV3-QHW8>] (archived Sept. 20, 2023).

177. U.N. SCOR, 73rd Sess., 8386th mtg. at 5, U.N. Doc. S/PV.8386 (Oct. 30, 2018).

178. *Id.* at 7.

179. Harry Kamian, Chargé d'Affaires, On the Illegal "Elections" in Donbas as delivered to the Special Permanent Council (Nov. 12, 2018), in U.S. MISSION TO THE OSCE, <https://osce.usmission.gov/on-the-illegal-elections-in-donbas/> [<https://perma.cc/HN6F-PZ2C>] (archived Sept. 29, 2023).

180. U.N. SCOR, *supra* note 177, at 2–3.

elections.<sup>181</sup> The sovereignty-eroding elections held in Ukraine's restive east, however, were not as legitimate as the Kremlin suggested. A report prepared by the European Platform for Democratic Elections, a group consisting of thirteen independent European citizen election observation organizations,<sup>182</sup> bluntly concluded that the election monitors invited by DPR and LPR "did not comply with the 'Code of Conduct for International Election Observers' endorsed by all relevant international election observation organisations, including ODIHR/OSCE."<sup>183</sup> The report further identified that the vast majority of non-Russian "international observers" had previously supported "various pro-Kremlin efforts that include . . . participation in politically biased and/or illegitimate electoral monitoring missions in Russia and elsewhere."<sup>184</sup>

Second, in 2019, President Putin issued a decree enabling Ukrainian citizens in the separatist regions of Donetsk and Luhansk to adopt Russian citizenship via an accelerated naturalization procedure. This decision, cynically justified based on human rights,<sup>185</sup> reflected the Kremlin's longstanding practice of "passportizing" populations abroad to serve Russian political ends.<sup>186</sup> Ukraine's

181. Maria Zakharova, Russian Foreign Ministry Spokesperson, Briefing by Foreign Ministry Spokesperson Maria Zakharova (Nov. 15, 2018), in THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, [https://mid.ru/en/foreign\\_policy/news/1578415/](https://mid.ru/en/foreign_policy/news/1578415/) [<https://perma.cc/NEM7-9JW5>] (archived Sept. 20, 2023).

182. EPDE is a signatory of the Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations, sponsored by the Global Network of Domestic Election Monitors (GNDEM). See *Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations*, GLOB. NETWORK OF DOMESTIC ELECTION MONITORS, <https://gndem.org/declaration-of-global-principles/> [<https://perma.cc/6NBH-4PFB>] (archived Sept. 24, 2023). In advance of its 2018 presidential elections, Russia's Ministry of Justice made the EPDE the first German organization to be added to its list "undesirable" foreign and international NGOs. *Russia to Eject German Democracy NGO*, DEUTSCHE WELLE (Apr. 14, 2018), <https://www.dw.com/en/russia-lists-german-ngo-european-platform-for-democratic-elections-as-undesirable/a-42974765> [<https://perma.cc/4ZUG-EDUP>] (archived Sept. 24, 2023).

183. ANTON SHEKHOVTSOV, EURO. PLATFORM FOR DEMOCRATIC ELECTIONS, FOREIGN OBSERVATION OF THE ILLEGITIMATE "GENERAL ELECTIONS" IN THE DONETSK PEOPLE'S REPUBLIC AND LUGANSK PEOPLE'S REPUBLIC IN NOVEMBER 2018 2 (2018).

184. *Id.*

185. Andrew Blake, *Russia Offers Passports to Residents of Occupied Eastern Ukraine; UN Asked to Intervene*, WASH. TIMES (April 24, 2019), <https://www.washingtontimes.com/news/2019/apr/24/russia-offers-passports-to-residents-of-occupied-e/> [<https://perma.cc/YPS3-3A47>] (archived Sept. 24, 2023). Previously, President Putin issued a decree recognizing passports issued by the self-proclaimed authorities in the separatist-held regions. *Russia Says Ukraine Passport Order Complies with International Law*, REUTERS (Feb. 20, 2017), <https://www.reuters.com/article/us-ukraine-crisis-documents-russia-idUSKBN15Z1OW> [<https://perma.cc/GW84-GHEC>] (archived Sept. 24, 2023).

186. During a UNSC discussion concerning Russia's decision, Poland's UN ambassador described "[s]o-called passportization [as] a well-known component of Russia's strategy of creeping annexation of Georgia's breakaway regions of Abkhazia and

foreign minister decried the move as “a continuation of aggression and interference in our internal affairs.”<sup>187</sup> The country’s UN ambassador added, “[D]istributing Russian passports in the occupied territories will make it practically impossible to conduct legitimate local elections there in accordance with the Ukrainian legislation and relevant OSCE standards . . . as envisaged by the Minsk agreements.”<sup>188</sup>

Third, in 2021, the Kremlin moved to integrate Donetsk and Luhansk into Russia’s national economy by authorizing the free movement of goods into Russia.<sup>189</sup> The Ukrainian government branded the decision “gross interference” in the country’s internal affairs.<sup>190</sup>

Finally, driving home Russia’s penchant for intervention in Ukraine’s domestic affairs well after Crimea’s annexation, on the eve of Russia’s 2022 invasion, President Putin observed:

I mean that the best decision would be for our colleagues in the Western countries not to lose face . . . and for Kiev itself to refuse to join NATO. In effect, in so doing, they would translate the idea of neutrality into life . . . the most important point is the demilitarisation, to a certain extent, of today’s Ukraine.<sup>191</sup>

This brief cataloguing of Kremlin actions in Ukraine in the wake of 2014 reveals no pretense of concern for the principle of noninterference. Simply put, like the Soviet Union before it, Russia intentionally discounted another state’s sovereignty for its own interests. This time, however, rather than using the banner of peaceful coexistence to defend international socialism, Putin used it to secure the dominance of Russian civilization—its history, language, culture, religion, economy, and also politics—in the post-Soviet space. As President Putin elaborated in 2021, before Russia’s invasion:

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South Ossetia.” U.N. SCOR, 74th Sess., 8516th mtg. at 12, U.N. Doc. S/PV.8516 (Apr. 25, 2019); see also Toru Nagashima, *Russia’s Passportization Policy Toward Unrecognized Republics*, 66 PROBLEMS OF POST-COMMUNISM 197 n.3 (2019) (suggesting Russia has used passportization in differing capacities to further its interests in different regions and situations).

187. Blake, *supra* note 185; see also *infra* Part IV(D).

188. U.N. SCOR, *supra* note 177, at 19.

189. *Putin Signs Decree on Humanitarian Support for People in Donetsk and Lugansk Republics*, TASS (Nov. 15, 2021), <https://tass.com/world/1361639> [<https://perma.cc/QFP4-GRVN>] (archived Sept. 24, 2023).

190. *Kyiv Blasts Putin Decree on Trade with Separatists in Eastern Ukraine*, RADIO FREE EUR./RADIO LIBERTY (Nov. 16, 2021), <https://www.rferl.org/a/ukraine-putin-decree-trade-separatist/31564172.html> [<https://perma.cc/N3U4-EB46>] (archived Sept. 24, 2023).

191. Vladimir Putin, President of Russ., *Vladimir Putin Answered Media Questions*, OFF. INT. RES. OF THE PRESIDENT OF RUSS. (Feb. 22, 2022), <http://en.kremlin.ru/events/president/news/67838> [<https://perma.cc/G95U-F832>] (archived Sept. 24, 2023).

Russians, Ukrainians, and Belarusians are all descendants of Ancient Rus, which was the largest state in Europe. [We] were bound together by one language . . . economic ties . . . and . . . the Orthodox faith. The spiritual choice made by St. Vladimir . . . largely determines our affinity today . . . . *I am confident that true sovereignty of Ukraine is possible only in partnership with Russia.* Our spiritual, human and civilizational ties formed for centuries and have their origins in the same sources . . . . It is in the hearts and the memory of people living in modern Russia and Ukraine, in the blood ties that unite millions of our families. Together we have always been and will be many times stronger and more successful. For we are one people.<sup>192</sup>

Emboldened by the constitutional amendments of 2020, the Kremlin's selective application of nonintervention and its downgrading of Ukraine's sovereignty as contingent on partnership with Russia carried through to the 2022 "special military operation." Just days before Russia's invasion, President Putin questioned outright the legitimacy of Ukraine's independence<sup>193</sup> and offered a litany of justifications for his decision to recognize the "independence and sovereignty" of DPR and LPR.<sup>194</sup> According to Putin, "modern Ukraine was entirely created by . . . Communist Russia . . . by . . . severing what is historically Russian land."<sup>195</sup> Ukraine "actually never had stable traditions of real statehood," and its "government . . . consistently pushes Ukraine towards losing its sovereignty."<sup>196</sup> If Ukraine was truly committed to "decommunization" and shrugging off Russia's influence, Putin suggested, it should welcome the loss of the Donbas, inasmuch as it was Lenin who "actually shoved [the territory] into Ukraine."<sup>197</sup>

Alongside this disparagement of Ukraine's sovereign equality, Putin invoked a long list of factors to justify his "long overdue decision" to recognize the breakaway republics. Several of these directly linked

192. Vladimir Putin, *On the Historical Unity of Russians and Ukrainians*, OFF. INT. RES. OF THE PRESIDENT OF RUSS. (July 12, 2021), <http://en.kremlin.ru/events/president/news/66181> [<https://perma.cc/9JQS-NPDX>] (archived Sept. 24, 2023) (emphasis added).

193. This was in contrast to previous assurances by Russia that it recognized Ukraine's territorial integrity. Television Interview with Sergey Lavrov, Foreign Minister of the Russian Federation, on Channel France 24, Moscow (Dec. 16, 2014), [https://mid.ru/en/foreign\\_policy/news/1723554/](https://mid.ru/en/foreign_policy/news/1723554/) [<https://perma.cc/Y8FN-65F5>] (archived Sept. 24, 2023).

194. Vladimir Putin, President of Russ., Address at the Kremlin (Feb. 21, 2022), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., [hereinafter Putin's Feb. 21st Address] <http://www.en.kremlin.ru/events/president/transcripts/67828> [<https://perma.cc/3CR3-K3MC>] (archived Oct. 22, 2023).

195. *Id.*

196. *Id.*

197. *Id.*

to Ukraine's internal affairs and to the overarching preoccupation with protecting Russia's civilizational heritage, such as the "Neanderthal and aggressive nationalism and neo-Nazism which have been elevated in Ukraine to the rank of national policy"; the "destruction of the Ukrainian Orthodox Church of the Moscow Patriarchate" and the "schism" caused by the establishment of the autocephalous Orthodox Church of Ukraine;<sup>198</sup> the "policy to root out the Russian language and culture and promote assimilation"; and the "condemn[ing of] landmarks of [Russian] history to oblivion, along with the names of state and military figures of the Russian Empire."<sup>199</sup>

Days later, in Putin's address announcing the invasion of Ukraine, he leaned into the same grievances to justify Russia's intervention. Some justifications, like receiving requests for assistance,<sup>200</sup> mirrored the Soviet rationales for the invasions of 1956 and 1968, as well as Russia's 2014 takeover of Crimea.<sup>201</sup> Putin, however, did not elect to act on this new request for "fraternal assistance" on the basis of preserving socialist unity. Instead, Russia's invasion supplanted Ukrainian sovereignty on the pretense of demilitarizing and de-Nazifying Ukraine, and "bring[ing] to trial those who perpetrated numerous bloody crimes against civilians, including against citizens of

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198. See Robert C. Blitt, *U.S. Interference in Ukraine's Autocephaly: An Ineffective, Unnecessary, and Unlikely Affair*, BYU L. INT'L CTR. FOR L. & RELIGIOUS STUD. (Jan. 9, 2020), <https://talkabout.iclrs.org/2020/01/09/u-s-interference-in-ukraines-autocephaly-an-ineffective-unnecessary-and-unlikely-affair/> [https://perma.cc/RR6T-F2BL] (archived Sept. 24, 2023).

199. Putin's Feb. 21st Address, *supra* note 194.

200. In President Putin's words, "The people's republics of Donbass have asked Russia for help." Vladimir Putin, President of Russ., Address at the Kremlin (Feb. 24, 2022), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/news/67843> [hereinafter Putin's Feb. 24th Address] [https://perma.cc/J9X8-LJLR] (archived Sept. 28, 2023). The spokeswoman for Russia's Foreign Ministry repeated almost verbatim: "I would like to point out that it is a special military operation waged to protect the people who have asked us for help. The appeal they made in 2022 was by far not the first one. It is a long story." Maria Zakharova, Russian Foreign Ministry Spokesperson, Briefing by Foreign Ministry Spokesperson Maria Zakharova (Feb. 25, 2022), in THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, [https://mid.ru/en/foreign\\_policy/news/1800470/#4](https://mid.ru/en/foreign_policy/news/1800470/#4) [https://perma.cc/R6U2-CUC2] (archived Sept. 20, 2023).

201. *Putin Answered Journalists' Questions*, *supra* note 169 (responding to a question about the use of armed force in Ukraine, President Putin reasoned: "we have a direct appeal from the...legitimate President of Ukraine, Mr Yanukovich, asking us to use the Armed Forces to protect the lives, freedom and health of the citizens of Ukraine."). Explaining the takeover of Crimea several years later, President Putin offered: "But how could we turn down the request of Sevastopol and Crimea, the people who lived there, to take them under our protection, under our wing? It was not possible." Vladimir Putin, President of the Russ., Vladimir Putin's Annual News Conference (Dec. 23, 2021), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/news/67438> [https://perma.cc/AZ4U-ZZDH] (archived Sept. 24, 2023).

the Russian Federation.”<sup>202</sup> Elaborating on Russia’s dismissal of Ukraine’s sovereignty, Foreign Minister Lavrov asserted that Ukraine was not entitled to the right of territorial integrity because its “neo-Nazi government in Kiev” failed to meet the standard of a government that “represent[s] the whole people belonging to the territory without distinction as to race, creed, or colour” under the UN’s 1970 Declaration on Friendly Relations and Co-operation among States.<sup>203</sup>

Behind the seemingly selfless justification of liberating Ukrainians from the scourge of Nazism, however, lurked a more naked intent to protect Russian status by burnishing its national identity as the inheritor of the Soviet Union’s glory and exceptionalism as a world power. As Russia’s ambassador to the UN put it less than ten days into the invasion: “We went to Ukraine . . . to bring . . . lasting peace. For that . . . [w]e need to cut out the malignant Nazi tumour that is consuming Ukraine and would have eventually begun to consume Russia.”<sup>204</sup> In other circumstances, combatting “Nazification” would reasonably be a laudable collective international objective. But here, even the Kremlin seemed to hedge its ability to serve as a standalone credible *causus belli* (“cause for war”). Thus, alongside the quest to de-Nazify, President Putin presented the “special military operation” as a response to the “collective” West’s effort to “destroy our traditional values and force on us their false values that would erode us, our people from within, the attitudes they have been aggressively imposing on their countries, attitudes that are directly leading to degradation and degeneration, because they are contrary to human nature.”<sup>205</sup>

Perhaps tacitly acknowledging the tenuous extent of the Nazi threat, Putin’s allusions to rebuffing Western values and dominance tapped into a larger justificatory framework that draws upon all the “dissenting countries pursuing independent foreign policy agendas and asserting their own historical, cultural, and religious values and norms.”<sup>206</sup> As Sergey Lavrov elaborated in a speech to the Arab

202. Putin’s Feb. 24th Address, *supra* note 200.

203. Sergey Lavrov, Foreign Minister of the Russian Fed’n, Foreign Minister Sergey Lavrov’s Remarks at the High-Level Segment of the U.N. Human Rights Council’s 49th Session (Mar. 1, 2022), in THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N, [https://mid.ru/en/foreign\\_policy/news/1802169/](https://mid.ru/en/foreign_policy/news/1802169/) [<https://perma.cc/9R8P-CMLU>] (archived Sept. 25, 2022).

204. U.N. SCOR, 77th Sess., 9011th mtg. at 16, U.N. Doc. S/PV.9011 (Apr. 5, 2022); Here too, the analogy with Soviet claims of unilateral intervention to protect world peace are obvious. See U.N. SCOR, U.N. Doc. S/PV 1441, *supra* note 111.

205. Putin’s Feb. 24th Address, *supra* note 200. The “internationalized” justifications of fighting Nazism and pushing back against Western civilization also figure prominently in the Kremlin’s effort to use the 2020 amendments to revitalize a national identity for Russia premised on its own civilizational glory, traditional values, millennial history, and imperial leadership. See *infra* Part IV.

206. THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N, HUMAN RIGHTS SITUATION IN THE UNITED STATES (2020), [https://washington.mid.ru/en/press-centre/news/human\\_rights\\_situation\\_in\\_the\\_united\\_states\\_of\\_america/](https://washington.mid.ru/en/press-centre/news/human_rights_situation_in_the_united_states_of_america/).

League, Russia's more sweeping rationale for the invasion of Ukraine was:

[N]ot about Ukraine, but about the future of the world order . . . We are at the beginning of very serious changes in the multilateral settings . . . which would not be dependent on the capricious behavior of the United States and its allies . . . which would be a movement towards real multilateralism, not to the multilateralism, which the West tries to impose on the basis of the exceptional role of the Western civilization in the modern world. The world is much richer than just Western civilization. Who but not many of you representing the ancient [Arab] civilizations should know this. And I think the movement is unstoppable.<sup>207</sup>

Like the Soviets of yesteryear, the Kremlin sought to mask its brutal national power interests behind a skewed understanding of international law fueled by Russian exceptionalism and a one-sided application of noninterference. Only with Russia's war aims fulfilled, the Kremlin declared, could Ukraine "begin to enjoy full sovereignty . . . We are sure that our family and spiritual ties are stronger than the aggressive and hateful policy of the current puppet government in Kiev."<sup>208</sup> In more practical terms, the Kremlin's ersatz version of "full sovereignty" for Ukraine would entail a dictated "permanent neutral and non-aligned status . . . the recognition of modern territorial realities [presumably acceptance of Russia's illegal annexations of Crimea and, subsequently, the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine<sup>209</sup>], and restoration of the status of the Russian language and the rights of its Russian-speaking citizens" in Ukraine's remaining territory.<sup>210</sup>

Channeling Soviet peaceful coexistence theory in this way, the Kremlin has merely replaced the vision of a socialist "family of states"

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207. Sergey Lavrov, Foreign Minister of the Russian Fed'n, Statement at a Meeting With the Permanent Representatives of the Member Countries of the Arab League (July 24, 2022), in THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, [https://mid.ru/en/foreign\\_policy/news/1823548/](https://mid.ru/en/foreign_policy/news/1823548/) [https://perma.cc/V7ST-MUYG] (archived Sept. 25, 2023).

