

SEVANNA POGHOSYAN

Soviet and Russian Approaches  
to Democracy in International Law





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## **LIST OF PUBLICATIONS SUBMITTED FOR DEFENCE**

1. Sevanna Poghosyan, 'The Idea of Democracy in International Law in Europe' in Anne van Aaken Pierre d'Argent, Lauri Mälksoo and Johann Justus Vasel (eds), (2023) *The Oxford Handbook of International Law in Europe* (Oxford University Press).
2. Sevanna Poghosyan, 'Russian Approaches to the Right of Peoples to Self-Determination: From the 1966 United Nations Covenants to Crimea' (2021) 30 *Juridica International* 183.
3. Sevanna Poghosyan, 'The Soviet View on Democracy in International Law' in Lauri Mälksoo, Ineta Ziemele and Dainius Žalimas (eds), *Baltic Yearbook of International Law*, vol 21 (2023) (Brill).
4. Sevanna Poghosyan, 'Russia's Discourse on Democracy in International Law' [Forthcoming] *Polish Yearbook of International Law*.

## ABBREVIATIONS

CoE	–	Council of Europe
CPSU	–	Communist Party of the Soviet Union
CIS	–	Commonwealth of Independent States
CSCE	–	Conference on Security and Co-operation in Europe
CSTO	–	Collective Security Treaty Organization
EAEU	–	Eurasian Economic Union
ECHR	–	European Convention on Human Rights
ECtHR	–	European Court of Human Rights
EU	–	European Union
FPC	–	Foreign Policy Concept
HRC	–	Human Rights Committee
ICCPR	–	International Covenant on Civil and Political Rights
ICESCR	–	International Covenant on Economic, Social and Cultural Rights
ICJ	–	International Court of Justice
MFA	–	Ministry of Foreign Affairs
NATO	–	North Atlantic Treaty Organization
NGO	–	Non-governmental Organization
NSS	–	National Security Strategy
OSCE	–	Organisation for Security and Co-operation in Europe
RF	–	Russian Federation
R2P	–	Responsibility to Protect
UDHR	–	Universal Declaration of Human Rights
UN	–	United Nations
UNGA	–	United Nations General Assembly
UNHRC	–	United Nations Human Rights Council
UNSC	–	United Nations Security Council
USSR	–	Union of Soviet Socialist Republics
WTO	–	World Trade Organization

# 1. INTRODUCTION

## 1.1. Research Object

The central objects of study of this dissertation are Soviet and contemporary Russian approaches to democracy in international law. This study theoretically centres on the ‘democratic entitlement’ thesis in international law, which has evolved significantly since Thomas M. Franck’s 1992 article introducing and claiming the emergence of a ‘right to democracy’ in international law.<sup>1</sup> This research adopts a comparative law approach to explore the development of this claim in the context of Russia and its predecessor—the Union of Soviet Socialist Republics (USSR). Specifically, it investigates their interpretation and application of the concept of democracy in international law. Therein, it also addresses their approaches to self-determination, viewing it as intrinsically intertwined with democracy. This link is reinforced by the ‘democratic entitlement’ thesis, which views self-determination as a primary building block of the asserted ‘right to democracy’.<sup>2</sup>

Examining the Soviet view provides a historical lens to understand the enduring legacies of the past on contemporary Russian approaches and identify patterns, breaks, and continuities there. The presumption of a link between Soviet and contemporary Russian approaches rests on the premise of the doctrine of state continuity in international law that Russia formally claimed after the USSR’s collapse.<sup>3</sup> The thesis revolves around the following overarching question: has

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<sup>1</sup> Thomas Franck, ‘The Emerging Right to Democratic Governance’ (1992) 86 *The American Journal of International Law* 46.

<sup>2</sup> Thomas Franck viewed self-determination as the primary building block of the asserted right to democracy under international law, *ibid* 52–56; This connection is extensively explored in scholarly discussions, focusing on the internal and external dimensions of self-determination and their links with democracy in the international legal framework, see e.g.; Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice* (Hart Pub 2013); Roland Rich, ‘Recognition of States: The Collapse of Yugoslavia and the Soviet Union’ (1993) 4 *Eur. J. Int’l L.* 36; Steven Wheatley and Stephen Tierney, ‘Modelling Democratic Secession in International Law’, *Nationalism and Globalisation: New Settings, New Challenges* (Hart 2014); Jean d’Aspremont, ‘Legitimacy of Governments in the Age of Democracy’ (2005) 38 *New York University Journal of International Law and Politics*; Roland Rich, ‘Bringing Democracy into International Law’ (2001) 12 *Journal of Democracy* 20; Brad R Roth, *Governmental Illegitimacy in International Law* (Oxford University Press 1999); Steven Wheatley, ‘Deliberative Democracy and Minorities’ (2003) 14 *European Journal of International Law* 507.

<sup>3</sup> Federal’nyi Zakon №101-FZ O Mezhdunarodnykh Dogovorakh Rossiiskoi Federatsii [Federal Law №101-FZ on International Treaties of the Russian Federation] 15 July 1995, Art. 1.3.; Russian legal scholars also argue along the same lines, see e.g.; Stanislav V. Chernichenko, *Teoria Mezhdunarodnogo Prava*, [Theory of International Law] vol 2 (NIMP 1999) 58–110; Kremnev P.P., *Raspad SSSR i pravopreemstvo gosudarstv*. [The collapse of the USSR and succession of states] *Moscow* (Yurlitinform 2012); See generally Ineta Ziemele, ‘Is the Distinction between State Continuity and State Succession Reality or Fiction?: The Russian Federation, the Federal Republic of Yugoslavia and Germany’ (2001) 1 *Baltic Yearbook of International Law Online* 191.

there emerged a distinct Russian approach to democracy in international law?<sup>4</sup> The study hypothesises that while Russia pursued democratisation based on Western liberal principles, it retained some elements of the Soviet approach, or at least was influenced by it in some ways, resulting in a distinct Russian approach to democracy in international law.

When it comes to the Soviet approach, the focus is on the Soviet Union's official position regarding democracy in the post-WWII period, especially in the context of key international law documents such as the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Civil and Political Rights (ICCPR).<sup>5</sup> Regarding contemporary Russia, the analysis focuses on the post-2000 developments and the transformations since Putin's first presidential term up until 2024. In this context, the study particularly highlights and explores contemporary Russia's official position on democracy in international law in the context of moments signifying the greatest divergence of Russia's approach to (Western interpretation of) international law, like the 2014 annexation of Crimea and the 2022 full-scale invasion of Ukraine.<sup>6</sup> In both instances, the official stance is primarily derived from high-ranking officials' relevant speeches and statements, representing the government's position. Additionally, the study carefully examines the works of Soviet and contemporary Russian legal scholars, which, although not directly representing the official stance, help clarify and provide insight into the subtleties of the approach.

## 1.2. Contextualising the Hypothesis of this Study

As outlined in the introduction, the hypothesis of this study highlights the presumed links and divergence between Soviet and contemporary Russian approaches, justifying an examination of the breaks and continuities in their views on democracy in international law. It rests on the doctrine of state continuity and requires further elaboration and explanation. Following the disintegration of the USSR in 1991, the Russian Federation (RF) began its transition from Soviet

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<sup>4</sup> The overarching research question is comprehensively outlined in section 2.1 and is broken down into four specific, interrelated sub-questions that systematically address the various facets of the main inquiry of this dissertation.

<sup>5</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. See also the twin Covenant of ICCPR, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) 993 UNTS 3.

<sup>6</sup> See generally Vera Rusinova, 'Russian Approaches to International Law' in Anne van Aaken and others (eds), *The Oxford Handbook of International Law in Europe* (Oxford University Press 2023); Lauri Mälksoo, *Russian Approaches to International Law* (Oxford University Press 2015).

socialist democracy to one based on Western liberal ideas.<sup>7</sup> Nevertheless, upon transition, Russia also asserted itself as the legal continuator of the USSR and assumed its international rights and obligations, including its UNSC seat and treaty commitments.<sup>8</sup> Accordingly, it accepted the USSR's formal obligations to the core tenets of democratic governance under international law, albeit with new liberal interpretations. This includes the United Nations (UN) two human rights covenants of 1966, ratified by the Soviet Union in 1973 (entered into force in 1976).<sup>9</sup> Moreover, Russia signed the I Optional Protocol to the ICCPR on October 1, 1991, allowing individuals in that country to bring complaints about human rights violations directly to the UN Human Rights Committee (HRC).<sup>10</sup>

Therefore, Russia, while formally embarking on democratisation based on Western liberal values, simultaneously formally preserved aspects of Soviet legal thinking. This conflict prompts the question of what kind of democratic approach has developed in contemporary Russia, given these concurrent and competing influences. The literature demonstrates that although Russia abandoned Soviet ideology in favour of capitalist fundamentals,<sup>11</sup> the ghost of Soviet legal thinking could not immediately be exorcised from the post-Soviet space.<sup>12</sup> Accordingly, one can infer that the same applies to their approach to democracy, allowing one to think that Russia's current approach remains deeply rooted in and influenced by Soviet legal thought.

### 1.3. Relevance and Value

Although international law scholarship has addressed the topic of democratic entitlement extensively, there is still a notable gap in research on this subject in non-Western contexts.<sup>13</sup> Critics argue that these discussions primarily revolve

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<sup>7</sup> Sevanna Poghosyan, 'The Soviet View on Democracy in International Law' in Lauri Mälksoo, Ineta Ziemele and Dainius Žalimas (eds), *Baltic Yearbook of International Law*, vol 21 (2023).

<sup>8</sup> In fact Moscow has claimed the elements of both state succession and continuity under international law. For further details, *see* Malksoo (n 6), p. 32; For more on Russia's claim to state continuity *see* Chernichenko (n 3).

<sup>9</sup> ICCPR (n 5).

<sup>10</sup> Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 302.; HRC not to be confused with UNHRC.

<sup>11</sup> Vladislav L Tolstykh, 'The Nature of Russian Discourses on International Law: A Contemporary Survey', *Russian Discourses on International Law* (Routledge 2018) 10.

<sup>12</sup> Anna Isaeva, 'Contradictions and Incompleteness in Russian Legal Discourses', *Russian Discourses on International Law* (Routledge 2018) 43.

<sup>13</sup> See further *Infra* note Ch. 4.1.

around the Western liberal paradigm.<sup>14</sup> This approach is especially problematic from a comparative international law perspective, which questions the claim of the universality of international law by highlighting how it might be interpreted and implemented differently across various regional settings.<sup>15</sup> In this context, Russia is a crucial and relevant case for multiple reasons. In particular, the dissolution of the USSR lies at the core of the emergence of the democratic entitlement thesis in international law, making Russia's history and geography central to this subject. In more recent history, the RF has emerged as an actor that contests inherently Western liberal democratic norms and other international law principles like sovereignty and territorial integrity, echoing the Soviet Union's approach. Russia's interference in the democratization struggles of post-Soviet states, driven by its preference for stability over democracy within its self-defined 'sphere of influence' and culminating in the 2022 full-scale invasion of Ukraine, underscores the challenges created by Russia's approach and its consequences for the international community. These events carry profound implications for the future of democracy and other principles in international law. Analyzing Russia's stance is therefore crucial for understanding the trajectory of democratic entitlement in international law, with potential future trends and challenges.

Furthermore, the relevance of this topic is apparent against the background of the global democratic backslide, the rise of populism in Europe, and the consolidation of authoritarian rule in different parts of the world.<sup>16</sup> The same trend is observed within the RF as the Russian government has suppressed all calls for democracy harshly, as seen from the ill fate of opposition figure Alexey Navalny and the oppression of any dissent, which has intensified since the 2022 invasion of Ukraine.<sup>17</sup> The motivation of this study also stems from the absence of similar analyses in the literature, as demonstrated in the literature review.<sup>18</sup> Consequently, each article in this thesis enriches the debates on Soviet and Russian approaches to democracy in international law and various facets of their legal and political history.

The first article contributes to the debates on the democratic entitlement thesis by highlighting the evolution of the Western liberal idea of democracy in

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<sup>14</sup> Akbar Rasulov, "From the Wells of Disappointment": The Curious Case of the International Law of Democracy and the Politics of International Legal Scholarship' (2021) 32 *European Journal of International Law* 17.

<sup>15</sup> Anthea Roberts, *Is International Law International?* (Oxford University Press 2017).

<sup>16</sup> See e.g. Freedom House, 'Freedom in the World 2022: The Global Expansion of Authoritarian Rule' (2022) <https://freedomhouse.org/report/freedom-world/2022/global-expansion-authoritarian-rule> (accessed 10 May 2024); See more Bojan Bugaric and Alenka Kuhelj, 'Varieties of Populism in Europe: Is the Rule of Law in Danger?' (2018) 10 *Hague Journal on the Rule of Law* 21; Tom Ginsburg, 'Authoritarian International Law?' (2020) 114 *American Journal of International Law* 221.

<sup>17</sup> See generally Willemijn Born, Maartje Weerdesteijn and Joris van Wijk, 'Dissecting Dissent in Russia: A Multilevel Framework of Nonviolent Resistance in Repressive Regimes' (2024) 1 *International Criminal Law Review* 1.

<sup>18</sup> *Infra* note Ch. 4.2.

international law and its place in the European regional framework.<sup>19</sup> The second article confirms the continuities between Soviet and contemporary Russian approaches to self-determination within international law.<sup>20</sup> The third article introduces a new perspective by analysing the Soviet legal approach to democracy, delving into its historical origins and the impact of Soviet ideology on international law—a subject typically examined through the lens of human rights within international law scholarship.<sup>21</sup> The final article on Russia’s discourse on democracy in international law,<sup>22</sup> alongside complementary discussions within this compendium on Russian legal scholars’ approach,<sup>23</sup> provides a picture of the specificities of Russia’s approach to democracy within international law, deriving a picture of a multifaceted approach.