208. Zakharova, *supra* note 200.

209. The UN General Assembly similarly declared that this latter illegal annexation had "no validity under international law" and did "not form the basis for any alteration of the status of these regions of Ukraine." U.N. General Assembly, *Resolution ES-11/4: Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations*, Oct. 12, 2022, U.N. Doc. A/RES/ES-11/4, ¶3.

210. Maria Zakharova, Russian Foreign Ministry Spokesperson, Briefing by Foreign Ministry Spokesperson Maria Zakharova (Mar. 29, 2022), in THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, [https://mid.ru/en/foreign\\_policy/news/1807016/#2](https://mid.ru/en/foreign_policy/news/1807016/#2) [https://perma.cc/TZ2B-7GGF] (archived Sept. 25, 2023).



enjoying limited sovereignty lorded over by the USSR with Russia overseeing its own enforced family living under the sacrosanct banner of Russian civilization. Substituting several rhetorical terms in Brezhnev's description of peaceful coexistence drives this point home. One need only replace "socialism" and "capitalist" with variations on "Russian civilization" and "Western" to recognize how the Kremlin has adopted peaceful coexistence to press its contemporary national interests in securing a multipolar order premised on reinstating Russia's imperial status and global influence:

When external and internal forces hostile to socialism try to turn the development of a given socialist country in the direction of restoration of the capitalist system, when a threat arises to the cause of socialism in that country—a threat to the security of the socialist commonwealth as a whole—this is no longer merely a problem for that country's people, but a common problem, the concern of all socialist countries.<sup>211</sup>

Following the illegal absorption of Crimea into Russia in 2014, the Kremlin was quick to invoke the Soviets' skewed application of nonintervention. Mimicking the Soviet approach, the Kremlin baldly asserted that any external scrutiny or criticism of affairs in the newly annexed territory would amount to internal interference *in violation of Russia's sovereignty*. Nor did a UN resolution affirming Ukraine's "sovereignty, political independence, unity, and territorial integrity," and rejecting as invalid the Russian-backed referendum in Crimea, temper this channeling of a very Soviet double standard on noninterference.<sup>212</sup>

For example, when confronted by alleged human rights violations in Crimea reported under the mandate of the UN's Human Rights Monitoring Mission in Ukraine (HRMMU), Russia's Foreign Ministry protested: "the Republic of Crimea is a constituent entity of the Russian Federation [and] the situation in Crimea is therefore not a part of the HRMMU's mandate."<sup>213</sup> Although Russia denied HRMMU all access, the monitoring mission continued "to closely follow the situation" in Crimea,<sup>214</sup> prompting the Kremlin to double down on its

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211. Schwartz, *supra* note 90.

212. G.A. Res. 68/262, ¶ 5 (Mar. 27, 2014).

213. *Comment by the Information and Press Department of the Ministry of Foreign Affairs on the latest report by the UN Human Rights Monitoring Mission in Ukraine*, THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N (Dec. 16, 2014), [https://mid.ru/en/foreign\\_policy/news/1723622/](https://mid.ru/en/foreign_policy/news/1723622/) [https://perma.cc/P9HF-USYG] (archived Sept. 27, 2023).

214. Ivan Šimonović, Assistant Sec'y-Gen. for Hum. Rts., Remarks to the Human Rights Council on Cooperation and Assistance to Ukraine in the Field of Human Rights (Mar. 22, 2016), in UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/statements/2016/03/remarks-ivan-simonovic-assistant->

non-interventionist stance: “the HRMMU’s mandate does not allow it to monitor the human rights situation in other countries [i.e. outside of Ukraine]. The Republic of Crimea and the Federal City of Sevastopol are Russian territory, and any attempt to include the assessment of the human rights situation in that Russian region in the mission’s report on Ukraine is inappropriate.”<sup>215</sup>

By the same token, Russia’s demand that the West not “intervene” in the Kremlin’s 2022 invasion channeled the same entitlement demanded by the Soviet Union over the socialist states of Eastern Europe. On the eve of war, President Putin offered this explicit warning about any potential interference with Russia’s plans:

I would now like to say something very important *for those who may be tempted to interfere in these developments from the outside*. No matter who tries to stand in our way . . . they must know that Russia will respond immediately, and the consequences will be such as you have never seen in your entire history.<sup>216</sup>

This express caution against “outside” intervention—where Russia itself was embarking on an armed aggression in violation of Ukraine’s sovereignty—has functioned as a mantra throughout the 2022 war. Elsewhere, Putin has claimed that “[i]f someone from the outside tries to intervene in Ukraine and create strategic threats for

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secretary-general-human-rights-human-rights-1 [https://perma.cc/59ZR-F43L] (archived Sept. 27, 2023). Russia has denied HRMMU access to Crimea since March 2014. *See* Rep. of the Hum. Rts. Council, at ¶2, U.N. Doc. A/HRC/36/CRP.3 (2017); *see also Disinfo: U.N. Report on Crimea is Based on Lies*, EUVSDISINFO, <https://euvsdinfo.eu/report/un-report-on-crimea-is-false/> [https://perma.cc/HX97-7BG7] (archived Sept. 27, 2023) (debunking Russian claims that UN reporting on the situation in Crimea is based on lies as all information is coming from Ukraine).

215. Maria Zakharova, Russian Foreign Ministry Spokesperson, Briefing by Foreign Ministry Spokesperson Maria Zakharova (Dec. 13, 2017), *in* THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N, [https://mid.ru/en/foreign\\_policy/news/1559241/](https://mid.ru/en/foreign_policy/news/1559241/) [https://perma.cc/W229-YZD8] (archived Sept. 27, 2023). HRMMU’s 2014 mandate expressly provides it will, “[m]onitor the human rights situation in the country, with particular attention to the Autonomous Republic of Crimea, Eastern and Southern regions of Ukraine, and provide regular, accurate and public reports by the High Commissioner on the human rights situation and emerging concerns and risks.” Off. of the High Comm’r for Hum. Rts., Agreement Between the Office of the High Commissioner for Human Rights and the Government of Ukraine Concerning the Deployment of a Short-Term UN Human Rights Monitoring Mission in Ukraine (Jul. 31, 2014), [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Agreement\\_with\\_Govt\\_31July2014.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/Agreement_with_Govt_31July2014.pdf) [https://perma.cc/Q69Q-47Y5] (archived Sept. 29, 2023).

216. Putin’s Feb. 24th Address, *supra* note 200 (emphasis added).

Russia, our response will be lightning fast.”<sup>217</sup> Likewise, the Kremlin has threatened that Russia would “give the most resolute response to the side, which will try somehow to get into Ukraine and get into the special military operation that the Russian Armed Forces are currently conducting in Ukraine.”<sup>218</sup>

These warnings against Western intervention, coupled with the Kremlin’s own brazen intervention, reinforce the contemporary centrality of the Soviet conception of “peaceful coexistence” in Russia today, including its built-in double standard concerning nonintervention. As much as the Soviets invoked the doctrine to prioritize the socialist project above the sovereignty of other states, it simultaneously operated to repel attempted international interference in those countries. Today, the same concept is used to reject international intervention while enabling Russia to frame its own interference as legitimate and necessary. Only today, rather than invoke preservation of the socialist order to erase Ukraine’s sovereignty, the Kremlin instead justifies its action based on a renewed emphasis on Russian civilization and its millennial history.

Appeal to this particularized narrative, steeped as it is in a primeval mission of imperialism and Orthodox values, entitles Russia to reclaim not only its regional dominion in the post-Soviet space, but also its status as a great power on the global stage.<sup>219</sup> As President Putin noted in his speech celebrating the annexation of Crimea, “[t]hey are constantly trying to sweep us into a corner because we have an independent position . . . Russia is an independent, active participant in international affairs; like other countries, it has its own national interests that need to be taken into account and respected.”<sup>220</sup>

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217. Yaroslav Lukov, *Ukraine War: Putin Warns Against Foreign Intervention*, BBC NEWS (Apr. 27, 2022), <https://www.bbc.com/news/world-europe-61252320> [https://perma.cc/QZ5Y-GAS5] (archived Sept. 27, 2023).

218. *Kremlin Warns Against Attempts to Interfere in Russia’s Special Operation in Ukraine*, TASS (May 12, 2022), <https://tass.com/politics/1449925> [https://perma.cc/4DP6-AFH3] (archived Sept. 27, 2023).

219. Alexander Agadjanian explains that despite its ambivalence towards Soviet history, the Moscow Patriarchate has sought to revive Russia’s historical “continuity” not by linking exclusively to the Soviet past, but rather by extending past it “into the pre-Soviet time.” Thus, in 2015, for example, Patriarch Kirill “firmly integrated the Soviet period into the narrative of uninterrupted, millennial continuity.” See Alexander Agadjanian, *Tradition, Morality and Community: Elaborating Orthodox Identity in Putin’s Russia*, 45 RELIGION, STATE & SOC’Y 39, 42 (2017). Putin has similarly tapped into this millennial worldview, asserting, “people will inevitably lose human dignity without the values of Christianity and other world religions, without the millennia-long history of moral norms and ethics.” *Id.* at 53.

220. Vladimir Putin, President of Russ., Address by the President of the Russian Fed’n (Mar. 18, 2014), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/news/20603> [https://perma.cc/2YGE-9B2R] (archived Sept. 27, 2023).

Returning to the 2020 constitutional amendments, this section has outlined the Soviet origins and use of peaceful coexistence and nonintervention to shape international law. In the context of Putin's recent actions in Ukraine, it becomes evident that the constitutionalization of these principles is no coincidence. Rather, it cements a specific Kremlin understanding that is intended to carve out for Russia the freedom to act as it sees fit within the post-Soviet space, regardless of competing sovereignties and international law, while simultaneously denying any similar ability to other actors. These constitutionalized principles of peaceful coexistence and noninterference therefore serve a dual purpose. On one hand, they undergird the Kremlin's move to secure constitutional supremacy for Russian law over international obligations and regional scrutiny. Wielded as sovereignty-enhancing principles, they benefit the Kremlin by furnishing an ostensible constitutional basis for strengthening Russia's rejection of unwanted international accountability. On the other, they function as sovereignty destroying tools for states that lie within the post-Soviet space and represent, in the Kremlin's view, bellwethers for the projection of Russian influence and civilization abroad.

The malleability of "peaceful coexistence" as a tool for rubber-stamping Russian conduct while rebuffing parallel action by others provides the Kremlin with a seasoned—though still conveniently hollow—vessel through which it can continue to assert its relevance and centrality over international law. Writing sixty years ago, Lipson's conclusion on the Soviet Union remains equally apt with respect to Russia today. Borrowing from the storied playbook of Soviet international legal theory, Putin's stance on human rights and armed intervention continues the task of "depreciat[ing] the existing process of international norm-formation and . . . enlarge[ing] the role to be reserved for [the Russian Federation] in those processes."<sup>221</sup> This posture—directed at retaining influence over the rules of the international order—is no less central for the Kremlin's goal of recapturing its lost status of empire and securing its place as a leading force in a multipolar world. From this context, not only does invoking peaceful coexistence and noninterference reinforce Putin's embrace of Soviet history, including its approach to international law, but as Paul Stephan has rightly observed, its constitutional revival signals affirmation that the Kremlin's "inherent (*jus cogens*) right . . . to reject any principle of international law . . . regarded as repugnant to its fundamental interests [has] survived the Soviet Union's demise."<sup>222</sup>

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221. Lipson, *supra* note 70, at 111.

222. Paul B. Stephan, *Wars of Conquest in the Twenty-First Century and the Lessons of History – Crimea, Panama, and John Bassett Moore*, 62 VA. J. INT'L L. 63, 87 (2021).

To be certain, the affirmation of Soviet-era international legal doctrines also functions to reinforce the sovereignty-related constitutional amendments that seek to bolster Russian exceptionalism and territorial control. As demonstrated in the section that follows, this manipulation of the fabric of international legal theory and state sovereignty operates in tandem with the Kremlin's cementing of a new civilizational identity to establish a constitutionally validated launchpad for Russia's invasion of Ukraine.

#### IV. CONSTITUTIONALIZING A CIVILIZATIONAL IDENTITY TO DEFEND

Lauri Mälksoo attributes Russia's contemporary approach to international legal theory and its prioritizing of sovereignty to its foundational idea of "civilization," what he labels "this historically ambiguous and laden concept."<sup>223</sup> According to Mälksoo, "in Putin's Russia we have witnessed the come-back of arguments on historical, cultural, and civilizational distinctiveness in debates about international law, Russia's hostile relationship with the West, and skepticism about the course of globalization."<sup>224</sup> And indeed, the Kremlin's view of Russian civilizational identity—and specifically its uniqueness, history, rootedness, culture, and traditional values—is today a driving force behind its push for multipolarity as a means of securing the country's sovereignty and preminent status on the international stage.

This interlinking of Russian civilization with sovereignty and multipolarity is omnipresent in remarks by Russian government officials. As President Putin recently wrote, "values [such] as selflessness, patriotism, love for their home . . . , family, and Motherland remain fundamental and integral to the Russian society to this day. These values are, to a large extent, the backbone of our country's sovereignty."<sup>225</sup> And in Foreign Minister Lavrov's words,

The process of shaping the polycentric world order is an objective trend that reflects the redistribution of global balance of forces and increasing the factor of cultural and civilizational identity of peoples. All of us, even those used to bossing the world around, will have to adapt to this reality.<sup>226</sup>

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223. LAURI MÄLKSOO, *RUSSIAN APPROACHES TO INTERNATIONAL LAW* 141 (2015).

224. *Id.* at 10.

225. Vladimir Putin, *The Real Lessons of the 75th Anniversary of World War II*, NAT'L INT. (June 18, 2020), <https://nationalinterest.org/feature/vladimir-putin-real-lessons-75th-anniversary-world-war-ii-162982> [<https://perma.cc/SN62-ALBZ>] (archived Sept. 29, 2023).

226. Sergey Lavrov, Minister of Foreign Affs. of the Russian Fed'n, Statement at the 72nd Session of the U.N. General Assembly (Sept. 21, 2017), in UNITED NATIONS,

Stated differently, Russia's push for muscular sovereignty and multipolarity is premised on its sense of self as "one of the centres of world civilization"; it wields sovereignty to demand international recognition for its civilizational uniqueness, to secure pride of place within that international ordering, and to validate national policies that are sourced and justified in this identity.<sup>227</sup> The projection and defense of this civilizational identity is intertwined with the Kremlin's exceptionalist interpretation of sovereignty and international law, and it lies at the crux of its so-called special military operation.

With an eye towards unpacking these civilizational values and concepts to demonstrate how they function to justify Russia's invasion of Ukraine, it is essential to recall that these seemingly vital civilizational markers only obtained constitutional status as part of the amendments ratified in 2020. Prior to this point, Putin's effort to build out a viable new post-Communist identity certainly referenced Russia's history, its former imperial and great power status, and its role as the guardian of traditional values and compatriots abroad. But these efforts lacked the formalized blessing of a constitutional touchpoint.

In 2020, the Kremlin hardwired four hallmarks of its rebooted Russian civilizational identity into the constitution. Each of these concepts plays a central role in the Kremlin's attempts to validate its invasion of Ukraine: First, resuscitating and rehabilitating Russia's connection to Soviet world power; second, cultivating Russia's victory over fascism, especially by protecting "historical truth" and prohibiting "falsification"; third, anchoring Russia's historical persona still deeper, in a millennial history tied up in imperial glory and traditional values of Russian Orthodoxy; and finally, entrenching a muscular obligation to defend compatriot populations living abroad as a means of validating Russia's global civilizational footprint.

Taken together, these newly minted constitutional norms function to establish Russia as a foil for Western identity, and as a state entitled to regional deference (including territorial claims), control over its historical legacy, including the "truth," and world power status. Similar to the constitutionalization of peaceful coexistence, these concepts also operate to reinforce a perspective of Russian exceptionalism. Moreover, like peaceful coexistence and

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[https://gadebate.un.org/sites/default/files/gastatements/72/ru\\_en.pdf](https://gadebate.un.org/sites/default/files/gastatements/72/ru_en.pdf)  
[<https://perma.cc/L38R-5TZS>] (archived Sept. 29, 2023).

227. See Sergey Lavrov, Minister of Foreign Affs. of the Russian Fed'n, Remarks and Answers to Questions at the Terra Scientia on Klyazma River National Educational Youth Forum (Aug. 11, 2017), in THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, [https://www.mid.ru/en/foreign\\_policy/news/-/asset\\_publisher/cKNonkJE02Bw/content/id/2835310](https://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2835310) [<https://perma.cc/6Y6D-WEDS>] (archived Sept. 29, 2023).

noninterference, these civilizational markers carry not only internal implications for Russian society, but also extraterritorial ones that inform the Kremlin's proffered rationales for military action. In other words, as Paul Stephan has rightly observed, the constitutional amendments implicating Russian civilization "entail[] a duty to defend that civilization, not just within the immediate territory of the Russian Federation, but wherever it has put down historic roots and has a present manifestation."<sup>228</sup>

A. *Legal Successor to the USSR: Resuscitating, Rehabilitating, and Defending Russia's Lost Legacy*

Following the 2020 amendments, the Russian constitution now asserts under article 67.1(1) that the state is "the legal successor of the Union of SSR within its territory, and a legal successor (legal continuator) of the Union of SSR as regards membership in international organisations and their bodies."<sup>229</sup> This provision signals a significant break from the 1993 constitution. As Paul Kalinichenko and Dmitry Kochenov have observed: "The 1993 Russian Constitution gave 'sovereignty' a new meaning and rejected all the core elements of the Soviet legal heritage, in particular with regard to the implementation and application of international law within the national legal order."<sup>230</sup> Reversing this rejection, Putin's amendment makes an express and formal linkage between the Russian Federation and the USSR. For Mälksoo, this decisive step crystalizes "contemporary Russia's constitutional commitment to the legacy of the Soviet Union."<sup>231</sup>

Several immediate consequences flow from the decision to constitutionally reconnect Russia with the USSR. First, and foremost, the move reclaims at the constitutional level a direct linkage between Russia's and the USSR's status as actors on the international stage. Notably, it also would suggest that Russia's retention of the USSR's permanent seat on the UN Security Council is non-negotiable.<sup>232</sup>

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228. Stephan, *supra* note 222, at 87.

229. KONSTITUTSIYA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] art. 67.1(1) (Russ.).

230. Paul Kalinichenko & Dmitry Vladimirovich Kochenov, *Introductory Note to Amendments to the 1993 Constitution of the Russian Federation Concerning International Law (2020)*, 60 INT'L LEGAL MATERIALS 341, 341–346 (2021).

231. Mälksoo, *supra* note 33, at 84.

232. No State opposed Russia's assumption of the USSR's rights and obligations at the UN: "Russia moved into the position of the Soviet Union in the depositary lists of multilateral treaties as well as in the assembly rooms of the Organizations. Eventually only the flags and the delegation plates changed." Hubert Beemelmans, *State Succession in International Law: Remarks on Recent Theory and State Praxis*, 15 B.U. INT'L L.J. 71, 81. But plainly, the issue of Russia's permanent membership in the UN Security Council has resurfaced. See Kevin Cramer, *Colleagues Call for Russia to be Expelled from UN*

Drawing this express legal connection also confirms the intentional constitutional inauguration of Soviet era legal doctrine, including peaceful coexistence and noninterference, discussed above. Indeed, the assertion that Russia in essence is the successor to the Soviet Union is the first critical step in rehabilitating Soviet history and harnessing it as a positive aspect of Russia's contemporary civilizational identity.

Beyond these changes, however, Jakub Sadowski suggests a more sweeping civilizational purpose driving the amendment to formally reclaim the USSR's international standing and obligations. Given that the "constitutional confirmation of Russia's status as a successor to the Soviet Union [comes] 27 years after the adoption of the [1993] Constitution and 29 years after the Belovezha Accords, [it] must be based on other than purely legal grounds."<sup>233</sup>

On this question, Sadowski's semiotic-cultural analysis of the amendment's text is revealing. Unpacking more fully the successor/continuator language contained in this provision signals the Kremlin's intention to convey more than just an inheritance of the USSR's legacy. According to Sadowski, the compound term "*Pravoprodolzhatel*," used to denote a legal continuator, is "an endemic term that appears in legal, political and journalistic discourse in one single context in which Russia is presented as the continuator of the statehood of the Soviet Union *and the Russian Empire*."<sup>234</sup> Thus, while drawing a clear linkage to the legal status of the USSR, the amendment also signals an incorporation of Russia's imperial past. This fuller historical embrace simultaneously constitutionalizes the sense of civilizational exceptionalism and entitlement claimed by the Kremlin, as succinctly evidenced by Sergey Lavrov: "Russia rightfully [in Russian: *po pravu*—in this context, 'due to Russia's very essence']

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*Security Council*, KEVIN CRAMER: U.S. SENATOR FOR N.D. (Mar. 1, 2022), <https://www.cramer.senate.gov/news/press-releases/sen-cramer-colleagues-call-for-russia-to-be-expelled-from-un-security-council> [<https://perma.cc/AZ5F-FE2Y>] (archived Sept. 29, 2023).

233. Jakub Sadowski, *Amendments of 2020 to the Russian Constitution as an Update to Its Symbolic and Identity Programme*, 35 INT'L J. SEMIOT L. (2022) 723, 730. See generally *The Belavezha Accords Signed*, BORIS YELTSIN PRESIDENTIAL LIBR., <https://www.prilib.ru/en/history/619792> [<https://perma.cc/7SVN-XYR3>] (archived Sept. 29, 2023) (the 1991 Belovezha Accords, signed by the leaders of Russia, Ukraine, and Belarus, heralded the dissolution of the Soviet Union and establishment of the Commonwealth of Independent States in its place).

234. Sadowski, *supra* note 233, at 731 (emphasis added). The term 'pravoprodolzhatel' so used appears for the first time in the preamble to the Federal Law of 1999 'On the State Policy of the Russian Federation towards Compatriots Abroad'. See Federal'nyi Zakon RF o Gosudarstvennoi Politike Rossiiskoi Federatsii v Otnoshenii Sootechestvennikov Za Rubezhom [Federal Law of the Russian Federation Concerning the Compatriots Abroad], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1999, No. 22, Item 2670.



deserves a place among the main centers of power.”<sup>235</sup> From this perspective, article 67.1(1) therefore espouses a Russian civilizational identity that demands pride of place within the international community, with all the trappings that might attach to such standing, including an exceptionalist freedom to act on irredentist claims.

The constitutionalization of Russia’s civilizational identity, including its reclamation of Soviet and imperial aspects, are made even starker when examining amended article 67.1 in its entirety. As Sadowski observes, “The whole of Article 67.1 definitely refers to the idea of the *continuity of the Russian state in all its incarnations*.”<sup>236</sup> This critical project is elaborated in the provisions that build on article 67.1(1) discussed below.

### B. *Protector of Historical Truth / Falsification*

Furthering President Putin’s push to rehabilitate Russia’s Soviet era, article 67.1(3) “honours the memory of the defenders of the Fatherland, ensures protection of historical truth [and prohibits] [d]iminution of the heroic deed of the people defending the Fatherland.”<sup>237</sup> To be certain, the pivotal role played by the Soviet army in defeating Hitler’s forces cannot be understated. But this provision constitutionally cements the narrative of Russia’s “Great Patriotic Victory” over Nazi Germany at the cost of translating any criticism or accounting of other objectionable Soviet-era policies into seditious acts. To further its quest for a cohesive and unifying civilizational identity, the Kremlin in essence appeals to the glory, perseverance, and tenacity demonstrated by the people of the Soviet Union, while erasing the horrors and other unpleasantries associated with the totalitarian regime’s iron-fisted and devastating rule.

The decision to constitutionalize a historical “truth”—and constitutionally prohibit any challenge to this narrative—also fulfills Putin’s longstanding desire to shield Russia’s legacy and silence any historical accounting that comes at the expense of Russia’s virtue. Putin’s effort to cordon off and protect a selective reconstruction of the Soviet Union’s record<sup>238</sup> reflects his intention to control history in the

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235. Alicja Curanović, *Russia’s Contemporary Exceptionalism and Geopolitical Conservatism*, in CONTEMPORARY RUSSIAN CONSERVATISM: PROBLEMS, PARADOXES, AND PERSPECTIVES 207, 222 (Mikhail Suslov & Dmitry Uzlaner eds., 2019).

236. Correspondence with Jakub Sadowski (May 15, 2022) (on file with the author) (emphasis added).

237. KONSTITUTSIYA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] arts. 67.1(3) (Russ.).

238. In 2009, for example, then President Dmitry Medvedev established an Historical Truth Commission. According to the BBC, the Commission evidenced the government’s reliance on a “shining, sacred, memory of victory to give their people something to believe in.” James Rodgers, *Russia Acts Against ‘False’ History*, BBC NEWS (July 24, 2009), <http://news.bbc.co.uk/2/hi/europe/8166020.stm> [<https://perma.cc/XJ5B->

ideological “war of memories” unfolding with former Soviet satellite states seeking to confront the totalitarian similarities between Soviet Communism and Nazism.<sup>239</sup> As Mark Edele has articulated, rather than “critique the past to build a better future,” Putin, as a “positive nationalist,” has embraced this sanitized historical memory to construct “a monolithic, triumphalist narrative [to] underwrite[] [his] authoritarian state.”<sup>240</sup> Significantly, this historical memory narrative has become a “cornerstone of Russia’s foreign policy,” demanding compliance from the international system.<sup>241</sup> As President Putin put it:

We will put a sock in the rotten mouths that some people abroad keep opening to achieve immediate political goals . . . We will shut them up with true, basic information . . . We will put a sock in the mouths of all those who are trying to twist history, to misrepresent it, to belittle the role of our fathers and grandfathers, of our heroes who fell dead defending their motherland and actually the whole world from the brown plague [fascism] . . . We will shut those rotten mouths forever with those documents in order to teach them a lesson.<sup>242</sup>

For the Kremlin, those seeking to challenge this newly constitutionalized narrative—and in so doing, undercut Russia’s status and entitlement—are necessarily fascist in orientation; they wield “falsification” to foment extremism that in turn endangers Russia’s claim to global leadership as the vanquisher of the Nazi scourge. To confront this threat, Russia’s 2016 FPC calls for “firmly countering any and all . . . attempts to rewrite history and use it to stir up confrontation and revanchism in global politics or attempts to revise the outcomes of World War II.”<sup>243</sup>

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LQU4] (archived Sept. 29, 2023). The commission was disbanded in February 2012 by presidential order. Ivan Kurilla, *The Implications of Russia’s Law Against the “Rehabilitation of Nazism”*, PONARS EURASIA (Aug. 12, 2014), <https://www.ponarseurasia.org/the-implications-of-russia-s-law-against-the-rehabilitation-of-nazism/> [https://perma.cc/LX5K-75AL] (archived Sept. 29, 2023).

239. Mark Edele, *Fighting Russia’s History Wars: Vladimir Putin and the Codification of World War II*, 29 HIST. & MEMORY 90, 108 (2017) (quoting Igor Torbakov).

240. *See id.* at 109.

241. *See* Ilya Nuzov, *Freedom of Symbolic Speech in the Context of Memory Wars in Eastern Europe*, 19 HUM. RTS. L. REV. 231, 232 (2019).

242. *Putin Says He Rejects Soviet-Style Leaders For Life*, RADIO FREE EUR./RADIO LIBERTY (Jan. 18, 2020), <https://www.rferl.org/a/russia-s-putin-rejects-soviet-style-leaders-for-life/30384778.html> [https://perma.cc/8M3K-KPJ6] (archived Sept. 29, 2023).

243. Ob utverzhdenii Kontseptsii vneshney politiki Rossiyskoy Federatsii [On the Approval of the Foreign Policy Concept of the Russian Federation], SOBRANIE ZAKONODATEL’STVA ROSSIYSKOY FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2016, No. 640, art. 45(i).

More explicitly, in 2017 Putin further signaled the strategic importance attributed to securing universal acceptance of the Kremlin's vision of truth, warning that "falsification and manipulation of historical facts leads to the disunity of countries and peoples, to the emergence of new dividing lines, creating the image of an enemy."<sup>244</sup> Three years later, Putin amplified this message, arguing that efforts to tarnish Russia's role in WWII pose nothing less than

a threat to the fundamental principles of the world order, [and] also raises certain moral and ethical issues. Desecrating and insulting the memory is mean. Meanness can be deliberate, hypocritical and pretty much intentional . . . . Neglecting the lessons of history inevitably leads to a harsh payback. We will firmly uphold the truth based on documented historical facts.<sup>245</sup>

One battlefield in the larger "war of memories" that embodies the "twisted" history President Putin would like to "shut up" is the removal, relocating, or vandalizing of Soviet-era WWII monuments across former Communist Bloc states.<sup>246</sup> On this issue, the Kremlin unsurprisingly has abandoned any pretense of non-interference. Instead, it has decried such incidents as "a criminal war on monuments—we used to say it was 'unscrupulous' or 'unworthy,' but it is probably time we stop using diplomatic language, and speak bluntly."<sup>247</sup> Perhaps inspired by Putin's "gloves off" approach to defending the nation's prestige, in 2020 Russian legislators moved to confirm the extraterritorial intention attached to shielding "the heroic deed of the people defending the Fatherland." To this end, the Duma

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244. *Putin: Falsification, Manipulation of History Lead to Global Disunity*, SPUTNIK NEWS (Apr. 20, 2017), <https://sputniknews.com/politics/201704201052809033-putin-history-falsification-manipulation-nazism/> [https://perma.cc/3BYW-63ZA] (archived Sept. 29, 2023).

245. Putin, *supra* note 221.

246. As a window into this conflict, Bulgaria, the Czech Republic, Estonia, Hungary, the United States and others explicitly condemned Russia's efforts to "falsify history" on the 75th anniversary of the end of World War II: "Manipulating the historical events that led to the Second World War and to the division of Europe in the aftermath of the war constitutes a regrettable effort to falsify history." See Peter Dickinson, *US Accuses Russia of "Falsifying WWII History"*, ATL. COUNCIL (May 7, 2020), <https://www.atlanticcouncil.org/blogs/ukrainealert/us-accuses-russia-of-falsifying-wwii-history/> [https://perma.cc/YRS5-8WRK] (archived Sept. 29, 2023).

247. See Maria Zakharova, Russian Foreign Ministry Spokesperson, Briefing by Foreign Ministry Spokesperson Maria Zakharova (Jan. 23, 2020), in THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, [https://archive.mid.ru/en/foreign\\_policy/news/-/asset\\_publisher/cKNonkJE02Bw/content/id/4004544](https://archive.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4004544). Predictably, Russia's invasion of Ukraine has quickened the pace of states reconsidering the placement of Soviet era war memorials. See Ott Tammik, *Kremlin Escalates Estonian Row Over Removing Soviet-Era Tank*, BLOOMBERG NEWS (Aug. 5, 2022), <https://www.bloomberg.com/news/articles/2022-08-05/kremlin-escalates-estonian-row-over-removing-soviet-era-tank> (subscription required) [https://perma.cc/Y7FE-NPWM] (archived Sept. 23, 2023).

amended Russia's Criminal Code to prohibit destruction or damage to war memorials within Russia, *as well as abroad*, with convictions punishable by a fine of up to approximately \$40,000, three years of forced labor, or imprisonment.<sup>248</sup> This provision added to the existing criminal code governing falsification, which already prohibited the "dissemination of knowingly false information about the activities of the USSR during World War II."<sup>249</sup>

To be certain, the constitution's new obligation to protect "historical truth" and prohibit any besmirching of Russia's "Great Patriotic War" is about more than preserving war memorials. For the Kremlin, those states daring to reject or contextualize the legacy of Soviet occupation are the vanguard for "falsification of history" and embody nothing less than "the creeping rehabilitation" and glorification of Nazism.<sup>250</sup> As such, article 67.1(3) of the constitution builds on article 67.1(1) by more deeply and directly rekindling a nostalgic and powerful connection to Soviet military glory, "as the destroyer of Nazism, a superpower, and the second pole in a once bipolar world."<sup>251</sup> This connection "can be invoked whenever Russia is painted as an aggressor," providing the Kremlin with an easily deployable and familiar "presumption of innocence and just cause" it can communicate to the domestic population and others.<sup>252</sup> Moreover, appealing to this revered legacy facilitates "the Kremlin's drive to centralize power" by branding any opposition to it as falsification, or graver still, a threat to Russia's national unity.<sup>253</sup>

Driving this point home, Sadowski has observed that constitutionalizing this vision of national heroism cloaks the Kremlin in "the function of protecting an identity programme based on the mythologeme of defence."<sup>254</sup> The effect of propping up this righteous

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248. See Federal Law N 112-FZ "On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation", CONSULTANTPLUS, (emphasis added) [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_349573/3d0cac60971a511280cbb229d9b6329c07731f7#dst100010](https://www.consultant.ru/document/cons_doc_LAW_349573/3d0cac60971a511280cbb229d9b6329c07731f7#dst100010) [<https://perma.cc/D9VK-RJPK>] (archived Sept. 29, 2023); see also "Criminal Code of the Russian Federation" N 63-FZ, CONSULTANTPLUS [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/ce7af482a33b637b65c85f433ea3f82d916cb418/](https://www.consultant.ru/document/cons_doc_LAW_10699/ce7af482a33b637b65c85f433ea3f82d916cb418/) [<https://perma.cc/NN5H-95YF>] (archived Sept. 29, 2023).

249. See Federal Law N 128-FZ "On Amendments to Certain Legislative Acts of the Russian Federation", CONSULTANTPLUS [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_162575/3d0cac60971a511280cbb229d9b6329c07731f7#dst100009](https://www.consultant.ru/document/cons_doc_LAW_162575/3d0cac60971a511280cbb229d9b6329c07731f7#dst100009) [<https://perma.cc/Y5T7-N7EL>] (archived Sept. 29, 2023).

250. See Zakharova, *supra* note 247.

251. Kevork K. Oskanian, *A Very Ambiguous Empire: Russia's Hybrid Exceptionalism*, 70 EUR.-ASIA STUD. 26, 42 (2018).

252. Gregory Carleton, *Why Russia Thinks It's Exceptional*, THE CONVERSATION (Oct. 17, 2017), <https://theconversation.com/why-russia-thinks-its-exceptional-85240> [<https://perma.cc/E2D3-UGRY>] (archived Sept. 30, 2023).

253. *Id.*

254. Sadowski, *supra* note 233, at 730.

legacy is self-evident: “When the founding principle for political action is such a universally painful and important memory—and the propaganda machine has been going on all cylinders—it’s almost impossible *not* to get the nation’s support.”<sup>255</sup>

Putin’s “harsh payback” for anyone daring to besmirch Russia’s reputation had already begun even before the 2022 invasion of Ukraine. As noted above, the Kremlin made combatting any “attempts to falsify history” or to “revise the results of the Second World War” an explicit plank in its successful candidacy for election to the UNHRC for 2021–2023.<sup>256</sup> But for its ejection from that body after the onset of the invasion, the Kremlin was poised to use its global platform at the UNHRC to expand its domestic and international efforts to protect “truth.”

Russia’s colossal 2020 report, *Human Rights Situation in Certain Countries*, further confirms the intention to position falsification and distortion of history as the ur-source of all international evil, including Russophobia.<sup>257</sup> From this flawed departure point, the report posits that the “war waged against historical truth creates . . . new threats for the modern society . . . [including] racist and xenophobic ideologies,” and “frequent attacks against traditional values organized by those who propagate ultraliberal ideas.”<sup>258</sup> These trends, the report concludes, aggravated the “human rights situation of national

255. Tikhon Dzyadko, *Putin Is Using WWII for Propaganda Because It’s the Best Memory That Russia Has*, NEW REPUBLIC (Apr. 22, 2014), <https://newrepublic.com/article/117479/russia-world-war-ii-victory-putins-obsession> [<https://perma.cc/Y87E-WUPS>] (archived Sept. 29, 2023).

256. This platform presented a host of challenges for the international system. See discussion *supra*, notes 143–52. No less disturbing, leveraging the UNHRC to challenge factual information could have amplified the Kremlin’s larger disinformation (*dezinformatsiya*) campaign to undercut the West, divide European states, and undermine the internal stability of vulnerable societies. See Elizabeth Grimm Arsenault & Joseph Stabile, *Confronting Russia’s Role in Transnational White Supremacist Extremism*, JUST SEC. (Feb. 6, 2020), <https://www.justsecurity.org/68420/confronting-russias-role-in-transnational-white-supremacist-extremism/> [<https://perma.cc/G9FZ-TMEU>] (archived Sept. 29, 2023) (noting Russia’s broader misinformation project intends “to sow discord in Western democracies and influence transcontinental relations.”); see also Resolution on the Importance of European Remembrance for the Future of Europe, EUR. PARL. DOC. P9\_TA(2019)0021 (2019) (noting “efforts of the current Russian leadership to distort historical facts and whitewash crimes committed by the Soviet totalitarian regime [represent] a dangerous component of the information war waged against democratic Europe.”).