#### 1.4. Discussing the Disciplinary Boundaries of this Study

With its sources, theoretical framework, and methodological approach, this study is primarily rooted in international law.<sup>24</sup> Nevertheless, politics and law are often intertwined within international law, making it essential to consider the underlying political dynamics for a comprehensive legal analysis.<sup>25</sup> Within this study, the interaction of law and politics can be seen throughout the discussion on the Soviet position on democracy in the negotiations of the 1948 UDHR and the statements of high-ranking officials of the RF. In both cases, we deal with legal sources indicative of *opinio juris* related to the state practice of international law. In other words, a valid international law analysis involves treaties and legal documents, extensively discussed in this study, and the statements and pronouncements of high-ranking officials who represent the state’s position, which is an essential part of international law analysis. However, power dynamics, interests, and geopolitical factors highlight the political nature of these processes. This approach aligns with the way international law scholars have generally addressed the topic, typically integrating discussions of democracy with broader political contexts. Thus, while rooted in international law, the study acknowledges the inevitable interplay between politics and international relations, making it an interdisciplinary analysis with international law as the central discipline.

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<sup>19</sup> Poghosyan, ‘The Soviet View on Democracy in International Law’ (n 7).

<sup>20</sup> Sevanna Poghosyan, ‘Russian Approaches to the Right of Peoples to Self-Determination: From the 1966 United Nations Covenants to Crimea’ (2021) 30 *Juridica Int’l* 183.

<sup>21</sup> Poghosyan, ‘The Soviet View on Democracy in International Law’ (n 7).

<sup>22</sup> Sevanna Poghosyan, ‘Russia’s Discourse on Democracy in International Law’ [Forthcoming] *Polish Yearbook of International Law*.

<sup>23</sup> *Infra* note Ch. 6.3.3.

<sup>24</sup> *Infra* note Ch. 3.

<sup>25</sup> See generally Wayne Sandholtz and Christopher A Whytock, *Research Handbook on the Politics of International Law* (Edward Elgar Publishing 2017) 1.

## 2. SETTING UP THE RESEARCH TASK

### 2.1. Outlining the Research Task and Research Questions

The primary task of this dissertation is twofold: first, to investigate the specificities of Soviet and contemporary Russian approaches to democracy and the continuity between these approaches in international law. The analysis of their approaches to the right of peoples to self-determination also falls under this task. Secondly, to determine whether a distinct Russian understanding of democracy (encompassing both Soviet and contemporary Russian approaches) has developed within the framework of international law and, if so, to delineate this understanding. These research tasks are addressed separately in four articles, with further elaborations in this compendium.

In addressing the research tasks, this study focuses on several key aspects: it examines claims regarding the emergence of a right to democracy under universal international law and its interpretations within the European regional legal order. Additionally, it explores Soviet and contemporary Russian official state approaches to democracy and self-determination in international law. Furthermore, the study analyzes the views of Soviet and contemporary Russian legal scholars on democracy in international law, particularly within the framework of democratic entitlement theory.

While each article is structured around multiple research questions that dissect the research tasks into smaller parts, and the introduction introduces the overarching question, the dissertation is organised around the following key research questions:

- 1) *What is the status of democracy within universal international law and the European regional (international) legal order? Is it an established legal right or a principle?*
- 2) *When the Soviets spoke about democracy and self-determination within the context of international law, what precisely did they mean and advocate for? What are the defining characteristics of Soviet approaches to democracy in international law?*
- 3) *When contemporary Russia speaks about democracy within the context of international law, what does it mean and advocate for? What are the defining characteristics of contemporary Russian approaches to democracy in international law?*
- 4) *What are the similarities between Soviet and contemporary Russian approaches to democracy in international law? Has there developed a distinct and unique Russian approach to democracy within international law?*

Ultimately, based on the answers of these four research questions, this study also raises inquiries about the potential impacts of Russian approaches to democracy on the evolution of the democratic entitlement paradigm in international law. This inquiry is addressed separately in the conclusion, reflecting on the future of international law of democracy.

## 2.2. Statements Presented for Defence

Based on the analysis, the following four main statements are presented for defense, each numbered and organized with subsections labeled alphabetically:

- 1) A) The claim that there exists a legal right to democracy, specifically in the Western liberal sense, is widely contested in universal international law, indicating that democracy has not achieved the status of a universally recognised, hard legal right.  
B) In the context of the European regional legal order, it is possible to argue for a ‘right to democracy’, despite the absence of an explicit reference to a ‘right to democracy’ in regional legal documents, given the strong regional support. This right is implicitly derived from foundational principles of Western liberal democratic governance, such as the right to political participation, freedom of expression, and freedom of assembly. The principle of democratic conditionality central to the European regional political-legal institutions further supports this claim. However, questions remain about the nature of this right.  
C) In universal international law and the European regional legal order, democracy is best described and supported as an essential guiding principle. However, universal international law does not endorse any specific model of democracy, whereas, in Europe, Western liberal democracy (with its variations) is strongly supported as a fundamental governance principle.
- 2) The Soviets formally advocated a distinct approach to democracy in international law, rooted in Marxist-Leninist principles and counter-Western ‘socialist international law’, consistently guiding their approach in international law. Within international law, they emphasised collective, specifically social and economic rather than political rights. They also underscored an external dimension of democracy that rhetorically emphasised anti-imperialism, favoured sovereignty, and non-interference in national governance. Nevertheless, their practices in international law were flexible and reflected double standards domestically and abroad, aligning with foreign policy goals and self-interests.
- 3) The contemporary Russian approach to democracy has formally evolved to mirror aspects of Western liberal democratic ideals despite assertions of continuity with Soviet doctrine. Russia’s approach, unlike the Soviet one, has

evolved inconsistently, showcasing remarkable conceptual flexibility over time. It encompasses a blend of universalist and particularist principles that simultaneously critique and reinforce Western ideas of democracy in international law. Within international law, Russia, like the Soviets, formally emphasises sovereignty and non-interference in domestic affairs and strategically utilises the antiimperialist and anticolonialist discourse, focusing predominantly on the external dimensions of democratic relationships within international law. Russia's practices in international law are flexible and reflect double standards domestically and abroad, aligning with foreign policy goals and self-interests.

- 4) A) The similarity between Soviet and Russian approaches to democracy boils down to a common formal emphasis on sovereignty and non-interference in internal affairs, rejecting any external scrutiny over their domestic matters. It also manifests in their state practices, which are selective and ambiguous, tailored to achieve realist objectives rather than claimed normative ends. Thus, they both reflect aspects of illiberal approaches to international law, showcasing resistance to the possibility of making democracy, in the Western liberal sense, an entitlement under international law.
- B) As for the question of whether there has developed a distinct Russian approach to democracy in international law, this question is answered in three parts:
- a) Conceptually, it is difficult to assert the existence of a distinct, unique Russian approach to democracy that would also encompass the Soviet perspective.

Nonetheless,

- b) Within the scope of Soviet and contemporary Russian approaches to international law, it is plausible to identify a Russian approach that integrates both Soviet and contemporary Russian perspectives. This approach is characterised by a formal emphasis on the 'democracy of international law', with sovereignty and non-intervention (primarily for great powers) as its central tenets. It demonstrates growing resistance to the 'democratic entitlement' paradigm by shifting focus away from it towards 'democratic relations in international law' and regards democratic entitlement as an intrusion into domestic affairs.
- c) This distinctiveness is limited to the practice and does not carry over into theoretical or conceptual interpretations, alongside similarities underscoring fundamental differences between Soviet and modern Russian approaches. Even in the case of contemporary Russia, conceptually it does not offer a meaningful alternative to the Western approach that would qualify as unique.

## 3. METHODOLOGY

### 3.1. The Limitations and Scope of the Study

***Thematic scope:*** The focus of this study is limited to international law and interpretations and practices relevant to democracy in the context of international law. Thus, the detailed exploration of Soviet and Russian domestic practices of democracy is beyond its scope and is addressed in this dissertation only in general terms. Practical considerations necessitated this choice as comprehensively detailing the domestic developments would be unfeasible due to the volume of the material and the limited scope of this study.

Furthermore, when it comes to the primary analysis, specifically regarding the pronouncements of the state officials, the main focus is on the keyword ‘democracy.’ The same strategy is applied while analysing the writing of legal scholars as the study focuses on the works that focus on democracy within the context of international law or dedicate a significant part to it within their work. Given the broad array of material, this approach has allowed to effectively manage the scope and relevance of these materials and reflect the study’s thematic focus on democracy. This strategy involves a deliberate choice, reversing the conventional order by prioritising democracy as the central element of the democratic entitlement thesis instead of focusing on mere human rights elements.

The only exception is the additional thorough examination of Soviet and contemporary Russian approaches to the right of peoples to self-determination in international law. This choice was necessary because self-determination is the core tenet of the democratic entitlement thesis and holds particular relevance in the context of both Soviet and contemporary Russian approaches. A thorough exploration of other human rights categories, like freedom of expression, freedom of assembly, or the right to political participation, would require multiple articles and dissertations, each focusing on a specific right. However, throughout this dissertation, these human rights provisions are addressed as needed, particularly in the context of constitutions, domestic legislation.

***Temporal scope:*** The dissertation, at the initial stage, focused on two focal points. The starting point of the Soviet approach to democracy was focused on the post-WWII period, specifically the 1948 UDHR and the 1966 two human rights covenants because it was at this time that the Soviets actively participated in the international legal discourse and laid out their position and vision on the subject of democracy and self-determination in international law. Later, the Soviets adopted a new Constitution, reflecting their core ideological position on democracy.

The discussion on contemporary Russian approaches primarily centres around the post-2000 Russian discourse on democracy and self-determination, with a specific emphasis on developments following the 2014 annexation of Crimea, which marks a critical point where Russia openly contested international legal norms regarding sovereignty and self-determination. However, the research scope

was subsequently expanded at the later stages due to significant developments. Specifically, the 2022 full-scale invasion of Ukraine by Russia has emerged as a new focal point in this dissertation, particularly highlighting Russia's strategic use of democracy and self-determination rhetoric to justify its military invasion of Ukraine.

Furthermore, as the dissertation is a compilation of individual articles, the temporal dimension of the research in each article requires elaboration. Each section is tailored to address distinct research questions within their respective historical contexts, analysing different periods and focusing on the most relevant points in time.

- a) The first article exploring the theoretical dimensions of democracy in international law within Europe adopts a *longue durée* approach. It provides a brief overview of democracy's historical development in the context of European legal traditions starting from Ancient Greece. Additionally, it closely examines the existing regional legal frameworks on democracy in Europe after WWII. It addresses the challenges faced in universalising the Western liberal concept of democracy in contemporary international law.
- b) The second article concerns two focal points relating to Soviet and Russian approaches to self-determination in international law. It discusses the Soviet approach to self-determination in the decolonisation period, specifically around the 1966 UN twin human rights covenants. The analysis of Russia's contemporary approach focuses primarily on the 2014 annexation of Crimea. Further insights are also offered in the compendium while discussing Russia's stance on self-determination and democracy in the wake of its 2022 full-scale invasion of Ukraine.
- c) The article on the Soviet perspective on democracy focuses explicitly on the 1948 UDHR negotiations and Moscow's reasons for ratifying the 1966 UN twin human rights covenants. Additionally, it reviews the writings of Soviet legal scholars from that period to gain insights into the overarching ideological stance on democracy during that era.
- d) The final article on contemporary Russian approaches to democracy deals with the problem of Russia's understanding of the concept of democracy in international law, with a greater focus on the post-2000 period, following Vladimir Putin's first election as the president of the RF, signified by a steady authoritarian and conservative turn.

### **3.2. Addressing Possible Biases**

Much of the international legal discourse on democracy is rooted in the ideas of Western liberalism. As a result, critiques of this perspective vary widely; some highlight flaws within the Western liberal democracy model while still recognising its strengths, whereas others oppose it entirely. However, every scholar's

stance on democracy in international law is shaped by their intrinsic values and beliefs. Therefore, it is crucial to transparently address one's potential biases and influences, which may be challenging to overcome fully.

My understanding of democracy has been profoundly influenced by my experiences in my home country, Armenia, set against the transformative period following the USSR's collapse. The transition of Armenia, a former Soviet Republic, towards a Western-style liberal democracy is an ongoing process marked by unique challenges and issues common to other post-Soviet nations. Mixed popular sentiments characterise this process; in this context, Western liberal democracy seemed appealing yet foreign—it was not considered a natural or inherent fit but rather an ideal to aim for or the best available option to pursue. Thus, over time, I have come to view democracy as a set of norms and practices that countries can learn and are worth pursuing, developing a liberal outlook.

My perspective has been further shaped by my studies in Estonia, which introduced an opportunity to interact and think about these concepts more deeply. My current understanding of democracy in international law resonates with Ginsburg's original definition along Western liberal lines.<sup>26</sup> Despite this, throughout this journey of drafting the dissertation, I have remained open and curious, always mindful of the lenses I apply when discussing the subject of democracy. This caution extends to being wary of blinding dogmas and the critiques and alternatives often influenced by other ideological motives or hidden agendas.