257. For example, the report claims “Estonian authorities continue to impose misinterpretation of joint Russian-Estonian history based on nationalist ideology and Russophobia.” HUMAN RIGHTS REPORT, *supra* note 160. More generally EUvsDisinfo, a project of the EU’s External Action Service, observed that the Kremlin’s disinformation narrative “labels anyone daring to challenge the Kremlin’s version as ‘Russophobic.’” *Disinfo: The West is Trying to Review the Results of the Nuremberg Trials*, EUVSDISINFO (July 5, 2020), <https://euvsdisinfo.eu/report/the-west-is-trying-to-review-the-results-of-the-nuremberg-trials/> [<https://perma.cc/54UA-ZV6J>] (archived Sept. 29, 2023).

258. HUMAN RIGHTS REPORT, *supra* note 160, at 4–5.

minorities and ethnic groups, [especially for] the Russian-speaking population in the Baltic countries and Ukraine.”<sup>259</sup> Thus, from the report’s perspective, anyone who defies Russia’s historical memory and traditional values is branded either “Nazi and ultraright”<sup>260</sup> or “ultraliberal.” In both instances, these perceived attacks on an all-powerful but pure vision of Russian civilization are framed as threatening Russia’s national interests by undermining the state’s prestige and endangering Russian compatriots living abroad.

It bears recalling that despite Russia’s professed commitment to combatting Nazism, its actual contemporary contribution to the cause is dubious at best. Numerous reports have documented the Kremlin’s own long-standing effort to stoke extremist and nationalist sentiment abroad. Through a systematic campaign of direct and indirect support, the Kremlin has sought to “galvani[ze] far-right groups across the world to destabilise the European democratic order, undermine Western alliances, and create havoc within Western democratic states.”<sup>261</sup> For example, “Russia’s bot and troll hordes amplified far-right memes during the 2016 U.S. presidential election”<sup>262</sup> while “fight clubs, neo-Nazi soccer hooligans, and motorcycle gangs” all operate as nonstate “conduits for the Kremlin’s influence operations in Western countries . . . [with] Russia’s intelligence services co-opt[ing] fringe radicals and angry young men to try to undermine Western democracies from within.”<sup>263</sup> In the realm of political parties abroad, “Russian cash and charm” have been used to “woo Europe’s far-right populist parties . . . to strengthen the Kremlin’s political influence.”<sup>264</sup>

259. *Id.* at 5.

260. *Id.* This apparent inconsistency aligns with a RAND study that described Russia’s contemporary propaganda efforts as a “firehose of falsehood”, based on its distinctive lack of commitment to objective reality and consistency. CHRISTOPHER PAUL & MIRIAM MATTHEWS, RAND CORP., THE RUSSIAN “FIREHOSE OF FALSEHOOD” PROPAGANDA MODEL: WHY IT MIGHT WORK AND OPTIONS TO COUNTER IT, RAND CORPORATION (2016), <https://www.rand.org/pubs/perspectives/PE198.html> [https://perma.cc/63GA-2F33] (archived Sept. 29, 2023).

261. See C.J. Werleman, *The New Far Right is Uniting Globally and Russia is Capitalising on It*, TRT WORLD (July 31, 2018), <https://www.trtworld.com/opinion/the-new-far-right-is-uniting-globally-and-russia-is-capitalising-on-it-19279> [https://perma.cc/DZ44-C5WC] (archived Sept. 29, 2023).

262. See Benjamin Wallace, *The Prep-School Nazi*, N.Y. MAG. (Mar. 30, 2020), <https://nymag.com/intelligencer/2020/03/rinaldo-nazzaro-the-base-norman-spear.html> [https://perma.cc/6B62-WZ38] (archived Sept. 29, 2023).

263. See Michael Carpenter, *Russia Is Co-Opting Angry Young Men*, ATLANTIC (Aug. 29, 2018), <https://www.theatlantic.com/ideas/archive/2018/08/russia-is-co-opting-angry-young-men/568741/> [https://perma.cc/8GU4-7M8K] (archived Sept. 29 2023).

264. See Tony Paterson, *Putin’s Far-Right Ambition: Think-Tank Reveals How Russian President is Wooing – and Funding – Populist Parties Across Europe to Gain Influence in the EU*, INDEPENDENT (Nov. 25, 2014), <https://www.independent.co.uk/news/world/europe/putin-s-far-right-ambition-think-tank-reveals-how-russian-president-is-wooing-and-funding-populist-9883052.html> [https://perma.cc/ZLE3-5HCR] (archived Sept. 29, 2023); see also Matt Bradley, *Europe’s Far-Right Enjoys Backing from*

Exploring this phenomenon in 2014, Alina Polyakova observed, the “courtship between Eastern European far-right parties and Russia has been going on for years . . . . [T]he European right sees [Putin] as a staunch defender of national sovereignty and conservative values who has challenged US influence and the idea of ‘Europe’ in a way that mirrors their own convictions.”<sup>265</sup> Most recently, troubling evidence suggests the Kremlin is “actively trying to nudge American extremist groups toward violence”<sup>266</sup> by, among other things, opening its borders to “become a safe, central organizing hub for U.S. paramilitary fascist organizations and global fascist networks.”<sup>267</sup>

Despite this hypocrisy and political intrigue abroad, Russia’s constitutional mandate to protect “historical truth” and prohibit any criticism of Soviet transgressions remains a linchpin narrative for justifying Russia’s intervention in Ukraine. So deep is the Kremlin’s commitment to the narrative of Nazi-fighting to preserve historical “truth” that, nearly half a year into its grinding war, Sergey Lavrov crowed in a statement before Arab League diplomats, “We will certainly help Ukrainian people to get rid of the regime, which is absolutely anti-people and anti-historical . . . . It is on a very wrong side of history, a side of history, which was accused at Nuremberg Tribunal forever.”<sup>268</sup>

The irony of making this claim before this particular audience could not have been lost on Lavrov. In many Arab countries, “voices of Holocaust deniers have continued to reverberate and receive media

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*Russia’s Putin*, NBC NEWS (Feb. 12, 2017), <https://www.nbcnews.com/news/world/europe-s-far-right-enjoys-backing-russia-s-putin-n718926>

[<https://perma.cc/E6D6-PT37>] (archived Sept. 29, 2023) (noting “[u]nder President Vladimir Putin, Russia is working to empower Europe’s far-right and Eurosceptic parties with offers of cooperation, loans, political cover and propaganda.”).

265. Alina Polyakova, *Strange Bedfellows: Putin and Europe’s Far Right*, 177 WORLD AFFS. 36, 36–37 (2014).

266. See Wallace, *supra* note 262.

267. See Alexander Reid Ross, *America’s Neo-Nazi Terrorists Have a Powerful New Patron: Vladimir Putin*, HAARETZ (Feb. 2, 2020), <https://www.haaretz.com/us-news/.premium-america-s-neo-nazi-terrorists-have-a-powerful-new-patron-vladimir-putin-1.8471461> (subscription required) [<https://perma.cc/7X3B-BQV9>] (archived Sept. 29, 2023). Rinaldo Nazzaro, the founder of the Base, a neo-Nazi group that seeks to “incite a race war, and establish a white ethno-state,” is the target of a sweeping FBI counter-terrorism probe. He currently resides in Russia and is suspected of being a possible Russian asset. See Rinaldo Nazzaro, COUNTER-EXTREMISM PROJECT, <https://www.counterextremism.com/extremists/rinaldo-nazzaro> [<https://perma.cc/H7RP-YU6F>] (archived Sept. 29, 2023); see also Jason Wilson, *Revealed: The True Identity of the Leader of an American Neo-Nazi Terror Group*, GUARDIAN (Jan. 23, 2020), <https://www.theguardian.com/world/2020/jan/23/revealed-the-true-identity-of-the-leader-of-americas-neo-nazi-terror-group> [<https://perma.cc/R8AR-GVBT>] (archived Sept. 23, 2023).

268. Lavrov, *supra* note 203.

support.”<sup>269</sup> Opinion polling has consistently evidenced endorsement of claims that the Holocaust is “a myth or has been greatly exaggerated.”<sup>270</sup> In 2002, the Arab League itself backed a symposium “devoted to Holocaust [d]enial.”<sup>271</sup>

But this illustration of Lavrov’s indefatigable ability to stay on message regarding the legitimacy of Russia’s claim of “denazifying” Ukraine pales in comparison to another noteworthy episode. During an interview with Italian media, Lavrov proffered a deliberate historical falsification and contemptible anti-Semitic conspiracy worthy (almost)

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269. See Hadeel Oueis, *The Holocaust in Arab Collective Consciousness*, WASH. INST. (June 13, 2022), <https://www.washingtoninstitute.org/policy-analysis/holocaust-arab-collective-consciousness> [https://perma.cc/7D8E-AK8P] (archived Sept. 29, 2023). There are mixed signals that this disposition, a byproduct of “decades of inculcation and indoctrination by Arab regimes through a variety of educational institutions” may be changing. *Id.* See Ali al-Nuaimi, Zeina Barakat & El Mehdi Boudra, *Teaching the Holocaust in the Arab World*, WASH. INST. (Apr. 12, 2021), <https://www.washingtoninstitute.org/policy-analysis/teaching-holocaust-arab-world> [https://perma.cc/8ZNM-PDZG] (archived Sept. 29, 2023); see also Christoph Strack, *Muslim World Leaders Visit Auschwitz in ‘Strong Signal’ of Interfaith Support*, DEUTSCHE WELLE (Jan. 19, 2020), <https://www.dw.com/en/muslim-world-leaders-visit-auschwitz-in-strong-signal-of-interfaith-support/a-52034131> [https://perma.cc/BY5P-YK6A] (archived Sept. 29, 2023). *Contra* Reuters, *Germany and Israel Condemn Palestinian President’s Holocaust Remarks*, NBC NEWS (Aug. 17, 2022), <https://www.nbcnews.com/news/world/mahmoud-abbas-holocaust-israel-germany-condemn-munich-olympics-rcna43459> [https://perma.cc/96XW-9QHX] (archived Sept. 29, 2023) (reporting that Palestinian president Mahmoud Abbas, during a visit to Germany, refused to condemn the Palestinian terrorist attack during the 1972 Munich Olympics, and instead accused Israel of committing “50 Holocausts”).

270. See Shane Croucher, *Why Holocaust Denial Thrives in the Arab World*, INT’L BUS. TIMES (Jan. 25, 2015), <https://www.ibtimes.co.uk/holocaust-memorial-day-2015-why-denial-jewish-genocide-thrives-arab-world-1484903> [https://perma.cc/E26J-J2C5] (archived Sept. 29, 2023). Meir Litvak explains that this public ignorance flows in part from “the intentional disruption of the free flow of information, such as western Holocaust textbooks, and the banning of documentaries, features films and teaching of the Holocaust” by governmental authorities. MEIR LITVAK, FROM EMPATHY TO DENIAL: ARAB RESPONSES TO THE HOLOCAUST 380 (2009).

271. Michelle L. Picheny, *A Fertile Ground: The Expansion of Holocaust Denial into the Arab World*, 23 B.C. THIRD WORLD L.J. 331, 348 (2003). Emirati authorities ultimately shut down the Abu Dhabi-based Zayed International Center for Coordination and Follow-Up, the group responsible for organizing the symposium. Adnan Malik, *Emirates Shutting Down Arab Think Tank Accused of Promoting Anti-Semitism*, ASSOCIATED PRESS STATE & LOC. WIRE, Aug. 17, 2003. Elsewhere, Arab League member states harnessed international events like the infamous 2001 UN World Conference against Racism (Durban Conference) to “remov[e] references to anti-Semitism” and “triviliz[e] the Holocaust.” Egypt’s foreign minister at the time boasted that while Arab delegations to Durban did not achieve all their goals, they “were able to drop all indications to the Holocaust, except one.” LITVAK, *supra* note 266, at 361–362.



of his Soviet predecessors, all in the name of advancing Russia's war narrative.<sup>272</sup>

**Lavrov:** We had no choice but to recognise [Donetsk and Luhansk], sign an agreement on mutual assistance with them and, upon their request, defend them from the militarists and Nazis who are flourishing in today's Ukraine.

**Question:** This is how you see it, while Vladimir Zelensky puts it differently. He believes denazification doesn't make any sense. He is a Jew. The Nazis, Azov – there are very few of them (several thousand). Vladimir Zelensky refutes your view of the situation . . .

**Lavrov:** . . . There is nazification there . . . [Zelensky's] argument is: How can there be Nazism in Ukraine if he is a Jew? I may be mistaken but Adolf Hitler had Jewish blood, too. This means absolutely nothing. The wise Jewish people say that the most ardent anti-Semites are usually Jews. "Every family has its black sheep," as we say.<sup>273</sup>

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272. The Soviet regime nurtured anti-Semitism as "an integral part of official state policy" from the late 1930s and early 1940s onwards. William Korey, *The Origins and Development of Soviet Anti-Semitism: An Analysis*, 31 SLAVIC REV. 111, 117 (1972); see also Moshe Decter, *The Status of the Jews in the Soviet Union*, 41 FOREIGN AFFS. 420, 430 (1963) (concluding that Soviet policy amounted to "spiritual strangulation—the deprivation of Soviet Jewry's natural right to know the Jewish past and participate in the Jewish present."). This comprehensive policy included state-sanctioned quotas in educational and professional fields, sham trials, torture, and mass killings, including of Jewish poets and doctors falsely accused of being enemies of the state. *Id.* See Joshua Rubenstein, *Jewish Anti-Fascist Committee*, YIVO ENCYC. OF JEWS IN E. EUR. (Jan. 2011), [https://yivoencyclopedia.org/article.aspx/Jewish\\_Anti-Fascist\\_Committee](https://yivoencyclopedia.org/article.aspx/Jewish_Anti-Fascist_Committee) [https://perma.cc/HWY8-8MUS] (archived Sept. 29, 2023) (recounting Stalin's forcible disbanding of the Jewish Anti-Fascist Committee (JAC) and the ensuing campaign to arrest hundreds of Jewish cultural figures, later holding secret show trials for fifteen defendants, and ultimately executing thirteen individuals in what is commemorated as the "Night of the Murdered Poets"). Of course, anti-Semitism as a matter of official Russian state policy has still deeper roots dating back to the Tsarist era, highlighted by the forgery and dissemination of the notorious *Protocols of the Elders of Zion* and creation of the Pale of Settlement, a legal regime restricting Jewish residency to a limited part of the Russian empire. Michael Hagemeister, *The Protocols of the Elders of Zion in Court: The Bern Trials, 1933–1937*, in Esther Webman, ed., *THE GLOBAL IMPACT OF THE PROTOCOLS OF THE ELDERS OF ZION: A CENTURY-OLD MYTH* (Routledge, 2011), 243; Hadassa Ben-Ito, *THE LIE THAT WOULDN'T DIE: THE PROTOCOLS OF THE ELDERS OF ZION* (2005); John Klier, *Pale of Settlement*, YIVO ENCYCLOPEDIA OF JEWS OF EASTERN EUROPE, 2010, [https://yivoencyclopedia.org/article.aspx/Pale\\_of\\_Settlement](https://yivoencyclopedia.org/article.aspx/Pale_of_Settlement) [https://perma.cc/ET26-CXUW] (archived Dec. 12, 2023).

273. *Foreign Minister Sergey Lavrov's Interview with Mediaset, Italian Television Network*, THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N (May 1, 2022), [https://mid.ru/en/foreign\\_policy/news/1811569/](https://mid.ru/en/foreign_policy/news/1811569/) [https://perma.cc/3YPD-YDL9] (archived

Lavrov used the same interview to elaborate on the legitimacy of Russia's de-Nazification mission in Ukraine, drawing a clear linkage between the struggle against Nazism and the struggle against the West. In expounding these rationales, Lavrov drew extensively on the civilizational identity-building amendments of 2020, invoking the need to protect Russia's prestige and influence abroad, its Orthodox traditional values, and Russian compatriots:

**Lavrov:** You have asked whether the elimination of several dozen (even thousand) Nazis' influence is worth putting a country with a population of 40 million at risk. This question is not entirely correct. It is a matter of Russia's fundamental security interests . . . [When] the west came to Ukraine . . . they started encouraging the initiatives that the Ukrainian leadership promoted to be as unlike the Russian Federation as possible. I have mentioned the persecution of the Russian language and the Russian media, the shutdown of Russian-language television channels, the ban on the sale of any printed products in Russian . . . the [forced schism in the] Russian Orthodox Church, which is a sacred institution in our state and society, and the adoption of laws to promote Nazi theories and practice.<sup>274</sup>

To further unpack these civilizational identity-building markers and their pivotal role in supporting Russia's justifications for the invasion of Ukraine, the following sections explore the constitutionalization of traditional values within the larger context of Russia's millennial history as well as the ever-enlarging constitutional protection for compatriot interests abroad.

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Sept. 29, 2023) [hereinafter *Lavrov Interview with Mediaset*]. "There is no historical proof of Hitler's supposed Jewish heritage, but conspiracy theories that emerged before World War II have occasionally resurfaced this century." Ofer Aderet, *Et Tu, Lavrov? The Bountiful Conspiracies About Hitler's Jewish Blood*, HAARETZ (May 2, 2022), <https://www.haaretz.com/israel-news/2022-05-02/ty-article/premium/et-tu-lavrov-the-bountiful-conspiracies-about-hitlers-jewish-blood/00000180-98a1-d68d-adee-bfb53b040000> [https://perma.cc/8ZXR-QUBV] (archived Sept. 23, 2023). Lavrov's remarks set off a firestorm of diplomatic protest. President Putin reportedly apologized to the Prime Minister of Israel for Lavrov's comments and "clarif[ied] his attitude towards the Jewish people and the memory of the Holocaust." No record of this apology, however, appears in the Kremlin readout of the call between the two leaders. *Putin sorry for Lavrov's claim Hitler was part Jewish - Israel PM*, BBC NEWS, May 5, 2022, <https://www.bbc.com/news/world-middle-east-61339749> [https://perma.cc/M2UD-CKKZ] (archived Dec. 12, 2023).

274. *Lavrov Interview with Mediaset*, *supra* note 273.