Moreover, my experiences have given me a nuanced understanding of Russian approaches to democracy in international law. Although I maintain an external viewpoint, my juxtaposition to Russia—owing to the region's shared geopolitical and historical legacies and my knowledge of the Russian language—enhances my comprehension, albeit not from an insider's perspective. Russia's influence was evident throughout my country's democratisation path, offering substantial insights into Russia's handling of democracy domestically and internationally. This positions me in a unique middle ground, enabling me to interpret Russia's statements and intentions regarding democracy and how these are perceived internationally. Nonetheless, I am aware of the limitations of this position and remain committed to continuously reevaluating and addressing them.

### 3.3. Research Methodology

***Comparative International Law Approach:*** This study falls within the realm of comparative international law, which challenges the traditional view of international law's universality by suggesting that its interpretation and application can vary across different regions. It adopts the perspective that Russia's approach to democracy significantly diverges from international legal norms due to its distinct sociocultural, legal, geopolitical, and philosophical contexts. The study

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<sup>26</sup> Tom Ginsburg, *Democracies and International Law* (1st edn, Cambridge University Press 2021) 21.

acknowledges these regional and national differences not as a validation of such variations but as a recognition that a uniform approach to understanding and implementing international law is not always feasible.

**Clarifying the use of terms such as ‘view’, ‘approach’, ‘discourse’, and ‘democratic entitlement’:** Throughout this study, I generally use the terms ‘approach,’ ‘view’, and ‘discourse’ in similar contexts. However, when discussing the contemporary Russian approach to democracy, I often use the term ‘discourse’ as it reflects Russia’s positions’ flexibility, without applying discourse analysis as a method in this study.<sup>27</sup> The term ‘discourse’ highlights how language shapes positions not fixed in strict legal terms. It also entails examining the underlying sociopolitical factors, including ideologies, narratives, and communication practices, that influence our understanding of the world, thereby deepening our comprehension of the legal framework.<sup>28</sup> Here, I echo David Kennedy, who argues that: “the key to developing a style of legal analysis which could aid in elaborating the connections between practice and theory, in my mind, is concentration upon discourse and upon the hidden ideologies, attitudes and structures which lie behind discourse, rather than upon the subject matter of legal talk.”<sup>29</sup>

When discussing democracy-related concepts, I predominantly use the terms ‘right to democracy’ and ‘democratic entitlement’ in contemporary Russian contexts. However, for the Soviet perspective, I refer more generally to ‘democracy’ or sometimes explore the origins of the ‘democratic entitlement paradigm’ to avoid anachronism.

**Research methods:** This doctoral thesis has been written using various research methods. In the first article, the historical method facilitated the reconstruction of the evolution of the concept of democracy within international law, focusing on Europe. Meanwhile, the doctrinal method was applied to examine the international (and regional) legal framework of democracy. In the second and third articles, addressing the Soviet perspective on democracy and self-determination, the doctrinal method was utilised to analyse the international law framework on democracy and self-determination. The historical method was utilised to analyse the Soviet position on democracy and self-determination within the specified period. The views expressed by statist Soviet legal scholars can be seen as extensions of the state’s views, as they effectively echoed the ideological positions of the USSR.

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<sup>27</sup> P Sean Morris, *Russian Discourses on International Law: Sociological and Philosophical Phenomenon* (P Sean Morris ed, 1st edn, Routledge 2018).

<sup>28</sup> The concept ‘discourse’ has been utilised widely in the international law research, see, e.g. Isaeva (n 12); Tolstykh (n 11); VK Bhatia, Christopher Candlin and Jan Engberg (eds), *Legal Discourse across Cultures and Systems* (Hong Kong University Press 2007); Pok Yin S Chow, *Cultural Rights in International Law and Discourse: Contemporary Challenges and Interdisciplinary Perspectives* (Brill Nijhoff 2018); David Kennedy, ‘Theses about International Law Discourse’, *Sources of International Law* (Routledge 2000); Elina Paunio, *Legal Certainty in Multilingual EU Law: Language, Discourse, and Reasoning at the European Court of Justice* (Ashgate 2013).

<sup>29</sup> Kennedy (n 28) 23.

To systematically identify and analyze contemporary Russian approaches to self-determination and democracy in international law (as discussed in articles 2 and 4), this study relied on a qualitative analysis of speeches and texts by high-ranking officials, primarily sourced from the Russian MFA and government websites. The data was narrowed from thousands of statements and speeches to fifty documents per topic, focusing on those substantively addressing democracy and self-determination in international law. The selection involved keyword searches for terms like ‘democracy’, ‘right to democracy’, ‘democratic entitlement’, and ‘self-determination’. When the original Russian-language texts, such as official statements, articles, and books, were already available in English, I used those original translations. If official translations were not available, I used my own translations.

In the study of Russia’s approach to democracy, the analysis was structured around specific categories and themes identified through the literature review and within the analysis of texts. This part of the study developed chronologically, focusing on tracing the evolution of Russia’s discourse on democracy during Putin’s rule since 2000. This approach contrasts with the analysis of self-determination, which was construed around the identified thematic categories initially centred on a specific event—the annexation of Crimea.

### 3.4. Sources

**Primary sources:** Much of this research is construed by examining a broad range of international legal instruments, from binding agreements to non-binding declarations, including but not limited to the 1945 UN Charter, the 1966 covenants, and various UN General Assembly (UNGA) Resolutions. In the introductory chapter, I also complement the discussions by briefly analysing Russia’s general approach to democracy as observed in the UN Human Rights Council’s (UNHRC) Universal Periodic Review (UPR).

The study also explores regional instruments, such as the Helsinki Final Act (1975), the 1990 Paris Charter, the Treaty on European Union and the Treaty of Lisbon (2009), the 1950 European Convention on Human Rights (ECHR). Additionally, it assesses regional agreements pertinent to Russia, including those within the Eurasian Economic Union (EAEU), Commonwealth of Independent States (CIS), and Collective Security Treaty Organization (CSTO), and declarations made by Russia and China. The study also briefly references cases from the International Court of Justice (ICJ) and the European Court of Human Rights (ECtHR). Although not analyzed in detail, these cases provide insight into systemic issues related to democracy and self-determination in international law, especially within Europe and in relation to Russia’s legal practices.

Additionally, the research thoroughly examines the Soviet Constitutions, specifically the 1936 and 1977 ones, the 1993 Russian Constitution and the relevant constitutional amendments. Additionally, it briefly overviews contemporary

Russian laws that have been widely criticised for undermining democracy and human rights.

To continue, this study places a significant focus on the pronouncements of high-ranking Russian officials, thus reflecting the official state position. These include official inauguration speeches and addresses delivered at international forums such as the UNGA, the Valdai Discussion Club and other formal gatherings that explore democracy within the realm of international relations and law. The analysis considers the content of these speeches and their influence on domestic and international legal frameworks concerning democracy. It further enhances the articles' findings by including an analysis of Russian Foreign Policy and National Security documents within the compendium.

The study explores the Soviet approach to democracy in international law by examining the *travaux préparatoires* of the 1948 UDHR, where the Soviets articulated their core views on democracy. While the focus is primarily on these negotiations, the analysis also focuses on the 1966 covenants, recognising that the key discussions had already occurred during the UDHR debates. The decision to ratify the 1966 covenants is instead primarily examined through the lens of Soviet legal scholars' writings.

**Secondary sources:** Amongst secondary sources of primary analysis, the main focus is on the writings of Soviet legal scholars; in addition to this, at later stages, the compendium separately incorporates an analysis of the writings of contemporary Russian legal scholars. Altogether, these books and journal articles analyse the concept of democracy in Soviet and Russian law and their implications in international law, focusing on writings from the 1960s until 2024. Additionally, the study integrates a wide range of secondary sources, including articles, speeches, and books that delve into Russian perspectives on democracy and human rights within the international legal framework. These materials often originate from renowned international legal scholars and discuss the concept of democracy broadly.

Given the interdisciplinary nature of democracy, it occasionally becomes essential to refer to non-legal literature to understand its historical development and significance, particularly how it became a pivotal issue in international law after the 1980s. The analysis also encompasses works from international relations, politics, and history, which explore various elements of the Soviet and Russian geopolitical landscape, including their foreign policy strategies. Last but not least, in the introductory part (this compendium) specifically, the findings are contextualised within documents like Russia's National Security Strategy (NSS) and Foreign Policy Concept (FPC).

Some of these works were accessed online or gathered during research visits to the Peace Palace Library in The Hague, where I primarily obtained sources related to general theoretical debates, and the National Library of Finland in Helsinki, where I focused on acquiring Russian language materials. Additionally,

some Russian language sources were retrieved from databases such as Nauka Prava,<sup>30</sup> Cyberleninka<sup>31</sup> and DissersCat.<sup>32</sup>

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<sup>30</sup> Elektronnaia Biblioteka 'Nauka Prava' [Digital Library Nauka Prava], available at: <https://naukaprava.ru/>.

<sup>31</sup> Nauchnaia Elektronnaia Biblioteka 'KiberLeninka' [Scientific Digital Library CyberLeninka] available at: <https://cyberleninka.ru/>.

<sup>32</sup> Nauchnaia elektronnaia biblioteka dissertatsiy i avtoreferatov [Scientific Electronic Library of Dissertations and Abstracts], available at <https://www.dissercat.com/>.

## 4. LITERATURE REVIEW: AN OVERVIEW OF THE STATE OF THE ART

### 4.1. Democracy in the International Law Scholarship

The international legal scholarship has addressed both ‘the democracy of international law’ and ‘the international law of democracy’.<sup>33</sup> The former examines “the extent to which international legal institutions are “democratic” in some sense, dealing with issues of democratic features of the international legal system itself, such as its legitimacy, inclusivity, and transparency.”<sup>34</sup> The latter examines the degree to which international law mandates democratic governance for states and, if it does, how precisely.<sup>35</sup> In this study, I focus on the ‘international law of democracy’, specifically the democratic entitlement thesis within international law scholarship, which guide my research direction. I closely analyze debates about the existence of a human right to democracy in international law. However, before delving into the main theoretical framework, I briefly discuss the debates on ‘the democracy of international law’, given the frequent recurrence of this theme in the pronouncements of Soviet and Russian high-ranking officials. This requires reflections in the compendium and the main discussion.

#### 4.1.1. The Democracy of International Law

Discussions on the democracy of international law primarily revolve around the claims of a ‘democratic deficit’ within the system, a central question in contemporary world politics.<sup>36</sup> Critics point out the tensions between national democracy and achieving democratic legitimacy on a global scale,<sup>37</sup> the inherently undemocratic nature of norms legislation by international organisations,<sup>38</sup> the impact on globalisation to a ‘democratic deficit’ at the national level.<sup>39</sup> The critique of the ‘democratic deficit’ extends to the European continent, questioning the

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<sup>33</sup> Ginsburg (n 26) 16.

<sup>34</sup> *ibid.*

<sup>35</sup> *ibid* 19.

<sup>36</sup> Andrew Moravcsik, ‘Is There a ‘Democratic Deficit’ in World Politics? A Framework for Analysis’ (2004) 39 *Government and opposition* 336, 336.

<sup>37</sup> See e.g. JHH Weiler, ‘The Geology of International Law–Governance, Democracy and Legitimacy’ (2004) 64 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*.

<sup>38</sup> See e.g. José E Alvarez, ‘Introducing the Themes’ (2007) 38 *Victoria U. Wellington L. Rev.* 159; Anthony Carty, ‘Liberal Economic Rhetoric as an Obstacle to the Democratization of the World Economy’ (1988) 98 *Ethics* 742.

<sup>39</sup> See e.g. John R Bolton, ‘Should We Take Global Governance Seriously?’ (2000) 1 *Chi. J. Int’l. L.* 205; John O McGinnis, ‘Foreign to Our Constitution’ (2006) 100 *Nw. UL Rev.* 303.

EU's legitimacy<sup>40</sup> and is more pronounced towards regions lacking strong democratic traditions.<sup>41</sup>

Alvarez well captures the main debates in three categories of 'democratic' complaints: 'horizontal', 'vertical', and 'ideological'.<sup>42</sup> First, the 'vertical complaint' addresses the relationship between international institutions and individual citizens, stressing the limited agency of individual within the international legal system.<sup>43</sup> The 'vertical complaint' also points to the globalisation and fragmentation of lawmaking, which allows political actors to bypass domestic democratic processes of persuasion and consensus.<sup>44</sup> Some scholars advocate for a model incorporating individual voices into international law to enhancing its democratic legitimacy.<sup>45</sup>

Second, the 'horizontal complaint' focuses on interstate interactions, focusing on deviations from political equality or sovereignty principles.<sup>46</sup> The critics contend that global democracy is a fundamentally flawed concept without a corresponding global state, hence deeming sovereignty essential for legitimacy.<sup>47</sup> This critique is often aimed at global institutions like the World Trade Organization (WTO), the World Bank, and the UN.<sup>48</sup> Critics often point to the UNSC voting system, which gives veto power solely to its five permanent members (the P5), thereby prioritising certain states' (historically seen as Great Powers') rights over others, highlighting a significant imbalance in international decision-making processes.<sup>49</sup>

To address these concerns, critics call for reaffirming state sovereignty, asserting that the states involved must consent to any new international law norm.<sup>50</sup> For example, in the context of global financial institutions, Carty highlights a

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<sup>40</sup> See e.g., Christophe Crombez, 'The Democratic Deficit in the European Union: Much Ado about Nothing?' (2003) 4 *European Union Politics* 101; Gabriele Abels, 'Citizens 'deliberations and the EU Democratic Deficit: Is There a Model for Participatory Democracy?' (2009) 1 *Tübinger Arbeitspapiere zur Integrationsforschung (TAIF)*.

<sup>41</sup> See e.g., Ginsburg (n 26) 17.

<sup>42</sup> Alvarez (n 38) 160.

<sup>43</sup> *ibid.*

<sup>44</sup> See e.g., Robert O Keohane, Stephen Macedo and Andrew Moravcsik, 'Democracy-Enhancing Multilateralism' (2009) 63 *International organization* 1.

<sup>45</sup> See further Eric Stein, 'International Integration and Democracy: No Love at First Sight' (2001) 95 *American Journal of International Law* 489.

<sup>46</sup> Alvarez (n 38).

<sup>47</sup> *ibid* 162.

<sup>48</sup> See further Jeremy Farrall, 'Does the UN Security Council Compound the Global Democratic Deficit?' [2009] *Alberta Law Review* 913, 917; Robert Howse, *How to Begin to Think about the 'Democratic Deficit' at the WTO* (na 2003).

<sup>49</sup> See e.g., Christian Tomuschat, 'Multilateralism in the Age of US Hegemony', *Towards World Constitutionalism* (Brill Nijhoff 2005) 47.

<sup>50</sup> See e.g., McGinnis (n 39).

democratic deficit stemming from departures from this principle.<sup>51</sup> Charnovitz argues that sovereign equality among states does not equate to political equality, contending that the principle of ‘one person, one vote’ cannot be logically applied as ‘one state, one vote’ in the international arena.<sup>52</sup>

Lastly, the ‘ideological complaint’ posits that international law norms consistently reflect and advance a specific Western liberal ideology.<sup>53</sup> The debates reveal that these diverse critiques do not uniformly align and often propose conflicting solutions.<sup>54</sup> Supporters of international law often fail to recognise their conflicting critiques or the varied interpretations of ‘democracy’ or ‘sovereign equality’.<sup>55</sup> Thus, when exploring the democratic deficit critiques in international law, it is crucial to recognise these issues. This awareness is especially pertinent in discussing Russian approaches to democracy in international law, which formally stresses ‘sovereign equality’ and the ‘democratic deficits’ of international law and is considered in the main discussion.

#### 4.1.2. The International Law of Democracy: The Democratic Entitlement Thesis

**Overview of the Democratic Entitlement Thesis:** One of the significant concepts that emerged during the post-Cold War era, reflecting the global optimism regarding the advance of democracy within international law, is the emerging ‘right to democracy’ introduced by renowned American legal scholar Thomas M. Franck in his seminal 1992 article.<sup>56</sup> Much like Fukuyama’s ‘end of history’ in its tone, the concept of the ‘right to democracy’ emerged from the belief that Western liberal democracy would become a universally recognised legal entitlement in international law.<sup>57</sup> Franck argued that government legitimacy should no longer be evaluated solely based on national standards but must instead be measured by the universal standard of democracy.<sup>58</sup> Interestingly, while writing about democratic entitlement for the first time in his article, he credited Russia’s then-president Yeltsin and many Russians and Soviet citizens for these developments.<sup>59</sup>

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<sup>51</sup> Carty (n 38) 748.

<sup>52</sup> Charnovitz, ‘The Emergence of Democratic Participation in Global Governance (Paris, 1919)’ (2003) 10 *Indiana Journal of Global Legal Studies* 45, 49.

<sup>53</sup> Alvarez (n 33); See e.g., Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, vol 37 (Cambridge University Press 2007); Bhupinder Singh Chimni, *International Law and World Order* (Cambridge University Press 2017).

<sup>54</sup> Alvarez (n 38) 164.

<sup>55</sup> *ibid.*

<sup>56</sup> Thomas M Franck, ‘The Democratic Entitlement’ (1994) 29 *University of Richmond Law Review* 41.

<sup>57</sup> Francis Fukuyama, ‘The End of History?’ [1989] *The national interest* 3.

<sup>58</sup> Franck (n 1) 46.

<sup>59</sup> *ibid* 47.

Franck derived the right to democratic governance from the internal dimension of peoples' right to self-determination and the human rights to political freedom and free and fair elections.<sup>60</sup> He considered self-determination to be at the core of democratic entitlement, serving as the historical foundation from which this right originated.<sup>61</sup> For Franck, the evolution of self-determination, as the cornerstone of democratic entitlement, exemplified a principle that gradually gained acceptance, overcame resistance, and ultimately brought about historic change.<sup>62</sup> In his view, this deep-rootedness provided legitimacy for self-determination and its two newer branches: freedom of expression and the right to vote.<sup>63</sup>

Franck's article laid the groundwork for future scholarly discussions. The body of scholarship that supported Franck's ideas became known as the 'democratic entitlement school'. Building on Franck's ideas, proponents of this theory assert that a government's legitimacy should be evaluated based on international standards, including democracy.<sup>64</sup> They advocate for a 'right to democratic governance' or a 'right to political participation.'<sup>65</sup> Some argue that democratic governance was a global requirement and that individuals everywhere had a right to it,<sup>66</sup> or that establishing and maintaining democracy was an international legal obligation, allowing the global community to scrutinise a state's political system.<sup>67</sup> Others suggest that international law supports a version of Habermasian deliberative democracy, contrasting it with 'aggregative' democracy, which focuses on competitive elections.<sup>68</sup>

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<sup>60</sup> Franck (n 1).

<sup>61</sup> *ibid* 52.

<sup>62</sup> *ibid* 55.

<sup>63</sup> *ibid* 52.

<sup>64</sup> See generally Gregory H Fox, 'The Right to Political Participation in International Law', *Proceedings of the ASIL Annual Meeting* (Cambridge University Press 1992); Christina M Cerna, 'Universal Democracy: An International Legal Right or the Pipe Dream of the West' (1994) 27 NYUJ int'l L. & pol. 289; Steven Wheatley, 'Democracy in International Law: A European Perspective' (2002) 51 International and Comparative Law Quarterly 225; Nsongurua J Udombana, 'Articulating the Right to Democratic Governance in Africa' (2002) 24 Mich. J. Int'l L. 1209.

<sup>65</sup> Fox (n 64) 543, 596.

<sup>66</sup> See generally Cerna (n 64); Gregory H Fox and Georg Nolte, 'Intolerant Democracies' (1995) 36 Harv. Int'l. LJ 1; Henry J Steiner, 'Political Participation as a Human Right' (1988) 1 Harv. Hum. Rts. YB 77.

<sup>67</sup> See further Wheatley, 'Democracy in International Law' (n 64).

<sup>68</sup> See further Steven Wheatley, *The Democratic Legitimacy of International Law* (Hart Publishers 2010).

Nonetheless, this theory has its critics.<sup>69</sup> Most prominently, in response to Franck's 1992 article, Crawford's 1994 article stood out as providing a more cautious and critical outlook, recognising its complexities and challenges.<sup>70</sup> He also concluded that "democracy is not everything"—seeing it as a procedural principle embodying a substantive value, the premises of which are easily challenged.<sup>71</sup> Despite this, Crawford acknowledged positive developments in international law supporting democracy, highlighting the practices of international organizations and relevant jurisprudence.<sup>72</sup>

**Human right to democracy:** One of the main premises of the democratic entitlement model, widely debated in international law, has been the relationship between human rights and democracy. Various scholars have addressed explicitly whether democracy and human rights are to be viewed as intrinsically intertwined or if they can and should be analysed and applied separately. This inquiry also begs whether it is necessary to treat democracy as a distinct right when its fundamental elements are already recognised as human rights and whether such a merger or distinction promotes or hinders the global advancement of democracy. To start with, Christiano defends an instrumental justification of a 'right to democracy' by tying it instrumentally very closely with other "less controversial human rights".<sup>73</sup> Likewise, Fahner recognises such a right under international law, obliging states "to let citizens take part in political decision-making and to conduct free elections."<sup>74</sup> Furthermore, Cerna contends that democratic legitimacy and respect for human rights have replaced 'effective control' criteria for state recognition in international law.<sup>75</sup>

Nevertheless, the literature shows considerable resistance to such claims, as many authors acknowledge the connections between democracy and human rights without endorsing the notion of a human right to democracy. Marks and

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<sup>69</sup> See generally Amy E Eckert, 'Free Determination or the Determination to Be Free? Self-Determination and the Democratic Entitlement' [1999] *UCLA Journal of International Law and Foreign Affairs* 55; Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford University Press, USA 2003); Susan Marks, 'What Has Become of the Emerging Right to Democratic Governance?' (2011) 22 *European Journal of International Law* 507; James Crawford, 'Democracy in International Law' (1994) 64 *British Yearbook of International Law*; James Crawford, 'Democracy and the Body of International Law' in Gregory Fox and Brad Roth (eds), *Democratic Governance and International Law*, vol 91 (Cambridge University Press, Cambridge 2000); Rasulov (n 14).

<sup>70</sup> Crawford (n 69) 117–118.

<sup>71</sup> *ibid* 132.

<sup>72</sup> *ibid* 124–126.

<sup>73</sup> Thomas Christiano, 'An Instrumental Argument for a Human Right to Democracy: An Instrumental Argument for a Human Right to Democracy' (2011) 39 *Philosophy & Public Affairs* 142.

<sup>74</sup> Johannes Fahner, 'Revisiting the Human Right to Democracy: A Positivist Analysis' (2017) 21 *The International Journal of Human Rights* 321.

<sup>75</sup> Christina Cerna, 'Democratic Legitimacy and Respect for Human Rights: The New Gold Standard' (2014) 108 *AJIL Unbound* 222. 222.

Clapham, for example, recognise the interdependence of democracy and human rights and democracy, yet they argue against the expression of a human right to democracy.<sup>76</sup> They arrive at this conclusion by highlighting the ‘effective control’ criteria for state recognition, the ambiguity of state practice, the ideological biases of the concept, and the danger of equating ‘a right to democracy’ with mere electoralism. They also stress the importance of state sovereignty, emphasising that national politics is viewed as the primary domain of democracy.<sup>77</sup> Instead, they view democracy in international law as “an argument, a critical tool, and a set of principles for political life in all its multifarious settings”.<sup>78</sup>

Similarly, Charlesworth considers the assertion of a ‘right to democracy’ counterproductive, running the risk of reducing “the promise of democracy to that of a checklist of institutional measures.”<sup>79</sup> Conversely, she supports “the political goal of promoting self-rule between an equal citizenry” based on “debate, discussion and experimentation”.<sup>80</sup> Steiner views human rights and democracy as “two sides of the same coin” but opposes defining democracy as a human right.<sup>81</sup> Cohen also joins them, arguing that democracy is a demanding political ideal that would be inappropriate as an object of global responsibility. He argues that insisting on a universal human right to democracy could risk diluting its substance, as the strategy to elevate democracy might ultimately undermine its core principles.<sup>82</sup> For Marks, a narrow focus on elections and certain liberal institutions diverts valuable attention resources away from elements of the democratic tradition with more incredible emancipatory promise.<sup>83</sup> She critiques the ideological interpretation and application of the ‘democracy norm’ in international law, advocating for a more substantive understanding of democracy.<sup>84</sup>

***Democratic entitlement and pro-democratic interventions:*** Furthermore, in discussions on democratic entitlement, significant attention is devoted to the controversies surrounding the ideas of pro-democratic interventions and their compatibility with fundamental norms of international law, including state

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<sup>76</sup> Susan Marks and Andrew Clapham, *International Human Rights Lexicon* (OUP Oxford 2005) 68.

<sup>77</sup> *ibid* 68–69.

<sup>78</sup> *ibid* 70.

<sup>79</sup> Hilary Charlesworth, ‘Is There a Human Right to Democracy?’ in Cindy Holder and David Reidy (eds), *Human rights: The hard questions* (Cambridge University Press 2013) 282.

<sup>80</sup> *ibid*.

<sup>81</sup> Henry J Steiner, ‘Two Sides of the Same Coin?: Democracy and International Human Rights’ (2008) 41 *Israel Law Review* 445.

<sup>82</sup> Joshua Cohen, ‘Is There a Human Right to Democracy?’ in Christine Sypnowich (ed), *The egalitarian conscience: Essays in honour of GA Cohen*, vol 226 (Oxford University Press Oxford 2006).

<sup>83</sup> Susan Marks, ‘The End of History? Reflections on Some International Legal Theses’ in Gerry Simpson (ed), *The Nature of International Law* (Routledge 2017).

<sup>84</sup> Marks, Susan. *The Riddle of All Constitutions*. Oxford: Oxford University Press, 2000.

sovereignty and non-intervention.<sup>85</sup> A more assertive approach in international legal scholarship has connected the right to democracy with national foreign policy agendas, particularly among US international lawyers.<sup>86</sup> A vital issue in this context is how to enforce a right to democracy universally, if such a right exists, especially in the face of denials of this purported right under international law.<sup>87</sup> Some scholars, while recognising the importance of democracy, exclude the possibility of such interventions in general;<sup>88</sup> others demonstrate a more radical approach to pro-democratic interventions.<sup>89</sup>

Advocates of pro-democratic interventions often cite the ‘Democratic Peace’ theory, which posits that the spread of democracy fosters global peace.<sup>90</sup> This theory traces back to Immanuel Kant’s seminal work “Toward Perpetual Peace”, where he proposed that lasting peaceful relations are feasible only within an international community of democratic states, conceptualising a republican state in terms of constitutional democracy.<sup>91</sup> Over time, this thesis has been extensively studied and supported by empirical evidence demonstrating that democracy contributes to peace.<sup>92</sup> The most radical interpretation, as developed in Reisman’s work, first affirms the existence of a right to democracy and then proposes that its denial could justify armed interventions by third-party states or the UN.<sup>93</sup> In contrast, the political theory on pro-democracy interventions, as examined by Rawls (1999), outlines a liberal democratic peace that explicitly excludes the possibility of pro-democracy military interventions.<sup>94</sup>

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<sup>85</sup> See generally W Michael Reisman, ‘Humanitarian Intervention and Fledgling Democracies’ (1994) 18 *Fordham Int’l LJ* 794; Michael Byers and Simon Chesterman, “‘You, the People’: Pro-Democratic Intervention in International Law’ in Brad Roth and Gregory Fox (eds), *Democratic Governance and International Law* (Cambridge University Press 2000); David Wippman, ‘Pro-Democratic Intervention by Invitation’ in Brad R Roth and Gregory H Fox (eds), *Democratic Governance and International Law* (Cambridge University Press 2000).