### C. *A Millennial History Reclaimed*

While article 67.1(1) and 67.1(3) lean heavily on Russia's Soviet legacy, article 67.1(2) expands the civilizational identity markers to more sweeping—though equally significant—national experiences. In particular, this expansion conjures up Russia's imperial past by constitutionally cementing Russia's "millennium history," the "memory of the ancestors who conveyed to us ideals and belief in God, as well as continuity of development of the Russian state," and the "unanimity of the State."<sup>275</sup> As Khabrieva has reasoned, constitutionalization of these civilizational hallmarks "becomes a moral reference for Russian society, reflecting its ideals and traditional features of collective consciousness."<sup>276</sup>

Scholars had previously identified many of these seemingly inchoate yet historically loaded references as tapping into a "mythic narrative [of] high-octane fuel for the engine of Russian nationalism" and engendering "widespread domestic support."<sup>277</sup> Indeed, much like the fixation on falsification and protecting the aura surrounding the "Great Patriotic Victory," invocations of Russian Orthodoxy, Russia's imperial territory and traditional values permeated Kremlin strategy long before the constitutional amendments of 2020.

Crucially, this civilizational identity-building strategy has an inherent foreign policy dimension. As Daniel H. Nexson has noted, "The role of civilizational ideology in justifying imperial control needs little elaboration. The explicit notion of a 'civilizing mission,' for example, helped European liberals reconcile their core ideological beliefs with the inconvenient fact of empire."<sup>278</sup> Writing on Russia specifically, Alicja Curanović, in 2019, identified the aura of mission coloring Russia's foreign policy. As a contemporary reflection of Russia's imperial past, this "missionist" foreign policy, flowing from a destiny tied to higher authority,<sup>279</sup> sought to expand Russian power and influence by weakening the West ("multipolarity"), protecting

275. KONSTITUTSIIA ROSSIĬSKOĬ FEDERATsii [KONST. RF] [CONSTITUTION] art. 67.1(2) (Russ.).

276. Khabrieva, *supra* note 35, at 280. Ironically, Tatyana Moskalkova, Russia's Human Rights Commissioner, offered a ringing endorsement of reference to belief in god in a constitution that still retained Russia's formal status as a secular state: "... the appeal to faith and the moral foundations is worthy of attention, especially as there is only one God. ... [Including a reference to God in the Constitution] is a call to all religious denominations and I believe it will not encroach on the views of atheists in some way." *Reference to God in Constitution Doesn't Encroach on Atheists' Views – Ombudsman*, INTERFAX (Mar. 3, 2020), <http://www.interfax-religion.com/?act=news&div=15505> [<https://perma.cc/3TDR-NXLU>] (archived Sept. 23, 2023).

277. Carleton, *supra* note 252.

278. Daniel H. Nexon, *Discussion: American Empire and Civilizational Practice*, in *CIVILIZATIONAL IDENTITY: THE PRODUCTION AND REPRODUCTION OF "CIVILIZATIONS" IN INTERNATIONAL RELATIONS* 109 (Martin Hall & Patrick Thaddeus Jackson eds., 2007).

279. See Curanović, *supra* note 235.

traditional values, defending against evils like fascism and ultraliberalism, and tightening integration among former territories of the USSR.<sup>280</sup> Likewise, in 2018, Kevork Oskanian observed that this “deeply held aspiration to ‘great power’ status” was historically hardwired: “The Tsarist Empire did it, so did the Soviet Union, and so does today’s Russian Federation.”<sup>281</sup>

While Oskanian concluded that breaking free of the civilizational aspiration to great power status would “require nothing less than a fundamental redefinition of Russian identity,” this section demonstrates that by constitutionalizing Russia’s medieval and imperial antecedents, along with its Orthodox Christian identity, the Kremlin has effectively doubled down on its ambition to invoke Russian exceptionalism and traditional values to restore its international stature and justify its colonialist actions.

To better understand how these civilizational identity touchstones operate in the context of the invasion of Ukraine, some unpacking is necessary. Perhaps most prominently, ancestral memories and belief in god are intended to evoke Kyivan Rus’ and the spiritual birth of Russian Orthodoxy, crystalized by Grand Prince Volodymyr’s embrace and propagation of faith beginning in Kyiv in the late tenth century. This history incorporates, following the demise of Constantinople in 1453, the emergence of Tsarist Russia not merely as an empire, but as a manifestation of *Holy Rus’* (Holy Russia)—“the third Rome and the capital of Christendom.”<sup>282</sup> Picking up the mantle abandoned by Byzantium and Rome, these powerful memories link contemporary Russia not only to its humble Kyivan roots, but arguably to the imperial and religious purpose that drove the autocratic tsarist regime into quickly becoming the “largest state on earth” through conquests “into territory which was contiguous to [its] existing possessions.”<sup>283</sup>

It is during this historical period that the Moscow Patriarchate came to assume a privileged position, wielding enormous influence within the empire as the official state religion.<sup>284</sup> Nowhere else in Europe “was religious identity so closely linked to national and ethnic

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280. *Id.* at 214.

281. Kevork Oskanian, *Russia’s Imperial Mindset Dates Back Centuries – and It Is Here to Stay*, THE CONVERSATION (May 30, 2018), <https://theconversation.com/russias-imperial-mindset-dates-back-centuries-and-it-is-here-to-stay-95832> [https://perma.cc/4LNS-VQXA] (archived Sept. 29, 2023).

282. Christoph Mick, *How Moscow Has Long Used the Historic Kyivan Rus State to Justify Expansionism*, THE CONVERSATION (Mar. 8, 2022), <https://theconversation.com/how-moscow-has-long-used-the-historic-kyivan-rus-state-to-justify-expansionism-178092> [https://perma.cc/8442-26JF] (archived Sept. 29, 2023).

283. See PETER WALDRON, *THE END OF IMPERIAL RUSSIA* 103 (1997).

284. See Laura Engelstein, *The Dream of Civil Society in Tsarist Russia: Law, State, and Religion*, in CIVIL SOCIETY BEFORE DEMOCRACY 23, 31 (Nancy Bermeo & Philip Nord eds., 2000).

identity as in Russia.”<sup>285</sup> Indeed, under the Romanov dynasty, the Moscow Patriarchate steadfastly supported the imperial rallying cry “orthodoxy, autocracy and nationhood.”<sup>286</sup> The term *symphonia* came to describe the synergy of Church and Empire within this single framework, and was understood to represent the “two greatest gifts which God, in his love for man, has granted from on high: the priesthood and the imperial dignity. The first serves divine things, the second directs and administers human affairs; both, however, proceed from the same origin and adorn the life of mankind.”<sup>287</sup>

Over time, the Russian state may have shed some of its colonial territory. Still, where sovereign control may have relented, in many instances the presence of transplanted Russian immigrant communities—as well as its religious infrastructure—remained. Restored to pride of place after years of abuse under Communist rule, the Moscow Patriarchate has come to represent the chief global advocate of Russia’s ancestral belief in god, manifested in its campaign to prop up traditional values and its vociferous opposition to Western ultraliberalism both at home and abroad.<sup>288</sup> These values, championed by the Kremlin as part of its larger post-Yeltsin civilizational identity-building project, tap into Russia’s history, its exceptionalism, its deep

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285. Vicki L. Hesli, Ebru Erdem, William Reisinger, & Arthur Miller, *The Patriarch and the President: Religion and Political Choice in Russia*, 7 DEMOKRATIZATSIYA 42, 46 (1999).

286. Adrian Blomfield, *Orthodox Church Unholy Alliance with Putin*, TELEGRAPH (Feb. 26, 2008), <https://www.telegraph.co.uk/news/worldnews/1579638/Orthodox-Church-unholy-alliance-with-Putin.html> [<https://perma.cc/QE2K-K6E3>] (archived Sept. 29, 2023).

287. JOHN MEYENDORFF, *BYZANTINE THEOLOGY: HISTORICAL TRENDS AND DOCTRINAL THEMES* 213 (1974).

288. In practice, the term “traditional values” functions as a thin veneer for situating Russian Orthodoxy above not only Russia’s other established “traditional” faiths (namely Islam, Judaism and Buddhism), but also the country’s disparaged so-called “nontraditional” faiths. See Robert C. Blitt, *How to Entrench a De Facto State Church in Russia: A Guide in Progress*, 2008 BYU L. Rev. 707 (2008); see also Robert C. Blitt, *One New President, One New Patriarch, and a Generous Disregard for the Constitution: A Recipe for the Continuing Decline of Secular Russia*, 43 VAND. J. TRANSNAT’L L. 1337 (2010) (detailing the breakdown in Russia’s constitutional secularism and illustrating the government’s preferential treatment for the Russian Orthodox Church among “traditional” and “non-traditional” religions) [hereinafter Blitt, *How to Entrench*].

connection to faith—particularly Orthodox Christianity<sup>289</sup>—and the need to elevate family as a tool for ensuring demographic stability.<sup>290</sup>

From Putin's rhetoric, protection of traditional values is not only critical to Russia's soul and fundamental to its identity, but a linchpin in defining and asserting its status in the international arena:

We can see what efforts are being taken today to 'reformat' the world and destroy the traditional values and the cultural and historical spaces that have been forming for centuries. The goal is to create various bleak 'protectorates', because it is easier to rule peoples who are disconnected, have no national memory and are turned into simple vassals, and to use them as bargaining chips.<sup>291</sup>

As framed by Putin, the "Euro-Atlantic" rejection of traditional Christian values generates a classic imperialist mission for Russia: confronting and taming the intolerable threat of barbarism<sup>292</sup>—in this instance, embodied by an untethered and obscene liberalism—poised at its gates. This national mission is colored by religious fervor and is existentialist in nature; it paints the West as nothing less than subhuman degenerates:

They are denying moral principles and all traditional identities: national, cultural, religious and even sexual. They are implementing policies that equate large families with

289. Invocation of "traditional" values entails rejecting the perceived encroachment of "foreign" religious faiths that risk corrupting the true national identity of Russians. In the Moscow Patriarchate's view, Western missionaries "destroy the traditional organization of life that has been formed under [the Russian Orthodox Church's] influence. They destroy the spiritual and moral ideal that is common to all of us; and they threaten the integrity of our national consciousness and our cultural identity." Blitt, *How to Entrench*, *supra* note 288, at 707.

290. See Alexei Anishchuk & Steve Gutterman, *Population, Russian Values Key to Our Future – Putin*, REUTERS (Dec. 12, 2012), <https://www.reuters.com/article/us-russia-putin/population-russian-values-key-to-our-future-putin-idUSBRE8BB0JO20121212> [<https://perma.cc/F6EB-9QNE>] (archived Sept. 29, 2023) ("With the patriarch of the Russian Orthodox Church sitting in the front row, Putin said it is crucial to 'support institutions that are bearers of traditional values.'").

291. Vladimir Putin, President of Russ., Address to World Russian People's Council (Nov. 1, 2018), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/news/59013> [<https://perma.cc/UGX5-H4G3>] (archived Sept. 29, 2023).

292. See John M. Hobson & J.C. Sharman, *The Enduring Place of Hierarchy in World Politics: Tracing the Social Logics of Hierarchy and Political Change*, 11 EUR. J. INT'L RELS. 63, 86 (2005) (noting that in the late Fifteenth century, "the western Europeans began to redefine themselves negatively against the barbarians of Eastern Europe and the Ottoman Empire. A sense of a superior Europe-as-the-West identity was now emerging... And this in turn would constitute a new social identity that would lead on to European imperialism in Asia and Africa in the late 18th and 19th centuries").

same-sex partnerships, belief in God with the belief in Satan . . . I am convinced that this opens a direct path to degradation and primitivism, resulting in a profound demographic and moral crisis . . . Without the values embedded in Christianity and other world religions . . . that have taken shape over millennia, people will inevitably lose their human dignity. We consider it natural and right to defend these values.<sup>293</sup>

According to this narrative, Western individualism does not merely threaten individual religious identity. Rather, it profoundly endangers Russia's national identity as well. This threat, manifested both internally and externally, is therefore linked to the Kremlin's history of regional dominance and its desire to empower compatriot communities. Writing nearly a decade ago, Foreign Minister Lavrov warned, "the rejection of traditional values that have evolved over centuries, separation from [sic] own cultural and spiritual roots, and the inflation of individual rights and freedoms—that is a recipe for the loss of all reference points both in national and foreign policy."<sup>294</sup>

Fully unpacking the Kremlin's view, any challenge to traditional values endangers Russia's regional influence and its connection to compatriot communities abroad, and thus poses a direct threat to its national security. This narrative of repelling the West's all-corrupting and ahistorical ultraliberalism necessarily operates extraterritorially, as a tool for securing not only Russia's "national memory" but also its "spiritual unity."<sup>295</sup> Indeed, according to Putin, Russian leadership defending these values is central to why, in his words, "more and more people are looking towards Russia as an example of steadfast traditional values and a normal human life."<sup>296</sup>

The Kremlin's strident reaction in 2018 to the possibility of Ukraine's assertion of religious autonomy from the Moscow

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293. Vladimir Putin, President of Russ., Meeting of the Valdai International Discussion Club (Sept. 19, 2013), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/news/19243> [https://perma.cc/36PG-Z3XT] (archived Sept. 29, 2023).

294. See Sergey Lavrov, *Russia's Foreign Policy Philosophy*, 59 INT'L AFFS.: A RUSS. J. WORLD POL., DIPL. & INT'L RELS. 1, 5 (2013). Elsewhere, Lavrov warned "[t]he notions of morality and traditional national, cultural and religious identity are being eroded. . . .History teaches us that a civilization that has rejected its moral ideals loses its spiritual power. *DECR Vice-Chairman Takes Part in Conference on Protection of Christians in the Middle East*, THE RUSSIAN ORTHODOX CHURCH (Mar. 6, 2015), <https://mospat.ru/en/2015/03/06/news116424/> [https://perma.cc/45DB-TWHF] (archived Sept. 29, 2023).

295. Putin, *supra* note 192.

296. Vladimir Putin, President of Russ., Speech Before the Participants of the Episcopal Council of the Russian Orthodox Church (Dec. 1, 2017), in THE RUSSIAN ORTHODOX CHURCH, <https://mospat.ru/en/2017/12/01/news153708/> [https://perma.cc/U9FF-97BV] (archived Sept. 29, 2023).

Patriarchate offers stark confirmation of how perceived defiance of Russia's spiritual dominance is equated with a threat to its national identity. So grave a blow did the prospect of an autocephalous Ukrainian national church pose to the extraterritorial projection of *Holy Rus'*—also manifested in its “secularized” equivalent, *Russkiy Mir* (Russian World)<sup>297</sup>—that it necessitated convening Russia's president, prime minister, head of the FSB, and head of the Counter-Intelligence Department, as well as ministers of defense, interior affairs, and foreign affairs.<sup>298</sup> At the time, the Kremlin and Moscow Patriarchate both blamed Western plotting for facilitating Ukraine's “schism.”<sup>299</sup> Faced with the prospect of another blow to the Moscow Patriarchate in Montenegro less than a year later, President Putin threatened that efforts to sever “cultural and humanitarian ties between our compatriots abroad and Russia” would “spell[] dire consequences, primarily for those who are doing this. It is our shared duty . . . to do everything possible to preserve spiritual and historical unity.”<sup>300</sup>

To be clear, the cases of Ukraine and Montenegro are not isolated instances. Elsewhere, the Kremlin has regularly reinforced the notion that Russian Orthodoxy's “common spiritual space” reaches beyond the borders of contemporary Russia. For example, the Kremlin has actively supported the Moscow Patriarchate's involvement in Georgia, Belarus, Kazakhstan, and elsewhere in the “near abroad,” where it exerts “a significant impact on people's attitudes towards Russia and promotes, at least indirectly, sympathies for Putin's neo-imperialist ideology.”<sup>301</sup> But more sweepingly—and in a modern day embodiment of the “political myths of *Holy Rus'*, Third Rome, and Russia's civilisational role to inform public and political discourse”<sup>302</sup>—this support has reached well beyond the bordering states of the “near abroad.”<sup>303</sup>

297. See JOHN LOUGH, ORYSIA LUTSEVYCH, PETER POMERANTZEV, STANISLAV SECRIERU & ANTON SHEKHOVTSOV, *RUSSIAN INFLUENCE ABROAD: NON-STATE ACTORS AND PROPAGANDA* (2014).

298. See *What Does an Independent Orthodox Church Mean for Ukraine?*, HARV. UNIV. (Mar. 20, 2019), <https://hurl.harvard.edu/news/what-does-independent-orthodox-church-mean-ukraine> [https://perma.cc/LXP6-7N8Q] (archived Sept. 29, 2023).

299. See Blitt, *supra* note 198.

300. Vladimir Putin, President of Russ., Address at the 6th World Congress of Compatriots Living Abroad (Oct. 31, 2018), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/news/59003> [hereinafter Putin's Address to Compatriots Abroad] [https://perma.cc/42NU-HHZ5] (archived Sept. 29, 2023).

301. See CTR. FOR EURO-ATL. STUD., *EYES WIDE SHUT: STRENGTHENING OF RUSSIAN SOFT POWER IN SERBIA: GOALS, INSTRUMENTS, AND EFFECTS* 28 (2016).

302. See Dmitry (Dima) Adamsky, *Christ-Loving Diplomats: Russian Ecclesiastical Diplomacy in Syria*, 61 SURVIVAL 49, 50 (2019).

303. In Patriarch Kirill's view, “I am the Patriarch of the whole Rus'. I am not the Patriarch of the Russian Federation, or Ukraine, or Moldova. . . [T]he Russian Church is present in 62 countries.” ALEXANDER PONOMARIOV, *THE VISIBLE RELIGION: THE RUSSIAN ORTHODOX CHURCH AND HER RELATIONS WITH STATE AND SOCIETY IN POST-SOVIET CANON LAW (1922-2015)* 93 (2017). See, e.g., Blitt, *supra* note 139 (discussing examples of this influence beyond the near abroad).



Importantly, this defense of spiritual values is a core component of the Kremlin's larger multipolarity project. It functions to buttress Russia's alliances with similarly minded state and non-state actors that favor the rejection of human rights norms deemed antithetical to so-called traditional values. Further, because an existential urgency attaches to the protection of traditional values, it infuses multipolarity with an underlying "clash of civilizations" mindset. This clash of civilizations—pitting Western values as an existential threat to Russia—is perhaps most strikingly framed by Sergey Naryshkin, Russia's director of foreign intelligence. In 2019, Naryshkin warned that the world was witnessing:

[A] global process of aggressive erosion of traditional values [and] formation of negative attitude towards . . . the state. Belonging to a country and to a nation, values of family and faith—all these are brushed aside today in the name of abstract individual freedom . . . . Various programs promoting the rights of LGBT community and spreading the ideas of radical feminism are implemented [to] dilute[e] the notion of sex identity, the values of family and marriage . . . . In fact, the trend is to transform people into isolated individuals . . . . suffering from neurotic disorders. It is clear that such individuals are ideal objects for manipulation . . . . A society, treated in such a way, is a perfect target for so-called coloured revolutions.<sup>304</sup>

To prevent this national security threat, Naryshkin concluded, Russia and other concerned parties must commit to total reform of the global order:

If the so-called "Collective West" lacks maturity and courage to get on the right side of history and follow [a multipolar international system], [we] will have to design the global future without it. Russia is ready to take responsibility for this process . . . . I'm sure [other parties] in the Western countries who recognize the risks facing the international community and are ultimately concerned about self-preservation will be increasingly boosting up their involvement.<sup>305</sup>

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304. Sergey Naryshkin, Dir. of the Russian Foreign Intel. Serv., Statement at the X International Meeting of High-Level Officials Responsible for Security Matters on "Guaranteeing National Security and Sustainable Social and Economic Development of States under Conditions of Growing 'Hybrid' Threats" (June 18, 2019).