<sup>86</sup> Anne-Marie Slaughter, ‘Building Global Democracy’ (2000) 1 *Chi. J. Int’l L.* 223.

<sup>87</sup> See e.g., Michael Byers and Simon Chesterman, “‘You, the People’: Pro-Democratic Intervention in International Law’ in Brad Roth and Gregory Fox (n 34) 260.

<sup>88</sup> See e.g. John Rawls, *The Law of Peoples: With ‘The Idea of Public Reason Revisited’* (Harvard University Press 2001).

<sup>89</sup> See e.g., Reisman (n 85).

<sup>90</sup> See e.g. John M Owen, ‘International Law and the “Liberal Peace”’ in Brad R Roth and Gregory H Fox (eds), *Democratic Governance and International Law* (Cambridge University Press 2000) 343.

<sup>91</sup> Immanuel Kant, *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* (Pauline Kleingeld ed, David Colclasure tr, Yale University Press 2006).

<sup>92</sup> See further Joanne S Gowa, *Ballots and Bullets: The Elusive Democratic Peace* (Princeton University Press 1999); John Norton Moore, ‘Beyond the Democratic Peace: Solving the War Puzzle’ (2003) 44 *Virginia Journal of International Law* 341; Christiano (n 73).

<sup>93</sup> Reisman (n 85).

<sup>94</sup> Rawls (n 88).

Alongside this radical approach, one also observes critical voices. Third World scholars have questioned the modern distinction between democracies and non-democracies, which reproduces the undertone of the infamous ‘civilised’ versus ‘uncivilised’ paradigm.<sup>95</sup> Also, critics point out that historically, different regions have been ruled by various forms of governance, and today, not every nation agrees that democracy is necessary for their territory.<sup>96</sup> They also point towards the West-centric nature of the discourse on democracy and human rights in international law.<sup>97</sup>

The general consensus in international law remains that—in the absence of agreement by a state’s government, the lawful exercise of the right to self-defence, or authorisation by the SC—using military force against the territorial integrity or political independence of another state is generally considered a violation of international law.<sup>98</sup> In exceptional cases where there is a comprehensive agreement that enforcement is needed to uphold or restore democracy, collective action through the SC provides a valid legal option.<sup>99</sup>

## 4.2. Literature on Relevant Aspects of Soviet and Russian Approaches to Democracy

Numerous works have been central to construing the discussion on the Soviet position on democracy and human rights in the context of international law in this study.<sup>100</sup> Because the concept of democratic entitlement is the product of the post-Cold War period, general discussions on the Soviet approach to democracy instead focus on human rights elements. Morsink’s detailed discussion offers one of the most comprehensive analyses on this subject, thoroughly examining the entire process and the Soviet position during the drafting process of the USSR. He also dedicates a section to the general debates on democracy.<sup>101</sup> Likewise,

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<sup>95</sup> See e.g. BS Chimni, ‘Legitimizing the International Rule of Law’ (2012) 290 *The Cambridge Companion to International Law* 47.

<sup>96</sup> See further Hilary Charlesworth, ‘Democracy and International Law’, *Collected Courses of the Hague Academy of International Law*, vol 371 (Brill 2015).

<sup>97</sup> See further Pinghua Sun, ‘Drafting Process of the UDHR with Non-Western Influence’ in Pinghua Sun (ed), *Historic Achievement of a Common Standard: Pengchun Chang and the Universal Declaration of Human Rights* (Springer 2018).

<sup>98</sup> United Nations, ‘UN Charter’ (*United Nations*) Art 51, 2(4), Ch VII.

<sup>99</sup> Byers and Chesterman (n 85) 279–280.

<sup>100</sup> See e.g. Sun (n 97); Jessica Whyte, ‘Human Rights, Revolution and the “Good Society”’: The Soviet Union and the Universal Declaration of Human Rights’ in Kathryn Greenman and others (eds), *Revolutions in International Law* (1st edn, Cambridge University Press 2021); Anna Lukina, ‘Soviet Union and the Universal Declaration of Human Rights’ (2017) 1 Max Planck Institute for European Legal History Research Paper Series 19; Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press 1999).

<sup>101</sup> Morsink (n 100).

Lukina provides a more up-to-date discussion on the same topic, specifically focusing on the Soviet position throughout these negotiations. She contends that the Soviet delegation's reluctance to accept the UDHR was not due to a disregard for fundamental rights and freedoms. Instead, the USSR had a paternalistic vision of individual-state relations. This perspective, rooted in Marxist-Leninist philosophy, prioritised social rights over other types of rights, a trend evident in Soviet constitutional history characterized by an emphasis on society over the individual, prioritization of social rights, and a preference for positive rights.<sup>102</sup>

Additionally, some works have addressed the later stages of the Soviet stance on democracy and human rights.<sup>103</sup> Central to this study is Mälksoo's historical analysis, which, among other things, highlights the impact of human rights documents in bringing the USSR to its end.<sup>104</sup> Nonetheless, apart from these debates, my analysis is also informed by scholarly discussions of various aspects of socialist international law, also addressing the interaction of former communist bloc countries with the USSR in this context. Specifically, the discussions of Richardson-Little provide valuable insights into the general socialist concept of human rights in all Eastern block countries.<sup>105</sup>

In the context of contemporary Russian approaches to democracy, the topic has been explored from a multidisciplinary perspective. The book "Russian Discourses on International Law: Sociological and Philosophical Phenomenon" by Morris, with contributions from various legal scholars, greatly informed this study. Altogether it examines various facets of Russian approaches to international law, highlighting the unique characteristics of its stance and the rise of authoritarianism, alongside its contestations of international law norms.<sup>106</sup> Many

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<sup>102</sup> Lukina (n 100) 17.

<sup>103</sup> See generally Richard Dean, 'Beyond Helsinki: The Soviet View of Human Rights in International Law' (1980) 21 *Virginia Journal of International Law*; Daniel C Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Princeton University Press 2001).

<sup>104</sup> Lauri Mälksoo, 'The Controversy over Human Rights, UN Covenants, and the Dissolution of the Soviet Union' (2018) 61 *Japanese Yearbook of International Law* 260.

<sup>105</sup> See generally Ned Richardson-Little, 'The Failure of the Socialist Declaration of Human Rights: Ideology, Legitimacy, and Elite Defection at the End of State Socialism' (2019) 46 *East Central Europe* 318; Ned Richardson-Little, 'From Tehran to Helsinki: The International Year of Human Rights 1968 and State Socialist Eastern Europe' (2019) 1 *Diplomatica* 180; Ned Richardson-Little, *The Human Rights Dictatorship: Socialism, Global Solidarity and Revolution in East Germany* (1st edn, Cambridge University Press 2020); Ned Richardson-Little, Hella Dietz and James Mark, 'New Perspectives on Socialism and Human Rights in East Central Europe since 1945: Introduction to the Thematic Issue' (2019) 46 *East Central Europe* 169; Whyte (n 100); Susan Waltz, 'Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights' (2002) 23 *Third World Quarterly* 437; Benjamin Nathans, 'Soviet Rights-Talk in the Post-Stalin Era' in Stefan-Ludwig Hoffmann (ed), *Human Rights in the Twentieth Century* (Cambridge University Press 2010); Jack Donnelly, 'Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights' (1982) 76 *American Political Science Review* 303; Sun (n 97).

<sup>106</sup> Morris (n 27).

studies dealing with Russia address only specific elements of democracy, such as the right to freedom of expression,<sup>107</sup> religion, and peaceful association and assembly; the right to universal and equal suffrage, as well as free voting procedures and periodic and free elections within the context of public international law or human rights law.<sup>108</sup> They all demonstrate Russia's slide to authoritarianism focusing both on internal as well as external developments

Last but not least, this dissertation also explores Soviet and Russian approaches to self-determination, a topic that has been covered in the literature substantially.<sup>109</sup> Specifically, Mälksoo's work is essential as it demonstrates the fundamental differences between Soviet and Western approaches.<sup>110</sup> In contemporary Russia, many discussions revolve around secession and Russia's use of self-determination arguments in this context, amongst which Miklasova provides some of the recent ones and addresses Russia's legal doctrine and practice in international law.<sup>111</sup>

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<sup>107</sup> See generally Mikhail G Myagkov and Peter C Ordeshook, *Russian Elections: An Oxymoron of Democracy* (National Council for Eurasian and East European Research Seattle, WA 2008); Cole J Harvey, 'Changes in the Menu of Manipulation: Electoral Fraud, Ballot Stuffing, and Voter Pressure in the 2011 Russian Election' (2016) 41 *Electoral studies* 105; Timothy J Colton and Michael McFaul, *Popular Choice and Managed Democracy: The Russian Elections of 1999 and 2000* (Brookings Institution Press 2003); Richard Sakwa, 'The Russian Elections of December 1993' (1995) 47 *Europe-Asia Studies* 195; Timothy J Colton and Henry E Hale, 'Putin's Uneasy Return and Hybrid Regime Stability: The 2012 Russian Election Studies Survey' (2014) 61 *Problems of Post-Communism* 3.

<sup>108</sup> See generally Bill Bowring, 'Russia and Human Rights: Incompatible Opposites?' (2009) 1 *Goettingen Journal of International Law*; William A Clark, 'Boxing Russia: Executive-Legislative Powers and the Categorization of Russia's Regime Type' (2010) 19 *Demokratizatsiya* 5; Colton and Hale (n 107); Myagkov and Ordeshook (n 107); Lauri Mälksoo, 'International Law and the 2020 Amendments to the Russian Constitution' (2021) 115 *American Journal of International Law* 78; Johannes Socher, 'Farewell to the European Constitutional Tradition': (2017) 80 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*.

<sup>109</sup> See generally Sam Blay, 'Self-Determination: A Reassessment in the Post-Communist Era' (1993) 22 *Denv. J. Int'l L. & Pol'y* 275; Theodore Christakis, 'Self-Determination, Territorial Integrity and Fait Accompli in the Case of Crimea' (2015) 75 *ZaöRV/Heidelberg JIL* 75; Andrea Maria Pelliconi, 'Self-Defence As Remedial Self-Determination: Continuity in Russian Narratives to Justify Imperialism and the Use of Force' [2024] *Netherlands International Law Review*; Oliver Rowe, 'From Self-Determination to Secession? The Bolsheviks and National Self-Determination, 1914–1924' [2024] *Revolutionary Russia* 1.

<sup>110</sup> Lauri Mälksoo, 'The Soviet Approach to the Right of Peoples to Self-Determination: Russia's Farewell to *Jus Publicum Europaeum*' (2017) 19 *Journal of the History of International Law / Revue d'histoire du droit international* 200.

<sup>111</sup> Júlia Miklasová, 'Secession in International Law with a Special Reference to the Post-Soviet Space' in Vincent Chetail (ed), *Theory and Practice of Public International Law*, vol 8 (Brill 2024); Júlia Miklasová, 'Dissolution of the Soviet Union Thirty Years On: Re-Appraisal of the Relevance of the Principle of *Uti Possidetis Iuris*', *The International Legal Order in the XXIst Century/L'ordre juridique international au XXIeme siècle/El orden jurídico internacional en el siglo XXI* (Brill Nijhoff 2023).

Overall the literature review demonstrated that from a broader theoretical perspective, much of the literature on democratic entitlement focuses on Western experiences and approaches to democracy. Conversely, discussions on Russian approaches to democracy often scarcely address the concept of democracy itself, let alone democratic entitlement. Therefore, this dissertation leverages these gaps to offer a detailed discussion on Soviet and Russian approaches to democracy in international law, primarily from an international law perspective.

### **4.3. The Position of this Thesis vis-à-vis the Existing Literature**

This analysis explores the democratic entitlement thesis in international law, offering insights into Soviet and contemporary Russian approaches, thereby contributing to both research areas. It is inspired by questions about how the Western liberal idea of democratic entitlement as a proposition for developing international law continues to be viewed in Russia. This is especially interesting given the fact that despite becoming increasingly critical of Western liberal democracy and Western democracy promotion efforts globally, Russia continues to utilise this discourse even after its full-scale invasion of Ukraine.

Thus, before tackling this study's main research object and questions, an underlying question emerges that forms the theoretical foundation of this investigation: what has become of Franck's assertion regarding the emergence of a right to democracy in international law? Considering the case of Russia, one may question whether Franck's vision for the universal applicability of Western liberal democracy and even more so in its establishment as a right within international law has ever been viable. This situates the study within the broader context of comparative international law, enhancing the framework by examining a localised interpretation of the democratic entitlement paradigm.

Some of the questions raised in this study are not new and have been addressed in the literature, albeit primarily from an extra-legal perspective.<sup>112</sup> After all, democracy is an inherently political concept that has been significantly incorporated into international law scholarship only since the end of the Cold War.<sup>113</sup> Therefore, the literature discussing aspects of Russia's approach to democracy within international law focuses more on the specific human rights aspects that underlie democracy rather than democracy as an independent concept in international law. In this study, I adopt a different approach by focusing primarily on the concept of democracy and using the associated human rights aspects as a supplementary framework to guide the interpretation and practice of democracy. This thesis situates its examination within international law literature. It primarily

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<sup>112</sup> See further *Infra* note Ch. 4.1.

<sup>113</sup> See further Hilary Charlesworth, 'The Conceptual Politics of Democracy in International Law', *The Conceptual Politics of Democracy Promotion* (Routledge 2011).

draws from the literature on ‘the international law of democracy’, which examines the degree to which international law mandates democratic governance for states and, if it does, how precisely.<sup>114</sup>

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<sup>114</sup> Ginsburg (n 26) 19.

## 5. STRUCTURE OF THE DISSERTATION

*The components of the dissertation:* The dissertation is comprised of this introductory chapter (compendium) and four articles, collectively exploring and narrating various facets of Soviet and contemporary Russian approaches to democracy within international law. Article 1 examines the evolution of democracy in international law in Europe, the standing legal framework on democracy in international law, and the European regional (international) legal order.<sup>115</sup> Article 2 delves into Soviet and contemporary Russian approaches to self-determination within international law, with particular attention to Russia's contemporary position vis-a-vis self-determination in the context of its 2014 annexation of Crimea.<sup>116</sup>

Due to the importance of Soviet and contemporary Russian approaches to democracy in international law in this dissertation, this theme is explored in two distinct articles; Article 3 investigates the Soviet view on democracy within international law in the post-WWII period;<sup>117</sup> Article 4 examines contemporary Russian discourses on democracy, focusing on the post-2000 period.<sup>118</sup> The present compendium synthesises the findings from these articles, with some additional insights to explore whether a distinct Russian approach to democracy has emerged within the context of democratic entitlement theory in international law.

As the research advanced, the dissertation's objectives were refined, prompting necessary updates and clarifications in the introductory chapter. Initial assumptions and decisions were re-evaluated, leading to identifying and resolving gaps. The introduction now includes an updated discussion on Russia's discourse on self-determination intertwined with the discussion on democracy, particularly following the full-scale invasion of Ukraine in February 2022. Given that the original article was published in 2020, it was crucial to address these new developments and the resulting gaps in analysis.

While Article 4 presents the core arguments, the compendium further enriches the discussion in Chapter 6.3.2 by incorporating throughout the discussion insights from Russia's Universal Periodic Review (UPR) cycles and its FPC and NSS documents in the section. This is complemented by a separate section (6.3.3.) within the compendium analysing Russian legal scholars' writings from the same period, whose role, initially seen as minimal and lacking impact on state practice, has been reassessed. Though their influence on contemporary Russian state

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<sup>115</sup> Sevanna Poghosyan, 'The Idea of Democracy in International Law in Europe' in Anne van Aaken and others (eds), *The Oxford Handbook of International Law in Europe* (Oxford University Press 2023) <<https://academic.oup.com/edited-volume/46846/chapter-abstract/430657518?redirectedFrom=fulltext>> (accessed 30 May 2024).

<sup>116</sup> Poghosyan, 'Russian Approaches to the Right to Peoples to Self-Determination' (n 20).

<sup>117</sup> Poghosyan, 'The Soviet View on Democracy in International Law' (n 7).

<sup>118</sup> Poghosyan, 'Russia's Discourse on Democracy in International Law' (n 22).

discourse remains limited, their insights are included to deepen the understanding of Russian legal approach.

Additionally, in the first part of the main discussion in this compendium, I expand upon and offer a detailed analysis of UN jurisprudence and practice related to democracy within the framework of international law, before placing it in the context of the European regional approach. Lastly, the literature review was expanded to include a brief overview of the discussions surrounding the ‘democracy of international law’, alongside the core theoretical framework of the ‘democratic entitlement thesis’. This choice was prompted by the compilation and fresh look at the articles, which highlighted frequent references to the democracy of international law and underscored the need for a more thorough examination of the scholarly debates on the topic. Consequently, this section was added to this compendium, allowing to provide a more robust conclusion at the end.

***Overview of the discussion structure:*** The main discussion of the core findings of this dissertation is construed around sections addressing the research questions and their corresponding postulates presented for defence. First, I start the discussion (6.1) by addressing the first research question, dealing with the international law framework on democracy by integrating the findings of Article 1 with some complementary overview of the universal international law framework. Next (6.2.), I discuss the Soviet view on democracy and self-determination in international law based on the findings of a part of Article 2 and the whole of Article 3, answering the second research question. I demonstrate the distinct characteristics of the Soviet view on democracy and self-determination in international law, rooted in Marxist-Leninist ideology and counter-Western socialist international law.

Furthermore (6.3), I discuss contemporary Russian approaches to democracy and self-determination in international law and their links with Soviet approaches (6.3.2.). This part is construed primarily through Articles 2 and 4, and additional discussions withing the compendium on the position of Russian legal scholars, the UPR documents as well as National Security and Foreign Policy documents. Altogether, the discussion in this section answers the third and fourth research questions, demonstrating the characteristics of contemporary Russian approaches to democracy and self-determination in international law and the breaks and continuities with the Soviet approach. In the concluding section (7.) of this compendium, I confirm the four research postulates and individually assess the influence of Russian approaches on the trajectory of democratic entitlement in international law, while also outlining directions for future research.

## 6. THE RESOLUTION OF THE CENTRAL RESEARCH TASKS: DISCUSSION OF KEY FINDINGS

### 6.1. Democracy in the Framework of Universal International Law and the European Regional Context: Two Different Approaches

*Overview of the discussion:* This section develops the discussion based on the key insights from Article 1, supplemented by further analysis of UN practice and jurisprudence concerning democracy in international law. It addresses the first research question exploring the status of democracy within universal international law (6.1.1.) and its interpretation within the European regional framework of international law (6.1.2.). This part has limitations since, in the European regional framework context, the discussion mainly relies on the examination of legal documents within political-legal institutions, primarily the CoE and the EU and does not cover national-level democracy in Europe.

Overall, I reject the claim of an established legal right to democracy under contemporary universal international law. Meanwhile, I contend that within the European regional legal order, it is possible to assert the existence of such a right, given the strong support in the European political-legal institutions. Nevertheless, this assertion is implicit, and it remains unclear whether this should be viewed as an individual or a collective right. Furthermore, I claim that the evidence suggests that in both universal and European contexts, democracy is firmly understood and supported as an important underlying and guiding principle for domestic governance. However, while the endorsement of Western liberal democracy as a principle is evident within the European context, universal international law does not advocate for any specific model.

#### 6.1.1. Democracy in the Universal International Legal Framework

*Democracy within international law-treaties and practice:* As Article 1 discusses, there is no universally accepted legal definition of democracy, and it is rarely explicitly referred to as a right within international law. The UN Charter stipulates that only ‘peace-loving’ states are eligible for membership, a requirement initially intended to exclude governments with a history of fascism from joining the UN.<sup>119</sup> However, ‘peace-loving’ and ‘democratic’ are not synonyms. Equating the two could suggest an unwarranted interference in the domestic affairs of states.<sup>120</sup> Major human rights treaties also do not directly mention

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<sup>119</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945).

<sup>120</sup> Bruno Simma, *The Charter of the United Nations* (oup Oxford, UK 1995) 163.

democracy.<sup>121</sup> Article 21 of the UDHR and Article 25 of the ICCPR lay the groundwork for the electoral, or ‘thin’ definitions of democracy, albeit without direct reference to ‘democracy’. Art. 25 is noteworthy as the only ICCPR right confined to citizens.<sup>122</sup> Thus, it is less than a right to democracy and more a right to political participation and to political accountability through elections. While they are expressed in individual terms, Article 25 (a) and (b)<sup>123</sup> make full sense only in the context of a political society; to have meaning, they involve a collective enterprise.<sup>124</sup>

The tension between individual claims and the collective political context apparent in the ICCPR Art. 25 has surfaced in the jurisprudence of the UN Human Rights Committee. In the General Comment, the Committee described Article 25 as lying “at the core of democratic government based on the consent of the people”.<sup>125</sup> The Committee read the provision as implicitly holding elected representatives accountable for the exercise of public power. It also articulated a duty on states to ensure that the right to vote could be exercised, including positive steps to reduce barriers to political participation such as poverty and illiteracy.<sup>126</sup> Nonetheless, this is viewed as a thin legal articulation of the value of democracy.

Additionally, Article 1 and Article 25 of ICCPR are interpreted to establish a link between democracy and self-determination in international law, demonstrating collective enterprise.<sup>127</sup> They indicate that self-determination is an ongoing process rather than a one-time event establishing the State, thereby reflecting the concept of democracy. Article 1, associated with decolonisation, also affirms the principle of democracy at the collective level by endorsing the self-governance of societies by their people.<sup>128</sup> Moreover, this link has been strengthened in the post-colonial era as self-determination is viewed more as granting people the right to govern themselves based on the norms of democracy.<sup>129</sup>

This tension was reflected in a case brought against Namibia by a minority community, the Rehoboth Basters, for (among other things) violating Article 25 (a) and (c) by merging the Baster community into regional electoral districts, which effectively reduced their voting power.<sup>130</sup> The HRC found that these rights were

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<sup>121</sup> Gregory Fox, ‘Democracy, Right to, International Protection’, *Max Planck Encyclopedias of International Law* (2008) 16.

<sup>122</sup> Charlesworth, ‘Is There a Human Right to Democracy?’ (n 79).

<sup>123</sup> ICCPR art 25 (a) (b).

<sup>124</sup> Charlesworth, ‘Is There a Human Right to Democracy?’ (n 79) 274.

<sup>125</sup> General Comment No 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art 25), UN Human Rights Committee, UN Doc CCPR/C/21/Rev1/Add7 (7 December 1996).

<sup>126</sup> Charlesworth, ‘Is There a Human Right to Democracy?’ (n 79) 276.

<sup>127</sup> Franck (n 1); Crawford (n 69) 116.

<sup>128</sup> Crawford (n 69) 116.

<sup>129</sup> Simon Chesterman, Ian Johnstone and David Malone, *Law and Practice of the United Nations: Documents and Commentary* (Oxford University Press 2016) 441.

<sup>130</sup> *Diergaardt et al v Namibia* (1996) CCPR/C/69/D/760.

individual rights that could not be asserted by the community.<sup>131</sup> In a separate opinion, Martin Scheinin criticized the Committee's emphasis on the individual nature of Article 25 rights, arguing that special arrangements are necessary in specific situations for the participation rights of minorities and indigenous peoples. In such cases, he argued, merely providing individual community members with the right to vote in general elections would be insufficient under Article 25. Instead, some forms of local, regional, or cultural autonomy may be required to ensure effective participation rights.<sup>132</sup>

**UN resolutions:** The sole instance when a major UN forum dedicated to human rights development, like the now-defunct UN Commission on Human Rights, endorsed a specific 'right to democracy' was the 1999 "Promotion of the Right to Democracy" resolution introduced by the US. It reflected a substantive view of democracy, including a range of civil and political rights such as freedom of expression, thought, and association as well as the rights of 'universal and equal suffrage', free voting procedures, periodic and free elections and "the right of citizens to choose their governmental system through constitutional or other democratic means."<sup>133</sup> Interestingly, aside from the title, the concept of 'the right to democracy' does not appear in the resolution's text. Cuba proposed an amendment to remove 'the right to' from the title, arguing that no such right existed, and Russia supported this move. However, the amendment did not gain majority support, and the resolution was adopted by a vote of 51-0.<sup>134</sup>

In later resolutions, the explicit 'right' language vis-a-vis democracy was significantly reduced. Subsequent resolutions, such as the 2001 "Continuing dialogue on measures to promote and consolidate democracy", focused on national-level democratisation, highlighting "free and fair elections as an essential feature of democracy."<sup>135</sup> Throughout these efforts, there was always a significant North-South tension, with the US typically supporting these resolutions alongside the United Kingdom, Canada, and some developing states. In contrast, states such as China, Cuba, Saudi Arabia and Syria would abstain from voting.<sup>136</sup>

Other resolutions also emerged during this period, endorsing the "promotion of a democratic and equitable international order."<sup>137</sup> The language avoided any reference to elections and emphasised the economic and social dimensions of democracy at the international level.<sup>138</sup> The UNHRC, which succeeded the

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<sup>131</sup> *ibid* 10.8.

<sup>132</sup> *Ibid*.

<sup>133</sup> Promotion of the Right to Democracy, CHR Res 1999/57.

<sup>134</sup> Charlesworth, 'Is There a Human Right to Democracy?' (n 79).

<sup>135</sup> Continuing dialogue on measures to promote and consolidate democracy [CHR Res. 2001/41].

<sup>136</sup> Charlesworth, 'Is There a Human Right to Democracy?' (n 79) 271.

<sup>137</sup> Promotion of a Democratic and Equitable International Order [2001] CHR Res 2001/65.

<sup>138</sup> Charlesworth, 'Is There a Human Right to Democracy?' (n 79) 271.