305. *Id.*

The constitutionalization of Russia's historical geopolitical dominance as an imperial power, and its religious-ideological dominance through operation of the Moscow Patriarchate abroad, situates the missionist aspects of the Kremlin's civilizational identity-building project at the apex of the country's legal regime. Beyond generic appeals to patriotic glory, this elevation suggests not only a unifying religio-national experience, but "Russia's most important historiosophical idea," a narrative "obvious to every participant in Russian culture" that positions the state as "the only country of legitimate Christianity" and a "god-bearing people."<sup>306</sup> Unmistakably, the constitutionalization of this "third Rome" narrative comes with significant extraterritorial implications. It underwrites the Kremlin's desire to strengthen multipolarity by disrupting perceived Western dominance<sup>307</sup> and to create a regional and global order wherein Russia retains preeminence of place, or, in the words of one observer, "a new global dispensation, with Russia restored to eminence."<sup>308</sup>

The civilizational themes unpacked above are front and center in the Kremlin's war rhetoric. Just three days before the 2022 invasion, in a speech recognizing the independence of the breakaway republics of Donetsk and Luhansk, Putin emphasized that Ukraine was an inseparable part of the Russian state's heady millennial history: "Ukraine is not just a neighbouring country for us. It is an inalienable part of our own history, culture and spiritual space . . . Since time immemorial, the people living in the south-west of what has historically been Russian land have called themselves Russians and Orthodox Christians."<sup>309</sup> In a nod to recapturing Russia's lost glory, Putin characterized the breakup of the Soviet Union and the subsequent independence of its component states as a profound loss for Russia filled with "injustices, lies and outright pillage."<sup>310</sup>

More directly, Putin accused Ukraine of squandering the gift of its civilizational inheritance from Russia, "spen[ding] and embezzle[ing] the legacy inherited not only from the Soviet era, but also from the Russian Empire," preparing "the destruction of the Ukrainian Orthodox Church of the Moscow Patriarchate," and "root[ing] out the Russian language and culture and promot[ing] assimilation." In

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306. Sadowski, *supra* note 233, at 730.

307. As part of this, the Moscow Patriarchate and influential intellectual circles in Russia "understand Russia's mission as the opposition against the West." Marcin Skladanowski, *The Myth of Russian Exceptionalism: Russia as a Civilization and Its Uniqueness in Aleksandr G. Dugin's Thought*, 20 POL., RELIGION & IDEOLOGY 423, 423–24 (2019).

308. Lilia Shevtsova, *Ukraine Is Only One Small Part of Putin's Plans*, WASH. POST (Jan. 7, 2022), <https://www.nytimes.com/2022/01/07/opinion/russia-ukraine-putin-nato.html> (subscription required) [<https://perma.cc/95CZ-VW58>] (archived Sept. 30, 2023).

309. Putin's Feb. 21st Address, *supra* note 194.

310. *Id.*

Putin's words, Ukraine's insolent rejection of its "inalienable" connection to Russia's ancestral memory and belief in god meant its existence was premised "on the negation of everything that united us, trying to distort the mentality and historical memory of millions of people, of entire generations living in Ukraine." Because of this, the Kremlin was warranted in heaping scorn on Ukraine's sovereign right to independently determine its own identity without external interference. Any effort to sever the narrative of a collective historical memory and shared spiritual unity—including diminishment of the Moscow Patriarchate's standing abroad—ultimately empowered the "so-called pro-Western civilisational choice" and posed a direct challenge to Russian power and influence.<sup>311</sup>

With his formal declaration of a "special military operation" in Ukraine, President Putin elaborated on the contemporary threat to *Holy Rus'* posed by Ukraine's rejection of its Russian patrimony, pointing the finger not at NATO, but at Western liberalism specifically:

[T]hey sought to destroy our traditional values and force on us their false values that would erode us, our people from within, the attitudes they have been aggressively imposing on their countries, attitudes that are directly leading to degradation and degeneration, because they are contrary to human nature. This is not going to happen. No one has ever succeeded in doing this, nor will they succeed now.<sup>312</sup>

In this excerpt, Putin alludes to same-sex marriage and, more generally, to the application of the basket of equality and nondiscrimination norms based on sexual orientation and gender identity. Putin is oblique, however, about whether "our people" is limited to the citizens of Russia, or inclusive of compatriot communities, like those in Crimea, the Donbas, and elsewhere who find themselves forced to endure these "toxic" Western pseudo-values. In either case, it should come as no coincidence that the 2020 constitutional amendments reinforce this traditional-values vision inherited from the memory of ancestors. Article 67.1(4) calls on the state to contribute to the "comprehensive spiritual . . . development of children [and] upbringing of their patriotism," and article 72(1)(g) requires "protection of the family [and] protection of marriage as a union of a male and a female."<sup>313</sup>

Tellingly, Patriarch Kirill was quick to elaborate on Putin's justification for the need to invade Ukraine based on preventing

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311. Putin's Feb. 24th Address, *supra* note 200.

312. *Id.*

313. KONSTITUTSIYA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] arts. 67.1(4), 72(1)(g) (Russ.).

degenerate Western values from poisoning Russia's traditional sphere of influence. During a sermon two weeks into the war, Kirill asserted that the war was about nothing less than "which side of God humanity will be on." Specifically, he called attention to gay pride parades as demonstrating "that sin is one variation of human behavior," and a prerequisite for "join[ing] the [Western] club."<sup>314</sup> Reinforcing the Kremlin's fear that Western values will destroy not only conservative religious beliefs like Orthodoxy, but nations and history as well, Kirill declared, "[i]n Donbas there is . . . a fundamental rejection of the so-called [Western] values . . . . If humanity accepts that sin is not a violation of God's law, if humanity accepts that sin is a variation of human behavior, then human civilization will end there."<sup>315</sup>

Pivoting from traditional values, Putin's "special military operation" speech sought to draw a direct connection between the Great Patriotic War—where Russia "lost vast territories of strategic importance, as well as millions of lives"—and the contemporary concern for "a hostile 'anti-Russia'" taking shape "in territories adjacent to Russia, which . . . is our historical land."<sup>316</sup> Just like the Soviet defeat of Nazism during WWII, Putin alleged the people of Donbas were subject to a contemporary genocide—a Nazi action—and that those people, like the people of Europe during WWII, "pinned their hopes on Russia" to save them.<sup>317</sup> Perhaps concerned the analogy was not clear enough, Putin claimed the neo-Nazis in Ukraine, supported by the "leading NATO countries," were poised "to bring war to Crimea just as they have done in Donbass, to kill innocent people just as . . . Hitler's accomplices did during the Great Patriotic War. They have also openly laid claim to several other Russian regions."<sup>318</sup>

These remarks conjure up not only the unifying theme of the Soviet Union's sacrifice during the Great Patriotic War—the national obligation to combat fascism and the absolute virtue of this mission—but also the perpetuation of Russia's expectation that the "near abroad" continually be subject to Russia's exclusive religious and political influence. As noted above, the loss of this influence is of fundamental national security import. Thus, in Putin's words, Ukraine's Westward turn is a betrayal of the foundations of the Russian state: "[A] matter of life and death, a matter of our historical

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314. Thomas Kika, *Russian Orthodox Church Leader Blames Invasion on Ukraine's 'Gay Pride'*, NEWSWEEK (Mar. 7, 2022), <https://www.newsweek.com/russian-orthodox-church-leader-blames-invasion-ukraines-gay-pride-1685636> [https://perma.cc/6GHH-R9R8] (archived Sept. 20, 2023).

315. *Id.*

316. Vladimir Putin, *Address by the President of the Russian Federation* (Feb. 24, 2022), <http://en.kremlin.ru/events/president/news/67843> [https://perma.cc/3V4Q-KM5K] (archived Jan. 15, 2024).

317. *Id.*

318. *Id.*

future as a nation. This is not an exaggeration; this is a fact. It is not only a very real threat to our interests but to the very existence of our state and to its sovereignty.”<sup>319</sup>

A month into the invasion, Sergey Lavrov offered a similarly revealing assessment of Russia’s motivation for war. Driving home the centrality of the constitution’s reclaimed millennial history and civilizational vision—as well as its emphasis on sovereignty—he asserted, “[t]his is a point of inflection in the historical evolution of civilisations . . . . No amount of threats, blackmail, or ultimatums will coerce us into renouncing our sovereignty and independence, our centuries-old history, or our vast spiritual heritage, bequeathed to us by our ancestors.”<sup>320</sup> This statement, made before the United Russia Party’s Commission on International Cooperation and Support for Compatriots Living Abroad, also provides a convenient springboard for the next section, which explores the significance of Russia’s newly constitutionalized obligation towards compatriots and its role in creating further justifications for intervention abroad.

#### D. *Defending Compatriots, Everywhere*

The final element of Russia’s newly constitutionalized civilizational identity establishes for the first-time constitution-level protections for *non-citizen* Russian “compatriots” (“*соотечественникам*” or “*sootechestvennikam*”) living outside of Russia.<sup>321</sup> Previously, the Russian constitution provided that “[t]he Russian Federation shall *guarantee its citizens* protection and patronage abroad.”<sup>322</sup> With the 2020 amendments, the constitution abandons the restrictive limit on assisting citizens to embrace a far more sweeping obligation to provide “support to compatriots living abroad in exercising their rights, ensuring protection of their interests

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319. *Id.*

320. Sergey Lavrov, Foreign Minister of Russ., Remarks at the Meeting of the United Russia Party General Council Commission on International Cooperation and Support for Compatriots Living Abroad, in Moscow (Mar. 28, 2022), in THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N, [https://mid.ru/en/foreign\\_policy/news/1806797/](https://mid.ru/en/foreign_policy/news/1806797/) [<https://perma.cc/F9AD-TWHK>] (archived Sept. 28, 2023).

321. The Russian term *russkiy* connotes ethnic Russian, whereas *rossiskiy* refers specifically to citizens of the Russian Federation. *Sootechestvennik*, the Russian term for compatriot, “encompasses *both* of these categories, as well as individuals connected to Russia by culture or family background.” VERA ZAKEM, PAUL SAUNDERS, & DANIEL ANTOUN, MOBILIZING COMPATRIOTS: RUSSIA’S STRATEGY, TACTICS, AND INFLUENCE IN THE FORMER SOVIET UNION 3, 4 (Nov. 2015), <https://apps.dtic.mil/dtic/tr/fulltext/u2/a626362.pdf> [<https://perma.cc/AAE6-5MAC>] (archived Sept. 28, 2023) (hereinafter MOBILIZING COMPATRIOTS). “Since the annexation of Crimea, [Putin] has spoken increasingly of ethnic Russians (*russkiy*) abroad.” *Id.* at 4.

322. KONSTITUTSIA ROSSIĖSKOĖ FEDERATSII [KONST. RF] [CONSTITUTION] art. 61(2) (Russ.); Scheppele, *supra* note 24 (emphasis added).

and preserving all-Russian cultural identity.”<sup>323</sup> To better understand how these obligations figure into the Kremlin’s justification for the invasion of Ukraine, some unpacking of Russia’s compatriot policy, including the phenomenon of “passportization,” is necessary.

To begin, the legal term “compatriots” is not restricted to Russian citizens, but rather is defined “in an utterly extensive way.”<sup>324</sup> According to President Putin, “[e]veryone is Russian outside of Russia, and everyone who speaks Russian and is steeped in Russian culture is entitled to call themselves that. So, we must protect them and keep in touch with them.”<sup>325</sup> Russian legislation confirms that the inclusiveness of “compatriots” goes far beyond Russian citizens living abroad to include:

[I]ndividuals and their descendants who live abroad and are linked to the people historically living in Russia; individuals who make the free choice of a spiritual, cultural, and legal link to the Russian Federation; individuals whose ancestors lived on the territory of Russia, including former Soviet citizens living in countries that were part of the Soviet Union, whether they have received the citizenship of these states or became stateless persons; and individuals who emigrated from the Russian state, the Russian republic, the Russian Soviet Federative Socialist Republic, the USSR, or the Russian Federation who became citizens of another state or stateless persons.<sup>326</sup>

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323. KONSTITUTSIYA ROSSIĖSKOĖ FEDERATSII [KONST. RF] [CONSTITUTION] art. 67.1(3) (Russ.); Mälksoo, *supra* note 33.

324. Marlene Laruelle, *Russia as a “Divided Nation,” from Compatriots to Crimea: A Contribution to the Discussion on Nationalism and Foreign Policy*, 62 PROBS. POST-COMMUNISM 88, 94 (2015). Russia’s *Human Rights Situation in Certain Countries* report maintains a distinction between Russian citizens and “compatriots,” and uses terms “Russians” and “Russian-speaking minorities” when addressing concerns over discriminatory treatment. HUMAN RIGHTS REPORT, *supra* note 160; WHITE BOOK, *supra* note 165.

325. President Vladimir Putin, Russ., Meeting with Members of the Working Group on Drafting Proposals for Amendments to the Constitution at the Kremlin (Feb. 26, 2020), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/transcripts/62862> [<https://perma.cc/9L9X-UWXE>] (archived Sept. 22, 2023). States with “the largest shares of ethnic Russians in their populations are Estonia, Kazakhstan, and Latvia (23–27%) and Ukraine (17%).” MOBILIZING COMPATRIOTS, *supra* note 321, at i.

326. Federal’nyi Zakon RF o Gosudarstvennoi Politike Rossiiskoi Federatsii v Otnoshenii Sootechestvennikov Za Rubezhom [Federal Law of the Russian Federation Concerning the Compatriots Abroad], SOBRANIE ZAKONODATEL’SIVA ROSSIĖSKOĖ FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1999, No. 22, Item 2670, as reprinted in Vasile Rotaru, *Forced Attraction? How Russia is Instrumentalizing Its Soft Power Sources in the “Near Abroad”*, 65 PROBS. POST-COMMUNISM 37, 43 (2018). For a copy of the law amended to 2010, see <https://www.mid.ru/pereselenie/>.

As Marlene Laruelle has elaborated, the “legal definition of compatriot functions in a concentric way,” going from

[A] civic core (expatriate citizens) to a broader group of people who are culturally and spiritually oriented toward Russia ([such as] the Donetsk and Lugansk insurgents . . . ) before encompassing the even larger group of all Soviet peoples and people who were part of the Tsarist Empire ( . . . citizens of Poland and Finland could apply to have compatriot status).<sup>327</sup>

It is precisely this snowballing definition that prompted former president Boris Yeltsin to veto a 1997 attempt to establish a federal policy on compatriots out of concern it “would interfere in the domestic affairs of neighboring countries.”<sup>328</sup> Indeed, even at this early post-Soviet stage, Russian policymakers demonstrated an acute awareness of the strategic import and complexity attached to compatriots under Russian foreign policy. According to one advisor in Yeltsin’s inner circle:

The civic equality of ethnic Russians abroad is a normal national interest . . . involv[ing] the fate of 25 million people. Obviously, intervention on their behalf can be used as a pretext for territorial expansion, but this is not Russia’s purpose. That route would be fraught with dangerous consequences for everyone. Diplomatic measures are a must . . . . Russia must defend its interests in anti-imperialist ways. What is at stake is our internal stability. Unless we resolve this problem, it will remain a constant source of tension that could explode at any time.<sup>329</sup>

With the onset of the Putin era, however, the obligation to support and protect “compatriots” gradually came to reflect a vital soft power lever for advancing Kremlin interests abroad.<sup>330</sup> In Sergey Lavrov’s words, “Compatriots surrounding us . . . are our reserve, our soft power.

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[<https://perma.cc/4BCT-FWLS>]

327. Laruelle, *supra* note 324, at 94.

328. *Id.* at 92–93.

329. Sergei Stankevich, *Toward a New “National Idea,”* in CTR. FOR STRATEGIC & INT’L STUD., *RETHINKING RUSSIA’S NATIONAL INTERESTS* 24, 28 (Stephan Sestanovich ed., 1994). During the attempted August 1991 coup, Stankevich was part of Boris Yeltsin’s inner circle. *Id.*

330. Andis Kudors, *Russian Soft Power and Non-Military Influence: The View from Latvia*, in *TOOLS OF DESTABILIZATION: RUSSIAN SOFT POWER AND NON-MILITARY INFLUENCE IN THE BALTIC STATES* 71, 110 (Mike Winnerstig ed., 2014).

What matters most is that they feel comfortable over there, so that they can project this soft power.”<sup>331</sup>

The rise in Russia’s investment and interest in its compatriots can be traced back to 2006, when a formal policy of “Russification (русификация)” sought to consolidate and unify compatriots abroad.<sup>332</sup> This policy was premised on Russia’s use of various soft power outlets intended to shore up support for compatriots.<sup>333</sup> Despite this modest beginning, within ten years, Western policy assessments concluded that Russia’s compatriot communities

[S]trengthen[] Russia’s argument that there is a ‘Russian world’ (*Russkiy mir*) larger than Russia itself that lends legitimacy to both Russia’s great power status and its regional aspirations. To the extent that they identify with Russia not only culturally but also politically, Russian compatriots can amplify Russia’s political influence in the former USSR and provide political, economic, and military intelligence.<sup>334</sup>

Reinforcing this view, the 2016 FPC clearly entrenched compatriots as a strategic national priority. Pronouncing Russia’s fundamental foreign policy vision, the document tasked the Kremlin with ensuring “comprehensive, effective protectizon [sic] of [compatriot] rights and legitimate interests . . . abroad.”<sup>335</sup> It further obligated the government to enable compatriots “to better realize their rights in the countries of residence, and to facilitate the preservation of the Russian diaspora’s identity and its ties with the historical homeland.”<sup>336</sup>

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331. Sergey Lavrov, Foreign Minister of Russ., Remarks and Answers at the 25th Forum All of Russia 2021 in Sochi, *in* THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N (Sept. 10, 2021), [https://mid.ru/en/foreign\\_policy/news/1775320/](https://mid.ru/en/foreign_policy/news/1775320/).