Commission in 2006, adopted two resolutions in 2008<sup>139</sup> and 2011<sup>140</sup> on promoting a democratic and equitable international order, mirroring earlier provisions. As Charlesworth notes, in defining democracy, they included concepts favored by the global South, such as self-determination, permanent sovereignty over resources, the right to development, solidarity, and a healthy environment. These resolutions typically received support from those who abstained on the North's resolution and negative votes from Northern states on the Commission.<sup>141</sup>

**Practice:** Although the UN had a long history of monitoring elections and referenda in states emerging from colonialism, it did not send a monitoring mission to a sovereign state until the 1990 elections in Nicaragua.<sup>142</sup> The UN and other intergovernmental organisations have since heavily invested in crafting and monitoring electoral processes worldwide.<sup>143</sup> On two notable occasions, the international community responded vigorously to military coups against elected governments, endorsing the use of armed force to restore the rule of Jean-Bertrand Aristide in Haiti in 1994<sup>144</sup> and Ahmad Tejan Kabbah in Sierra Leone in 1998.<sup>145</sup> Nonetheless, these cases did not transform into a standard but remained exceptions to the rule that prioritises effective control criteria over democratic credentials.<sup>146</sup> Common approach in international law is that states can express disapproval of another's undemocratic actions in different ways, commonly by not recognising a regime's authority or limiting economic interaction. In exceptional cases where there is a comprehensive agreement that enforcement is needed to uphold or restore democracy, collective action through the SC provides a valid legal option to that end.<sup>147</sup>

These discussions highlight that, despite growing recognition of democratic principles within the UN system, regional and political tensions significantly influence their interpretation and implementation. This is particularly evident in the North-South divide, illustrating that democracy lacks a universal definition or recognition as a firm right in international law, reflecting differing priorities and perspectives on democratic governance.

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<sup>139</sup> Promotion of a Democratic and Equitable International Order [2008] HRC Res 8/5.

<sup>140</sup> Promotion of a democratic and equitable international order 2011 [HRC Res. 18/6].

<sup>141</sup> Charlesworth, 'Is There a Human Right to Democracy?' (n 79) 271.

<sup>142</sup> Yves Beigbeder, *International Monitoring of Plebiscites, Referenda and National Elections: Self-Determination and Transition to Democracy*, vol 32 (Martinus Nijhoff Publishers 1994).

<sup>143</sup> *ibid.*

<sup>144</sup> SC Res 940 (14 July 1994) UN Doc S/RES/940;

<sup>145</sup> UN Doc S/PRST/1998/5 (Security Council Presidential Statement, 26 February 1998); SC Res 1162 (29 April 1998) UN Doc S/RES/1162..'

<sup>146</sup> Tinoco Arbitration (Great Britain v Costa Rica) (Award) (1923) 1 RIAA 369 (Taft, Arb).

<sup>147</sup> Byers and Chesterman (n 85) 279–280.

## 6.1.2. Democracy in the European Regional (International) Legal Order

*The European trajectory of democracy in international law:* A key observation and conclusion from Article 1 relevant for discussions on the democratic entitlement thesis is the demonstration of the deep and intricate links between the histories and destinies of Europe and the concept of democracy. Even when efforts are made to decentre Europe from discussions on democratic entitlement thesis,<sup>148</sup> its historical trajectory remains deeply rooted in European intellectual traditions with influences and interactions coming from other parts of the world.<sup>149</sup>

Democracy has had a significant pacifying role in Europe, particularly following World War II and the Cold War, by promoting a common legal and political foundation rooted in democratic values. Moreover, European democratic experiences have shaped international law's view on democracy, though their impact on spreading Western liberal democratic ideals globally has been limited.<sup>150</sup>

Hence, even though universal international law does not endorse any specific model of democracy, the European path of democratic development inherently links it to Western liberal values. The overview of the evolution of democracy in Article 1 demonstrates that its entry into the international law lexicon and the establishment of a robust legal framework supporting democracy within the European regional order has been preceded by millennia of historical developments, reflecting its 'Western aura.'<sup>151</sup> This intrinsic association also partially explains the resistance from certain actors towards the chance of making democracy a universal entitlement in international law.

Nevertheless, despite its 'Western aura', the discussion in Article 1 also emphasised that 20th-century international legal debates on democracy in international law were shaped by the competing interactions between Western liberal and Soviet socialist ideologies.<sup>152</sup> The Cold War discourse on democracy also reflected these competing ideologies; the Western bloc, headed by the US, promoted liberal democracy, focusing on political and civil rights, while the Eastern bloc, led by the Soviet Union, promoted an alternative paradigm known as 'people's democracy' or socialist democracy, emphasising *inter alia* the importance of economic and social rights.<sup>153</sup> During this period, despite these developments, state sovereignty and non-interference remained the defining characte-

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<sup>148</sup> Critics challenging Eurocentric/Westcentric discussions on democracy in international law indirectly make such attempts, see e.g., Rasulov (n 14); Chimni (n 53).

<sup>149</sup> Poghosyan, 'The Idea of Democracy in International Law in Europe' (n 115) 4–6.

<sup>150</sup> *ibid* 2.

<sup>151</sup> Charlesworth, 'Democracy and International Law' (n 92) 56; See further Poghosyan, 'The Idea of Democracy in International Law in Europe' (n 111) 4–6.

<sup>152</sup> Poghosyan, 'The Idea of Democracy in International Law in Europe' (n 115) 6–7.

<sup>153</sup> Steven LB Jensen, 'The Making of International Human Rights: The 1960s, Decolonization and the Reconstruction of Global Values'.

ristics of international law.<sup>154</sup> Over time, the East-West ideological divide gradually diminished due to complex factors, fostering increased collaboration and understanding. These changes are seen in the 1990s declarations of the Organisation for Security and Co-operation in Europe (OSCE) (formerly known as Conference on Security and Co-operation in Europe (CSCE)) declarations.<sup>155</sup>

***Democracy within the European regional political-legal institutions:*** While the assertion of a right to democracy finds shaky ground in universal international law, a different image emerges when considering regional pronouncements, specifically from the Americas,<sup>156</sup> Africa,<sup>157</sup> and Europe.<sup>158</sup> Specifically, re-focusing on Europe, and the analysis in Article 1, we see more robust regional support for democracy, which allows the possibility to claim the existence of a ‘right to democracy’ albeit implicitly.<sup>159</sup> Specifically, the democratic conditionality adds to the clarity of this claim. Nevertheless, questions remain about the nature and sources of the said right. Nonetheless, the discussion indicates that democracy is best described and supported as a principle for governance.

Specifically, the Council of Europe (CoE) and the European Union (EU) are pivotal in maintaining and promoting democracy due to their unique complementary roles and comprehensive frameworks for upholding democratic values. These organisations have been instrumental during the early phases of democratic transitions in various European countries. Post-Cold War European integration has focused on democracy, especially in facilitating the accession of post-Communist states.<sup>160</sup>

The discussion in the Article 1 highlighted that democracy has been a foundational principle of the EU and the CoE since their inception, rooted in post-World War II efforts to promote peace and stability in Europe and prevent another catastrophe on the continent, thus reflecting its pacifying effect.<sup>161</sup> In the context of European integration, democracy has been considered a vital ideal and guiding principle for developing and managing European institutions, significantly in-

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<sup>154</sup> Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (adopted 24 October 1970) UNGA Res 2625 (XXV).

<sup>155</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) CSCE Doc 90/2; Charter of Paris for a New Europe, Second CSCE Summit of Heads of State or Government, Paris, 19-21 November 1990.

<sup>156</sup> Heraldo Muñoz, ‘The Right to Democracy in the Americas’ (1998) 40 *Journal of Inter-American Studies and World Affairs* 1; The Charter of the Organization of American States (OAS) 1948; ‘Inter-American Democratic Charter’.

<sup>157</sup> African Charter on Democracy, Elections and Governance (adopted 30 January 2007, entered into force 15 February 2012) AU Doc Assembly/AU/Dec.147 (VIII); Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government 2000 [AHG/Decl.5 (XXXVI)].

<sup>158</sup> Poghosyan, ‘The Idea of Democracy in International Law in Europe’ (n 115).

<sup>159</sup> *ibid* 8–12.

<sup>160</sup> *ibid* 7–8.

<sup>161</sup> *ibid* 9–11.

fluencing their decision-making procedures and governance structures.<sup>162</sup> Like the EU, democracy has also been a core principle of the CoE since its establishment in 1949 to promote unity and peace in post-war Europe. It also played a significant role in the post-Cold War period by assisting in the transitions of Central and Eastern European countries, transforming the CoE into a ‘school of democracy’.<sup>163</sup>

As demonstrated, democracy’s central role is evident in the Copenhagen Criteria for democratic governance as a condition for countries seeking EU membership.<sup>164</sup> The democratic conditionality has greatly influenced the ambition of the post-communist governments to join the EU. It also lies at the core of the EU’s Neighbourhood Policy, incentivising states to democratise.<sup>165</sup> Also, the EU has procedures to examine and remedy any issues and violations of democratic rules and standards. For example, the EU’s Rule of Law Mechanism monitors potential threats to the rule of law, a core tenet of democratic governance.<sup>166</sup> Article 7 of the Treaty on European Union theoretically enables the EU to suspend the rights of a member state that persistently and gravely violates EU principles, notably democracy.<sup>167</sup> Despite this, the complexities of Article 7(2) framework make its implementation challenging, prompting the EU to adopt budgetary conditionality as a strategy to uphold the rule of law.<sup>168</sup> However, the effectiveness of this approach remains questionable, particularly in light of the challenges posed by member states like Hungary.<sup>169</sup>

Likewise, the CoE preamble stresses the fundamental value of democracy to the organisation as rooted in spiritual and moral values, individual freedom, and the rule of law.<sup>170</sup> This language later reappeared in the 1950 ECHR, which was intended to function as an ‘early warning system’ or to protect liberal democracies in the West from backsliding to totalitarianism.<sup>171</sup> The CoE has many

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<sup>162</sup> See generally Dermot Hodson and others, *The Institutions of the European Union* (Oxford University Press 2022).

<sup>163</sup> See further Ganna Yudkivska, ‘Council of Europe’ in Anne van Aaken and others (eds), *The Oxford Handbook of International Law in Europe* (Oxford University Press 2023).

<sup>164</sup> See generally Flamur Mrasori, ‘The Role of the Unilateral Harmonization to the EU Integration’ (2022) 8 *Lex Portus* 54, 54.

<sup>165</sup> See generally Frank Schimmelfennig, ‘Rebordering Europe: External Boundaries and Integration in the European Union’ (2021) 28 *Journal of European Public Policy* 311.

<sup>166</sup> See further Anne van Aaken, ‘Rule of Law in Europe: A Multi-Layered Network’, *The Oxford Handbook of International Law in Europe*.

<sup>167</sup> Treaty on European Union (Consolidated Version), Treaty of Maastricht (adopted 7 February 1992, entered into force 1 November 1993).

<sup>168</sup> van Aaken (n 166).

<sup>169</sup> Poghosyan, ‘The Idea of Democracy in International Law in Europe’ (n 115) 11.

<sup>170</sup> Statute of the Council of Europe (adopted 5 May 1949, entered into force 3 August 1949) CETS No: 001.

<sup>171</sup> Esra Demir-Gürsel, ‘12. The Limits of the European Court of Human Rights Vis-à-Vis Contestation and Authoritarianism: Concluding Observations’ *The European Court of Human Rights* 245.

democracy-focused documents.<sup>172</sup> The Parliamentary Assembly of the CoE has also passed important resolutions concerning democracy.<sup>173</sup> The CoE's Venice Commission has enacted an impressive number of so-called 'main reference documents' addressing the function of parliament in a democracy and topics of fundamental significance to democracy.<sup>174</sup> The ECtHR has addressed numerous vital cases related to democracy.<sup>175</sup> However, democracy is typically discussed within the context of the concept of 'necessary in a democratic society' rather than explicitly as a right.

Nonetheless, the CoE's effectiveness in promoting democracy remains under scrutiny. Its key 'alarm bell' function, aimed at highlighting threats to democracy and human rights, is limited by the willingness of member states to adhere to its standards and implement its recommendations.<sup>176</sup> Additionally, global challenges including the decline of democracy and the surge of populism in Europe, especially in Hungary and Poland, along with the widespread dissemination of disinformation, and the rise of authoritarian tendencies, exemplified by Russia's military aggression against Ukraine, further test democracy's pacifying influence and its limits in Europe.<sup>177</sup> Nevertheless, as the concluding remarks of Article 1 emphasize, Europe's response to these challenges will significantly shape the future of democracy regionally and globally.<sup>178</sup>

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<sup>172</sup> 'Declaration Regarding Intolerance – a Threat to Democracy Adopted by the Committee of Ministers of the Council of Europe, 14 May 1981 (68th Session); Vilnius Declaration on Regional Co-Operation and the Consolidation of Democratic Stability in Greater Europe CM (2002) 55 (Adopted by the Committee of Ministers of the Council of Europe, Vilnius, Lithuania, 3 May 2002, 110th Session)'.

<sup>173</sup> Indicators for Media in a Democracy, Res 1636 (2008) (Adopted by the Assembly, 3 October 2008, 36th Sitting); Abolition of Restrictions on the Right to Vote, Res 1459 (2005) (Adopted by the Assembly, 24 June 2005, 24th Sitting).

<sup>174</sup> See e.g. Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report, Opinion No 190/2002, ACDL-AD (2002) 23 Rev (Adopted by the Venice Commission, Venice, Italy, 18–19 October 2002, 52nd Session).

<sup>175</sup> See e.g. *United Communist Party of Turkey and Others v Turkey* (ECtHR, 1998) ECHR 1; *Hirst v United Kingdom (No 2)* (ECtHR, 2005) ECHR 681; *Sunday Times v United Kingdom (No 1)* (ECtHR, 1979) ECHR 1.