332. VLADISLAVA VOJTÍŠKOVÁ, VIT NOVOTNY, HUBERTUS SCHMID-SCHMIDSFELDEN & KRISTINA POTAPOVA, WILFRIED MARTENS CTR. FOR EUR. STUD., *THE BEAR IN SHEEP’S CLOTHING: RUSSIA’S GOVERNMENT-FUNDED ORGANISATIONS IN THE EU* 32, 33 (2016) [hereinafter *THE BEAR IN SHEEP’S CLOTHING*] (internal quotations omitted).

333. *Id.*

334. MOBILIZING COMPATRIOTS, *supra* note 321, at ii.

335. Ob utverzhdenii Kontseptsii vneshney politiki Rossiyskoy Federatsii [On the Approval of the Foreign Policy Concept of the Russian Federation], SOBRANIE ZAKONODATEL’STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2016, No. 640, art. 3(h).

336. *Id.* at art. 45(f). The FPC priorities are reinforced by Federal’nyi Zakon RF o Gosudarstvennoi Politike Rossiiskoi Federatsii v Otnoshenii Sootechestvennikov Za Rubezhom [Federal Law of the Russian Federation Concerning the Compatriots Abroad], SOBRANIE ZAKONODATEL’STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1999, No. 22, Item 2670. For example, art. 14(2) establishes that protection of the fundamental human and civil rights and freedoms of compatriots is an integral part of the foreign policy of the Russian Federation. *Id.*



Evidencing its importance as a foreign policy tool, compatriot-related activities evolved to be supported by an expanding “bureaucratic machinery”<sup>337</sup> spearheaded by *Rossotrudnichestvo* (the Federal Agency for the Commonwealth of Independent States, Compatriots Abroad, and International Humanitarian Cooperation).<sup>338</sup> As part of its multi-million dollar mandate, *Rossotrudnichestvo* directs “the implementation of . . . projects regarding compatriots abroad.”<sup>339</sup> More specifically, it “actively conducts various joint activities for people who feel their belonging to Russia,” including “supporting compatriots’ public associations, addressing cultural, linguistic and spiritual needs of Russian compatriots abroad,” and “protect[ing] the rights and legitimate interests of [] compatriots.”<sup>340</sup>

Today, *Rossotrudnichestvo* boasts ninety-seven representative offices in eighty states, including seventy-two Russian centers for science and culture and two dozen representatives of the Agency “working in Russian Embassies in 21 states.”<sup>341</sup> This global footprint is further built out by a wide network of compatriot-related institutions, including state-backed media companies like ITAR-TASS;<sup>342</sup> other Russian government institutions;<sup>343</sup> and various government-organized or sponsored NGOs (GONGOs),<sup>344</sup> such as

337. MOBILIZING COMPATRIOTS, *supra* note 321, at 38.

338. *Rossotrudnichestvo*’s initial 2014 budget to support compatriots amounted to 111.4 million rubles. *Id.* This sum was planned to scale up to 10 billion rubles by 2020. THE BEAR IN SHEEP’S CLOTHING, *supra* note 332, at 29. More recent data, however, suggests that while the budget has grown significantly, it does not appear to have reached this level. Vladimir Putin, President of Russ., Meeting of Council on Russian Language at the Kremlin (Nov. 5, 2022), in OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/transcripts/62862> [<https://perma.cc/SZ8J-CJNA>] (archived Sept. 22, 2023) (Chairman of the Russian Language Council Vladimir Tolstoy estimated funding for *Rossotrudnichestvo* at four billion rubles in 2019). *Id.*

339. *Support for Compatriots Abroad*, ROSSOTRUDNICHESTVO, <http://www.rs.gov.ru/en/activities/5> [<https://perma.cc/5RVA-UZA5>] (archived Jan. 3, 2024).

340. *Id.*

341. *About Rossotrudnichestvo*, ROSSOTRUDNICHESTVO, <https://rs.gov.ru/about-foiv/> [<https://perma.cc/47PY-CL72>] (archived Sept. 27, 2023).

342. CTR. FOR EURO-ATL. STUD., *supra* note 301, at 38.

343. For example, the “Russia House network, a system of over 50 Russophone centers promoting Russian language and culture” regularly conducts outreach to compatriots. HEATHER A. CONLEY, LUCY MOORE & THEODORE P. GERBER, CTR. FOR STRATEGIC & INT’L STUD., RUSSIAN SOFT POWER IN THE 21ST CENTURY: AN EXAMINATION OF RUSSIAN COMPATRIOT POLICY IN ESTONIA 14 (2011).

344. “Most of the instruments in this field are government-controlled, and the NGOs involved are in reality semi-governmental.” Gudrun Persson, *Russian Influence and Soft Power in the Baltic States: The View from Moscow*, in TOOLS OF DESTABILIZATION: RUSSIAN SOFT POWER AND NON-MILITARY INFLUENCE IN THE BALTIC STATES 17, 24 (Mike Winnerstig ed., 2014). “A remarkable feature of the Russian GONGOs is their direct connection to the Russian government and the governing United Russia (Единая Россия) party.” THE BEAR IN SHEEP’S CLOTHING, *supra* note 332, at 34.

*Russkiy Mir* (Russian World Foundation),<sup>345</sup> the Foundation for Support and Protection of Rights of Compatriots Living Abroad,<sup>346</sup> the World Coordinating Council (WCC) of Russian Compatriots Living Abroad,<sup>347</sup> and the International Council of Russian Compatriots (ICRC).<sup>348</sup> Konstantin Kosachev, former head of *Rossotrudnichestvo*, has claimed that the agency's efforts channel "the traditions and practical skills which emerged in the old Soviet times."<sup>349</sup>

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According to one report, a "substantial number of organizations and other actors" linked to the Russian government work to advance Russia's compatriots policy as part of implementing its "soft power strategy in the Baltic states." Persson, *supra* note 344; TOOLS OF DESTABILIZATION: RUSSIAN SOFT POWER AND NON-MILITARY INFLUENCE IN THE BALTIC STATES 4 (Mike Winnerstig ed., 2014).

345. This quasi-governmental agency—where the Moscow Patriarchate maintains a board seat—busies itself "strengthening the spiritual unity of the Russian world" and operating as "a bulwark against the threat of globalization and the loss of culture under the guise of "promoting the Russian language." Blitt, *Russia's 'Orthodox' Foreign Policy*, *supra* note 138, at 389; *About Russkiy Mir Foundation*, RUSSKIY MIR FOUND., <https://russkiymir.ru/en/fund/index.php> [<https://perma.cc/D4E3-QAWS>] (archived Sept. 25, 2023). Russkiy Mir also has been accused of serving as "one of the structural divisions of Russia's Foreign Intelligence Service." Blitt, *supra* note 143, at 390.

346. Established by presidential decree in 2012 and aimed at "monitoring of the compatriots' position in the country of residence, [and] render[ing] legal and organizational help to them in case of violation of their rights." Sergey Lavrov, Russian Minister of Foreign Affs., Speech at the Meeting with the Members of the World Coordination Council of Russian Compatriots in Moscow (Mar. 19, 2012), in THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, [https://www.mid.ru/en/web/guest/foreign\\_policy/news/-/asset\\_publisher/cKNonkJE02Bw/content/id/164410](https://www.mid.ru/en/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/164410) [<https://perma.cc/L8W6-7453>] (archived Jan. 15, 2024). See generally FOUND. FOR SUPPORT & PROT. OF THE RTS. OF COMPATRIOTS LIVING ABROAD, <http://pravfond.ru> [<https://perma.cc/5MLG-DGAT>] (archived Sept. 25, 2023).

347. Established by the Russian Foreign Ministry in 2006 as a central agency for coordinating "the activities of Russian organisations abroad and their communications with the Russian government." THE BEAR IN SHEEP'S CLOTHING, *supra* note 332, at 34. See generally WORLD COORDINATION COUNCIL OF RUSSIAN COMPATRIOTS LIVING ABROAD, <https://vksrs.com> [<https://perma.cc/XM28-T29A>] (archived Sept. 25, 2023).

348. Established in 2003, the ICRC bills itself as the only worldwide association of local organizations of Russian compatriots, uniting 137 local compatriot organizations from 52 countries. *About Us*, INT'L COUNCIL OF RUSSIAN COMPATRIOTS, <http://www.msrs.ru/about-us> [<https://perma.cc/KP2Y-RXYM>] (archived Sept. 26, 2023). The ICRC also maintains special consultative status at the U.N. Economic and Social Council (ESCOR). U.N. Economic and Social Council, *List of non-governmental organizations in consultative status with the Economic and Social Council as of 31 December 2022*, UN Doc. E/2022/INF/5, Dec. 2022, 83, <https://ecosoc.un.org/sites/default/files/NGO%20Page%20Files/Introduction%20to%20E%20COSOC%20Consultative%20Status/INF%20List%202022.pdf> [<https://perma.cc/6TMG-BPSZ>] (archived Dec. 9, 2023).

349. Persson, *supra* note 344, at 20.

The use of GONGOs is but one manifestation of how the Kremlin channels this Soviet tradition.<sup>350</sup> For example, despite the ICRC being blessed with UN consultative status, its activities are decidedly government-driven. The ICRC has credited itself with protecting the political and social rights of the Russian-speaking population in Ukraine by using its networks and representatives of the Moscow Patriarchate to oppose the presence of NATO and implement the “Russian project” in Crimea, including supporting the referendum “which resulted in the reunification of Crimea with Russia.”<sup>351</sup> At the UN specifically, the ICRC has gone as far as to “warn[] the international community that the authorities in [Lithuania, Latvia, Estonia, and Ukraine] are essentially beginning a new anti-Russian Holocaust!”<sup>352</sup>

With this background in place, it becomes clearer that constitutionalizing the protection of compatriots is fraught with international implications. This is especially so because the compatriot policy serves as a conduit for reinforcing the newly constitutionalized emphasis on the projection of Russian power, influence, and civilization on a “multipolar” international stage. According to the head of *Rossotrudnichestvo*, the “Russian diaspora abroad provides social and humanitarian support for the implementation of the interests of the Russian Federation in post-Soviet countries.”<sup>353</sup> This support includes using compatriots to spearhead or justify myriad foreign influence efforts, including promoting the Russian language and the “fight for its status,” bolstering the presence of Russian government-controlled media outlets,<sup>354</sup> boosting Russian culture and the Moscow Patriarchate,<sup>355</sup> disseminating “Russia’s official views on history,”<sup>356</sup> and “fight[ing] against the falsifiers of history.”<sup>357</sup>

From the Kremlin’s perspective, advancing this “social and humanitarian support” is a sign of “Russia’s stable development and

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350. Paul Goble, *GONGOs Are Returning in Force*, MOSCOW TIMES (Aug. 5, 2010), <https://www.themoscowtimes.com/2010/08/05/gongos-are-returning-in-force-465-a465> [https://perma.cc/P8V2-JSVF] (archived Dec. 9, 2023).

351. *About Us*, *supra* note 348.

352. International Council of Russian Compatriots, *From linguistic segregation to criminal prosecution. Anti-Russianism in the Baltic States and Ukraine*, United Nations Forum on Minority Issues Session 12 (Geneva, Switzerland), Nov. 28, 2019, <https://www.minorityforum.info/database/entity/kjrbswsihs8> [https://perma.cc/NKV7-JGL7] (archived Dec. 9, 2023).

353. CONLEY, MOORE & GERBER, *supra* note 343, at 13–14.

354. Kudors, *supra* note 330, at 110.

355. *Id.*

356. *Id.*

357. CONLEY, MOORE & GERBER, *supra* note 343, at 4; *see also* THE BEAR IN SHEEP’S CLOTHING, *supra* note 332, at 24 (noting that compatriots are also good disseminators of false information spread by the Russian media, which can create chaos in their home countries).

its positions in the international arena becoming stronger.”<sup>358</sup> By the same token, Western “attempts to discriminate against . . . compatriots in terms of language or ethnic culture [or] to rewrite the chapters of [Russia’s] common history”<sup>359</sup> are framed as violations of minority rights and tantamount to a direct affront to Russia. Indeed, much of this compatriot-related activity also functions to compound societal cleavages and alienation abroad<sup>360</sup> and, to the chagrin of states like Estonia, to establish “organized groups . . . capable of influencing another country’s sovereign decisions without obvious intervention by Russia.”<sup>361</sup>

Despite the web of institutional support backing Moscow’s compatriot policy, some observers prior to the 2022 invasion of Ukraine concluded its potential value had been at times overplayed.<sup>362</sup> Nevertheless, stark concerns persisted that Moscow’s compatriot policy remained focused on “influencing public opinion and internal processes . . . as well as promoting discrimination against [target states] in the international arena,”<sup>363</sup> and establishing a justification for Russian intervention abroad. As one think tank ominously concluded in 2016,

Bearing in mind the very broadly defined notion of compatriots . . . on the one hand, and the experiences of the Baltic countries, especially the annexation of Crimea and the war in eastern Ukraine, on the other, any attempt [by Russia] to create a

358. Lavrov, *supra* note 346.

359. *Id.*

360. Kudors, *supra* note 330, at 73; THE BEAR IN SHEEP’S CLOTHING, *supra* note 332, at 23 (explaining how Russia instigates alienation to create a potential for unrest). Russian officials can harness this alienation “immediately or allow it to remain latent.” MOBILIZING COMPATRIOTS, *supra* note 321, at 19.

361. Anna Bulakh, Julian Tupay, Karel Kaas, Emmet Tuohy, Kristiina Visnapuu & Juhan Kivirähk, *Russian Soft Power and Non-Military Influence: The View from Estonia*, in TOOLS OF DESTABILIZATION: RUSSIAN SOFT POWER AND NON-MILITARY INFLUENCE IN THE BALTIC STATES 30, 35 (Mike Winnerstig ed., 2014).

362. Vasile Rotaru, *Forced Attraction? How Russia is Instrumentalizing Its Soft Power Sources in the “Near Abroad”*, 65 PROBS. POST-COMMUNISM 37, 46 (2018) (concluding Russia’s neighbors have treated compatriots “with suspicion and distrust . . . since Moscow used the pretext of protecting Russians living abroad for invading Georgia and for annexing Crimea”); MOBILIZING COMPATRIOTS, *supra* note 321, at 48 (similarly concluding: “If host government and majority populations in neighboring states begin to view Russian compatriots as essentially foreign groups that act in Russia’s interests . . . those compatriots are likely to face growing skepticism and even hostility.”) *Russia’s Compatriot Policy Becoming More Focused*, BALTIC TIMES (May 5, 2014), <https://www.baltictimes.com/news/articles/34818/> [https://perma.cc/B226-QR6U] (archived Sept. 27, 2023) (noting “[t]he efforts of various pro-Russian organizations to use Latvia’s minorities as an instrument to achieve Russia’s geo-political interests have failed, as their provocative activities have not gained support from the Latvian public.”).

363. Kudors, *supra* note 330, at 81 (quoting a 2012 Latvian Constitution Protection Bureau report: “[T]he hidden objective of Russia’s foreign policy is to discredit Latvia worldwide . . . [This] is the dominant national security risk for Latvia created by the Compatriots Policy.”).

newly constructed narrative [concerning an] ‘endangered Russian minority’ . . . should be prevented.<sup>364</sup>

The persistence of these concerns has proven to be well-founded. First, even with growing recognition of potential pitfalls associated with Russia’s ability to manipulate compatriots as a soft power tool, Putin continued to warn he would “firmly defend” compatriot rights and interests, “using all the available bilateral and multilateral mechanisms . . . . As for those [compatriots] illegally persecuted, those in danger, we will make every effort to ensure their protection and provide a shelter.”<sup>365</sup> Second, the elevation of compatriot rights to constitutional obligation communicated a willingness to further blur the boundary between Russian citizen and mere compatriot and to specifically expand the scope of protective action that might attach to the latter. When Russia invaded Georgia and Upper Abkhazia in 2008, “the highest Russian officials justified the operation by pointing to the need to protect Russian citizens living in South Ossetia from what Moscow’s leaders chose to call ‘genocide’ by the Georgian army in South Ossetia.”<sup>366</sup> This justification was underwritten in the years leading up to Russia’s intervention by intensification of its passportization efforts—“the mass conferral of Russian citizenship on the ‘compatriot’ population of particular territories by distributing Russian passports.”<sup>367</sup> By promoting Russian citizenship “as a guarantee of freedom and security against possible Georgian aggression,” Russia boosted to virtually 100 percent and 97 percent respectively the

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364. CTR. FOR EURO–ATL. STUD., *supra* note 301, at 48.

365. Putin’s Address to Compatriots Abroad, *supra* note 300. Similarly, Foreign Minister Lavrov remarked that “[w]e certainly see that it is necessary to continue energising *Rossotrudnichestvo* and its chain of Russian science and cultural centres.” Sergey Lavrov, Russian Minister of Foreign Aff., Remarks and Answers During Government Hour at the Federation Council, *in* THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED’N (Dec. 23, 2019), [https://www.mid.ru/en/web/guest/meropriyatiya\\_s\\_uchastiem\\_ministra/-/asset\\_publisher/xK1BhB2bUjd3/content/id/3977671](https://www.mid.ru/en/web/guest/meropriyatiya_s_uchastiem_ministra/-/asset_publisher/xK1BhB2bUjd3/content/id/3977671) [https://perma.cc/39QK-CYV5] (archived Dec. 9, 2023).

366. PETER ROUDIK, LIBR. OF CONG., RUSSIAN FEDERATION: LEGAL ASPECTS OF WAR IN GEORGIA 9 (Sept. 2008), <https://www.loc.gov/item/2018299250/> [https://perma.cc/X7AQ-GNFU] (archived Sept. 28, 2023). Then President Medvedev declared the Russian Constitution required him “to protect the lives and dignity of Russian citizens wherever they may be. It is these circumstances that dictate the steps we will take now. We will not allow the deaths of our fellow citizens to go unpunished. The perpetrators will receive the punishment they deserve.” Dmitry Medvedev, *Statement on the Situation in South Ossetia* (Aug. 8, 2008), *in* OFF. INT. RES. OF THE PRESIDENT OF RUSS., <http://en.kremlin.ru/events/president/news/1043> [https://perma.cc/4DAF-GFHD] (archived Sept. 28, 2023).

367. Nagashima, *supra* note 186.

number of Abkhazian and South Ossetian residents holding its passports.<sup>368</sup>

To facilitate the transmission of citizenship through passportization, the legislative expansion of compatriot protections unfolded alongside a parallel liberalization of Russia's legislative framework for citizenship and military intervention. Whether as a prelude to military intervention or a lever of political pressure, when set against the backdrop of these ever-expanding Russian laws, the constitutionalization of Russia's compatriot obligations augured even more muscular manifestations of Russia's passportization policy. For example, article 14(5) of the compatriots law provides that "failure of a foreign state to comply with . . . fundamental human and civil rights and freedoms in relation to compatriots is a sufficient basis for the adoption by the state authorities of the Russian Federation of measures to protect interests of compatriots."<sup>369</sup> Writing in 2008, Valery Zorkin, President of Russia's Constitutional Court, invoked this article to validate Russia's military intervention in South Ossetia.<sup>370</sup>

Further entrenching this rationale, amendments to Russia's law on defense in 2009 multiplied the grounds for "operational deployment" of Russian armed forces to include "protect[ing] Russian Federation citizens beyond the territorial boundaries of the Russian Federation from armed attack."<sup>371</sup> Together with this, the Federation Council "*de facto* delegated its decision-making power" over troop deployments to enable the president to unilaterally authorize the "operational use" of Russian forces abroad.<sup>372</sup> Scrutinizing these changes to the defense law, the Venice Commission called Russia's attempt to protect its citizens on the territory of a third State "problematic," concluding that

368. Thomas Hoffmann & Archil Chochia, *The Institution of Citizenship and Practices of Passportization in Russia's European Neighbourhood Policies*, in RUSSIA AND THE EU: SPACES OF INTERACTION 227–228 (Thomas Hoffman & Andrey Makarychev eds., 2019).

369. Federal'nyi Zakon RF o Gosudarstvennoi Politike Rossiiskoi Federatsii v Otnoshenii Sootechestvennikov Za Rubezhom [Federal Law of the Russian Federation Concerning the Compatriots Abroad], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1999, No. 22, Item 2670.

370. Valery Zorkin, *Walk the Razor's Edge: Peace Enforcement and Human Rights*, ROSSIYSKAYA GAZETA (Aug. 13, 2008), <https://rg.ru/2008/08/13/zorkin.html> [<https://perma.cc/RG6N-6N7L>] (archived Sept. 29, 2023).

371. O vnesenii izmeneniy v Federal'nyy zakon "Ob oborone" [On Amending the Federal Law "On Defence"], ROSSIĖSKAIA GAZETA [ROS. GAZ.] Nov. 13, 2009, *reprinted in* VENICE

COMM'N, [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2010\)056rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2010)056rev-e) [<https://perma.cc/MD5Z-XJKL>] (archived Sept. 29, 2023).

372. COUNCIL OF EUR., OPINION OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW ON THE FEDERAL LAW ON THE AMENDMENTS TO THE FEDERAL LAW ON DEFENCE OF THE RUSSIAN FEDERATION 11 (2010), <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL%282010%29124-e> [<https://perma.cc/WP2U-487Q>] (archived Dec. 9, 2023).

“[i]t cannot be used as a pretext for military intervention and cannot have as a consequence the stationing of troops in order to ensure the continued protection of the citizens in question.”<sup>373</sup>

Finally, in 2014 and 2015, Russia enabled fast-track naturalization by liberalizing its refugee and citizenship law through provisions including a pathway for “native” Russian speakers, and further expanded access to citizenship for all residents of neighboring unrecognized entities like Abkhazia and South Ossetia.<sup>374</sup> Alongside its compatriots policy, these changes reflected efforts by the Kremlin to facilitate its “demographic, geopolitical and national goals.”<sup>375</sup> More recent changes to Russia’s citizenship law have deepened this expansive approach, waiving longstanding residency and income requirements in favor of fast-track citizenship applications for all citizens of the former Soviet Union who continue to reside in one of the former Soviet republics without having citizenship of that republic.<sup>376</sup>

While the case of Abkhazia and South Ossetia might be distinguished on the basis of intervention to protect Russian *citizens*,<sup>377</sup> the Russian government’s policy extending citizenship itself implicates a violation of state sovereignty for failing to comport with

373. *Id.*

374. Irina Molodikova, *The Transformation of Russian Citizenship Policy in the Context of European or Eurasian Choice: Regional Prospects*, 6 CENT. & E. EUR. MIGRATION REV. 98, 113–14 (2017).

375. *Id.* at 116.

376. Поправки в Федеральный закон «О гражданстве Российской Федерации», упрощающие порядок приобретения гражданства России иностранными гражданами и лицами без гражданства [Amendments to the Federal Law “On Citizenship of the Russian Federation” Simplifying the Procedure for Acquisition of Russian Citizenship for Foreign Citizens and Stateless Persons], SOBRANIE ZAKONODATEL’STVA Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2020, No. 134. See Peter Roudik, *Russia: New Law Eliminates Requirement to Renounce Foreign Citizenship*, LIBR. OF CONG. (May 1, 2020), <https://www.loc.gov/item/global-legal-monitor/2020-05-01/russia-new-law-eliminates-requirement-to-renounce-foreign-citizenship/> [https://perma.cc/T4TV-X4YZ] (archived Sept. 29, 2023); *Simplification of the Procedure For Acquiring Russian Citizenship*, TIM SERVS., <http://www.timservices.ru/en/news/336-simplification-of-the-procedure-for-acquiring-russian-citizenship.html> [https://perma.cc/9L7M-G3XE] (archived Sept. 29, 2023) (noting that the executive branch at the time declined to authorize a proposal from some legislators to extend fast-track citizenship to all Russian compatriots). Nagashima tracks the earlier history of efforts to fast-track citizenship for compatriots. Nagashima, *supra* note 186, at 190.

377. In the estimation of the CoE’s Venice Commission, military intervention to protect a State’s own nationals abroad lacks an established legal basis: “It can be assumed that as soon as a rescue operation exceeds a minimum intensity and falls within the scope of [the U.N. Charter’s] Art. 2(4) [prohibition on the use of force], the protection of own nationals does not constitute an autonomous justification for the use of force.” COUNCIL OF EUR., *supra* note 372, at ¶ 45. Questions remain about the legality of Russia’s mass transmission of passports to residents in South Ossetia, and whether that action was motivated by a desire to generate a justification for Russia’s intervention. *Id.*

relevant international norms.<sup>378</sup> Executing a policy of passportization artificially expands the umbrella of citizenship protection while simultaneously reinforcing the Kremlin's constitutional vision of exceptionalism, with maximalist sovereignty attached to Russia and a watered down sovereignty for the "near abroad" states living in Russia's shadow. In the words of one think tank report on passportization, while Russia "claims inviolability of state sovereignty" for itself, "in its eyes post-Soviet states have at best limited sovereignty."<sup>379</sup>

Despite this obvious encroachment on state sovereignty, Russia continued to exercise its passportization policy after its intervention in Georgia. Although the extension of Russian citizenship to residents of Crimea came after Russia's takeover, Russia's actions in Ukraine's Donbas region prior to its 2022 invasion more closely mirrored the Georgian model. In April 2019, Putin issued an executive order extending fast-track Russian citizenship to residents of the breakaway self-proclaimed republics of Donetsk and Luhansk. Putin couched his invitation as intended to protect "human and citizens' rights and freedoms."<sup>380</sup> From the EU's perspective, Putin's action ran contrary to "the spirit and the objectives" of the 2014-2015 Minsk agreements and signaled "another attack on Ukraine's sovereignty."<sup>381</sup> A BBC commentator more bluntly described the move as granting Russian passports "to people regarded by everyone bar Russia as Ukrainians living on Ukrainian soil. In Kiev it's being seen another step towards eventual Russian annexation."<sup>382</sup>

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378. HOFFMANN & CHOCHIA, *supra* note 368, at 223. Hoffmann and Chochia conclude Russia's extension of passports to residents "in Transnistria, Abkhazia or South Ossetia" violated international law because "these regions do not form a part of the Russian territory under international law [and thus any resident's] right is restricted by the sovereignty of Moldova and Georgia, respectively." *Id.*

379. Fabian Burkhardt, *Russia's 'Passportisation' of the Donbas: The Mass Naturalisation of Ukrainians is More Than a Foreign Policy Tool*, STIFTUNG WISSENSCHAFT UND POLITIK GER. INST. FOR INT'L & SEC. AFF. (Aug. 3, 2020), <https://www.swp-berlin.org/en/publication/russias-passportisation-of-the-donbas> [https://perma.cc/V6RQ-UX8A] (archived Sept. 29, 2023). This conclusion is reiterated elsewhere: "For Putin, Russia is the only sovereign state in this neighborhood. None of the other states, in his view, have truly independent standing—they all have contingent sovereignty." Fiona Hill & Clifford G. Gaddy, *What Makes Putin Tick, and What the West Should Do*, BROOKINGS INST. (Jan. 13, 2017), <https://www.brookings.edu/research/what-makes-putin-tick-and-what-the-west-should-do/> [https://perma.cc/HXX2-JTPZ] (archived Sept. 29, 2023).

380. *Executive Order Identifying Groups of Persons Entitled to a Fast-Track Procedure When Applying for Russian Citizenship on Humanitarian Grounds*, OFF. INT. RES. OF THE PRESIDENT OF RUSS. (Apr. 24, 2019), <http://en.kremlin.ru/acts/news/60358> [https://perma.cc/NE7X-T5AL] (archived Sept. 29, 2023).

381. *Russia Starts Giving Passports to Ukrainians*, DEUTSCHE WELLE (June 14, 2019), <https://p.dw.com/p/3KT4z> [https://perma.cc/F869-ZTH8] (archived Sept. 29, 2023).

382. *Russia Offers Passports to People in Eastern Ukraine Territories*, BBC NEWS (Apr. 25, 2019), <https://www.bbc.com/news/world-europe-48045055>



Shortly after this opening salvo, the Kremlin expanded its offer of citizenship to include residents of Ukraine (and their children) born or residing in Crimea before Russia's annexation in March 2014.<sup>383</sup> With this expansion of passportization from 2019, Russian authorities subsequently invited Donetsk and Luhansk residents holding new Russian passports to participate in the referendum to approve the 2020 constitutional amendments. At that time, the number of passports issued was fewer than 200,000.<sup>384</sup> By the eve of the 2022 invasion, the number of residents with Russian citizenship "rebel-held areas in eastern Ukraine" had swelled to more than 720,000, representing nearly 18 percent of the population.<sup>385</sup>

From the perspective of the Kremlin, therefore, the presence of Russian citizens in Donbas, alongside other Russian "compatriots," coupled with the constitutional obligations to protect, provided significant justification for its decision to invade. Government statements readily confirm this understanding. For example, in December 2021, Foreign Minister Lavrov stressed "the need to ensure the rights of our compatriots living abroad, protect their interests and preserve pan-Russia cultural identity."<sup>386</sup>

More directly, three days before the war, President Putin invoked "the people" that "[s]ince time immemorial" have "called themselves Russians and Orthodox Christians" and lived in "what has historically been Russian land" as central to his justification for rejecting Ukrainian sovereignty and recognizing the breakaway Donbas republics.<sup>387</sup> Putin repeatedly stressed the threat Ukraine posed to the "[p]eople who identify as Russians and want to preserve their identity, language and culture", and to the "destruction" of the Ukrainian

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[<https://perma.cc/D284-T2RD>] (archived Sept. 29, 2023). Pundits with reported ties to Russia's Ministry of Defense hypothesized in 2020 that disseminating new Russian passports in the restive Donbas could lay the groundwork for another 'Crimean scenario': "It is probable that when the number of Russians in [Donetsk and Luhansk] reaches a certain size, a referendum on reunification according to the Crimean scenario will be logical... And who knows, maybe the Kherson region...or the rest of Donbas will also follow [this] path." Ksenia Kirillova, *Moscow Pressures Ukrainian Authorities by Stepping Up Passportization Efforts*, JAMESTOWN FOUND.: EURASIA DAILY MONITOR (July 1, 2020), <https://jamestown.org/program/moscow-pressures-ukrainian-authorities-by-stepping-up-passportization-efforts/> [<https://perma.cc/7KDX-5ZUY>] (archived Sept. 29, 2023).

383. Kirillova, *supra* note 382.

384. Burkhardt, *supra* note 379.

385. Dasha Litvino & Yuras Karmanau, *With Fast-Track Passports, Russia Extends Clout in Ukraine*, AP NEWS (Feb. 17, 2022), <https://apnews.com/article/russia-ukraine-europe-russia-moscow-donetsk-9e451c5a094b7b2f5ead7534a3a23740> [<https://perma.cc/DFX2-BLC6>] (archived Sept. 29, 2023).

386. Sergey Lavrov, Foreign Minister of Russ., Remarks at a Meeting of the United Russia Commission on International Cooperation and Support for Compatriots Living Abroad in Moscow (Dec. 28, 2021), *in* THE MINISTRY OF FOREIGN AFF. OF THE RUSSIAN FED'N, [https://mid.ru/ru/foreign\\_policy/news/1792565/?lang=en](https://mid.ru/ru/foreign_policy/news/1792565/?lang=en).

387. Putin's Feb. 24th Address, *supra* note 200.

Orthodox Church (Moscow Patriarchate), a central promulgator of compatriot identity.

In Putin's view, the only sin of the "people of Donbas"—Russian compatriots and citizens alike—was their opposition to "the transition towards the Neanderthal and aggressive nationalism and neo-Nazism which [had] been elevated in Ukraine to the rank of national policy."<sup>388</sup> In opposing the barbaric and neo-Nazi state, Putin concluded, "[t]hey are fighting for their elementary right to live on their own land, to speak their own language, and to preserve their culture and traditions."<sup>389</sup> In using the possessive pronoun "their," Putin clearly intended to convey "Russian"—namely Russian land, language, and Russian Orthodoxy as prescribed by the Moscow Patriarchate.

Three days later, Russia's military launched an outright assault against Ukraine. In rationalizing his action, Putin converted his justification for recognition of the breakaway republics into a justification for war to protect Russia's compatriots:

It became impossible to tolerate it. We had to stop that atrocity, that genocide of the millions of people who live there and who pinned their hopes on Russia, on all of us . . . . The purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime. To this end, we will seek to demilitarise and denazify Ukraine, as well as bring to trial those who perpetrated numerous bloody crimes against civilians, including against citizens of the Russian Federation.<sup>390</sup>

## V. CONCLUSION

The story of Russia's 2020 constitutional amendments is ultimately another worrying example of what Kim Lane Scheppele, Javier Corrales, and others describe as "autocratic legalism,"<sup>391</sup> only on steroids and with a time-delayed fuse. Rather than merely introducing new or changing existing laws to consolidate power, the 2020 amendments represent a fundamental reorientation of the constitutional underpinnings of the Russian state for the purpose of restoring an autocratic empire's lost glory clad in millennial history, with all the imperial entitlements and accoutrements that it entails. To provision this autocratic expansion, President Putin did not have to look far: Soviet international legal theory and Russian history provided familiar and tested scaffolds, with the Western world playing the

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388. Putin's Feb. 21st Address, *supra* note 194.

389. *Id.*

390. *Id.*

391. Scheppele, *supra* note 24, at 545.

useful foil, albeit with a fresh emphasis on its debauched values rather than its voracious capitalism. Furthermore, by subsuming this transformation within a complex, elaborate, and technical amendment process where public attention was directed to other more urgent changes, much of this reorientation transpired under the radar.

Almost two years into the war, subsequent developments signal that this constitutional change—and its accompanying foreign policy implications—is intended for the long-haul. In March 2023, President Putin approved a new Foreign Policy Concept that leans into and further activates the constitutional amendments discussed herein. Among other things, the document embraces “Russia’s special position as a unique country-civilization and a vast Eurasian and Euro-Pacific power that brings together the Russian people and other peoples belonging to the cultural and civilizational community of the Russian world.” In this vein, the FPC identifies Russia “as one of the sovereign centres of global development” with a “historically unique mission aimed at . . . building a multipolar international system.”<sup>392</sup>

As an “influential sovereign centre[]” committed to defending its territorial integrity, the 2023 FPC directs Russia to implement peaceful coexistence by “ensuring sustainable long-term good-neighbourly relations” with near abroad states “*which are connected with Russia by centuries-old traditions of joint statehood, deep interdependence in various fields, a common language and close cultures.*” In addition, the FPC bolsters noninterference by requiring Russia to counter the West’s “wide-spread . . . interference” intended “to impose pseudo-humanistic or other neo-liberal ideological views, leading to the loss by the humankind of traditional spiritual and moral values and integrity.”

To further implement the constitutional norms of peaceful coexistence and noninterference while advancing Russian sovereignty, territorial integrity, and civilizational entitlement, the FPC condemns the West for “undermining [Russia’s] constructive civilizational role, power, economic and technological capabilities, limiting its sovereignty in foreign and domestic policy, [and] *violating its territorial integrity.*” Finally, the FPC—situating Russia at “*the core of the civilizational community of the Russian world*”—tasks the government with “protecting the Russian Orthodox Church from discrimination abroad, *including in the interests of ensuring the unity of Orthodoxy,*” and “consolidati[ng] compatriots living abroad” by “supporting them in *protecting their rights and legitimate interests . . . primarily in hostile states,* in preserving their all-Russian cultural and linguistic identity, Russian spiritual and moral values, and their ties with their historic Motherland.”<sup>393</sup> As argued here, all of these objectives—now duly

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392. The Concept of the Foreign Policy of the Russian Federation, *supra* note 131.

393. *Id.* (emphasis added).

enshrined in the amended constitution—represent the fuel justifying Russia's current aggression against Ukraine, and exacerbate the prospect of future conflict elsewhere.

Confronted with these constitutional underpinnings for aggression, policymakers concerned with Russia's actions would be best served by contemplating long-term actions that directly address Russia's lurch towards a restored empire seeking domination over its neighbors. At a minimum, this strategy should include redoubled efforts to strengthen the sovereignty of Russia's neighbors and, as a matter of necessity, prioritizing vigorous and targeted diplomatic engagement with states that remain ambivalent regarding Russia's unlawful action.

To challenge Russia's framing of the conflict, policymakers must construct compelling fact-based counter-narratives to expose the Kremlin's underlying global power machinations and current constitutional framework as creating a dangerous foundation for destabilizing and threatening other regional neighbors in addition to Ukraine. Among other things, this will require responding to the role of the Moscow Patriarchate and other government-backed organizations that support the Kremlin abroad. It likewise should include a greater push to resolve any genuine human rights violations impacting Russian minority communities. Settling authentic grievances in this realm will do much to deflate Russia's claims of Nazis lurking about or endangered minorities, while more fully unmasking its reliance on bankrupted Soviet international legal theory and ill-conceived imperial aspirations.

Finally, states should commit to a long-term strategy of supporting Russian civil society fighting from within and outside the state to bring about peaceful change. This support should be tangibly expressed at international fora, as well as through any other means available to signal international recognition for another vision of Russia that, however seemingly distant, remains possible.