<sup>176</sup> See generally Angelika Nußberger, 'From High Hopes to Scepticism? Human Rights Protection and Rule of Law in Europe in an Ever More Hostile Environment' in Heike Krieger, Georg Nolte and Andreas Zimmermann (eds), *The International Rule of Law: Rise or Decline?* (2019).

<sup>177</sup> Poghosyan, 'The Idea of Democracy in International Law in Europe' (n 111) 11–13; More on these trends, see Bugaric and Kuhelj (n 15) 32; Stephan Haggard and Robert Kaufman, 'The Anatomy of Democratic Backsliding' (2021) 32 *Journal of Democracy* 27; Amir Ali, *Brexit and Liberal Democracy: Populism, Sovereignty, and the Nation-State* (Routledge 2021).

<sup>178</sup> Poghosyan, 'The Idea of Democracy in International Law in Europe' (n 115) 14.

## 6.2. Soviet Approaches to Democracy in International Law: Challenging the Western Liberal Model

*Overview of the discussion:* This section delves into the historical aspect of this dissertation, exploring Soviet approaches to democracy and self-determination in international law. The findings suggest that the Soviet legal doctrine formally promoted a unique approach to democracy and self-determination (6.2.1.) grounded in Marxist-Leninist ideology, which was also translated into their approach to international law (6.2.2.). Their ultimate goal was achieving a classless communist society and not the political independence of nations or individual rights. In international law, the Soviets emphasised collective rights over individual and political rights, particularly social and economic rights. They also reflected the premises of a counter-Western socialist international law, highlighting an external aspect of democracy that stressed anti-imperialism, favoured sovereignty (primarily for great powers) and supported non-interference in national governance. This focus on the ‘democracy of international law’ was aimed against the rise of an ‘international law of democracy’ that could allow external scrutiny of their domestic affairs. However, their practices (6.2.3.) were flexible and exhibited double-standards domestically and internationally, aligning with their realist foreign policy objectives and self-interests.

### 6.2.1. Democracy in the Soviet Legal Doctrine: From Constitutions to the Writings of Legal Scholars—A Distinct and Consistent Approach

One of the main arguments of Article 3 is that the Soviets maintained a unique counter-Western approach to democracy, grounded on the premises of Marxism-Leninism and, specifically, the end goals of a classless communist society. This conclusion is drawn primarily from an analysis of the writings of Soviet legal scholars as well as the Soviet Constitutions and the traits of Soviet constitutionalism, which should be viewed as a political charter outlining the government’s goals within the socialist regime.<sup>179</sup>

The writings of Soviet legal scholars reveal their view of Soviet democracy as a ‘real people’s democracy’, which they considered the most authentic and objective form ever achieved by humanity.<sup>180</sup> They argued that Soviet democracy and the Communist Party of the Soviet Union (CPSU) served the interests of its people. They viewed socialist democracy as a new form, ‘democracy for the working class’, contrasting it with what they viewed as the “bourgeois thoughts

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<sup>179</sup> See further Ziyad Motala, ‘The Jurisprudence of Constitutional Law: The Philosophical Origins and Differences Between the Western Liberal and Soviet Communist State Law’ (1989) 8 Dick. J. Int’l L. 225, 240–242.

<sup>180</sup> Dzhangir Kerimov, G Mal’cev and A Nedavnij, *Demokratija i pravo v razvitom socialisticheskom obshhestve* (Mysl’ 1979) 9.

and revisionist ideology of ‘clean’, ‘classless’ democracy.”<sup>181</sup> For instance, renowned Soviet international law scholar Tunkin challenged the notions of ‘pure’ democracy and human rights, highlighting the various historical types and forms of democracy.<sup>182</sup>

Furthermore, Soviet legal scholars recognised the central role of Soviet Constitutions in the evolution of Soviet democracy.<sup>183</sup> Based on the analysis of the Soviet Constitutions, specifically the 1936 and 1977 Constitution, we see that the Soviets prioritised a collectivist view of human rights over an individualist perspective and had a rather paternalist approach to law, thus significantly restricting their scope and subordinating them to the interests of the state and society. To illustrate, the 1977 Constitution stipulated that citizens could not exercise their rights and freedoms in ways that would harm society or the State.<sup>184</sup> When a citizen’s rights conflicted with societal interests, those rights were required to yield.<sup>185</sup> The Constitutions also prioritised socio-economic rights over civil and political rights. This indicates that the Soviet legal philosophy posited that individual rights could only be exercised through the collective.<sup>186</sup>

Another important characteristic was the central role of the Communist Party, exemplifying a paternalistic approach. The 1977 Constitution solidified the Party’s position, declaring at the outset that the CPSU was the leading force of Soviet society.<sup>187</sup> This was also reflected in the writings of Soviet legal scholars. Kuz’min argued that having two or more parties and opposition in parliament did not guarantee democracy and viewed it as a tool to strengthen control over society.<sup>188</sup> In contrast, he believed that the state and the party knew what was best for the people beyond any challenge or critique. He also claimed that there was no class basis for institutionalizing political differences in the USSR: introducing pluralist democracy would be a regression in the historical development of socialism in the USSR.<sup>189</sup>

This framework, amongst other things, altered the nature and meaning of democracy fundamentally. For example, in the case of elections, it precluded political plurality and the possibility of opposition, aligning with Soviet legal principles that negated such possibilities. Moreover, the 1977 Constitution

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<sup>181</sup> *ibid* 9–10.

<sup>182</sup> GI Tunkin, *Theory of International Law* (William E Butler tr, Harvard University Press 1974).

<sup>183</sup> Poghosyan, ‘The Soviet View on Democracy in International Law’ (n 7).

<sup>184</sup> Igor Kavass and Gary Christian, ‘The 1977 Soviet Constitution: A Historical Comparison’ (1979) 12 *Vanderbilt Journal of Transnational Law* 533, 569.

<sup>185</sup> See further Christopher Osakwe, ‘Soviet Human Rights Law Under the USSR Constitution of 1977: Theories, Realities And Trends’ 56 *Tulane Law Review* 46, 264.

<sup>186</sup> Dean (n 103) 63.

<sup>187</sup> Constitution (Fundamental Law) of the Union of Soviet Socialist Republics, 1977 art 6.

<sup>188</sup> Eduard Kuz’min, *Demokratija i konstitucii dvuh mirov* [Democracy and the constitutions of two worlds] (Mezhdunorodnye otnoshenija 1981) 17.

<sup>189</sup> *ibid* 25.

strengthened and reaffirmed certain rights, such as freedom of expression, allowing individuals to criticise their working conditions without fear of punishment.<sup>190</sup> However, having a constitutional right did not guarantee its judicial protection.<sup>191</sup> The Soviets viewed political participation as a means rather than an end, with rights consistently constrained by ‘state interest’ and obligations. Thus, Soviet-era ‘rights’ differed from Western ‘rights’ due to broad limitations and interpretations dictated by Soviet constitutional principles. Instead of having ‘claims against the government’, Soviet citizens were given ‘opportunities promised by the State.’<sup>192</sup>

### 6.2.2. The Soviet View on Democracy and Human Rights in International Law: Challenging the Western Liberal Model

*The 1948 UDHR:* Article 3 demonstrates that the characteristics defining the Soviet approach to democracy domestically also shaped their approach to democracy in international law. Specifically, in international law, the Soviets emphasised collective, particularly social and economic rights over individual and political rights. They also highlighted an external aspect of democracy that stressed anti-imperialism, sovereignty and non-interference in national governance. However, their practices were often flexible and exhibited double standards, aligning with their foreign policy objectives and self-interests.<sup>193</sup> This is specifically reflected in the Soviet position on democracy and human rights during the 1948 UDHR negotiations, as articulated by the Soviet delegates, specifically Pavlov and Vishinsky.<sup>194</sup>

To recapitulate the main themes, the Soviets insisted that the declaration should have highlighted that everyone had a right to protect fundamental freedoms, regardless of their characteristics, thus emphasising non-discrimination. Soviet delegate Vyshinsky also emphasised the need to ensure the implementation of the rights asserted; some actual steps should have backed up each right proclaimed. Given the Soviets’ commitment to positive socioeconomic rights, Vyshinsky condemned the declaration’s fundamental goal for lacking such specific, useful guarantees.<sup>195</sup> Vyshinsky brought up the issue of implementation concerning several political rights.<sup>196</sup>

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<sup>190</sup> 1977 Soviet Constitution arts 49–50.

<sup>191</sup> Kavass and Christian (n 184) 571.

<sup>192</sup> See further Loffe Olimpiad, ‘Soviet Attitudes toward International Human Rights Law’ [1987] Connecticut Journal of International Law 361, 362.

<sup>193</sup> Poghosyan, ‘The Soviet View on Democracy in International Law’ (n 7).

<sup>194</sup> *ibid* 198–203.

<sup>195</sup> Andrei Vyshinsky, *Voprosy Mezhdunarodnovo Prava i Mezhdunarodnoi Politiki*, [Questions of International Law and International Politics] *Leningrad*, 379 (1950) 382.

<sup>196</sup> *ibid* 373.

Another point resurfacing in the Soviet position on the UDHR is the obligations and limitations accompanying Soviet human rights. The Soviets justified these restrictions internationally by invoking state sovereignty and public interest. Vyshinsky condemned attempts to instrumentalize the declaration against state sovereignty for political purposes.<sup>197</sup> He deemed the ‘human rights vs state sovereignty’ dichotomy false as, in his view, human rights were inextricably linked to the state because it was the state that protected them.<sup>198</sup> He also referred to ‘the public interest’ while expressing concern about the ‘dangers of unlimited free speech’, stating that it should have allowed exceptions for harmful ideologies such as Nazism, instigation of war, and hostility between States.<sup>199</sup>

Moreover, socioeconomic rights were also prioritised throughout the debates. Regarding civil and political rights, the Soviets were concerned that by signing the declaration and supporting its articulation of civil and political rights, they would justify the possibility of the West meddling in Soviet domestic political issues. The ‘sovereignty first’ strategy demanded the Soviet Union’s strong resistance to the case for creating a human rights court as they emphasised the risk that such a shift would institutionalise the reasoning behind imperial and colonial authority, albeit now presented in terms of individual rights.

Democracy did not make its way to the Article 21 of the UDHR, reflecting the underlying ideological differences, nonetheless, the definition of democracy was central during the debates on Article 29, which declares “the general welfare in a democratic society” as a possible limitation on the exercise of rights. Particularly the discussion about replacing the USSR-endorsed term ‘democratic State’ with ‘democratic society’ is essential. During one of the discussions, the Soviet delegate argued that the advantage of the Soviet conception of the state was that it was democratic in a new sense of the word, supported by most of the people and was bound up with the defence of fundamental human rights. That it was a true democracy: the right to participate in government. He then stated that Soviet popular democracy was based on unity, which the Soviet people demonstrated during the war.<sup>200</sup> Nonetheless, this proposal met with resistance based on the concern that it could be used to undermine the individual rights and freedoms outlined in the Declaration: invoking the state in this context was seen as contrary to the notion that human rights are fundamentally claims against the state.<sup>201</sup> While the Soviet proposal to add ‘and democratic State’ at the end was rejected, this discussion is important as it reflected fundamental disagreements around the meaning of democracy.

Overall, the Soviets expressed that they faced ideological challenge concerning their involvement in the declaration’s drafting, as every modification by

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<sup>197</sup> *ibid* 379.

<sup>198</sup> *ibid* 380.

<sup>199</sup> *ibid* 371.

<sup>200</sup> United Nations Commission on Human Rights, Summary Record of the Fifty-First Meeting (New York, 28 May 1948) E/CN.4/SR.51, 7-8.

<sup>201</sup> Morsink (n 100) 63–65.

the Soviet Union that made mention of the state had been rejected.<sup>202</sup> While it is widely perceived that the Soviet abstention from the UDHR stemmed from deep ideological divides, I agree with the interpretation that their abstention was not solely due to opposition to human rights. Instead, they believed that the UDHR failed to sufficiently address the implementation of measures for the legal and material assurance of the rights it outlined.<sup>203</sup> In other words, it did not adequately account for the vision of democracy and human rights that the Soviets had in mind.

Although the Soviets were unable to incorporate their fundamental perspective into the UDHR, they challenged Western ideas, emphasising the differences in how human rights were understood in international law by non-Western actors.

***From the 1966 ICCPR and ICESCR to the 1975 Helsinki Final Act:*** The 1966 UN covenants largely mirror the framework established by the UDHR and the fundamental views on democracy had already been clarified during the negotiations of the 1948 UDHR.<sup>204</sup> Hence the reason why the Soviets agreed to ratify it is rather thought out in the analysis of the writings of Soviet legal scholars. Article 3 demonstrates that even after the Soviets ratified the 1966 UN covenants, grounded in the UDHR text, they maintained their original stance on democracy. Their approach was grounded in counter-Western international law principles that emphasized sovereignty and non-intervention, along with anti-imperialism and anti-colonialism, while also underscoring the importance of self-determination. This ratification was predicated on the belief that the international law provisions would not be implemented domestically. This conclusion was drawn primarily by the analysis of the documents of the negotiations around the 1966 ICCPR writings of Soviet legal scholars.<sup>205</sup> Specifically the Soviet legal scholars argued Soviet approach to human rights and the application of the covenants must be seen within the broader context of their legal philosophy on international law norms, as emphasized by these scholars.<sup>206</sup>

To illustrate, just like the UDHR, throughout the negotiations of the 1966 covenants also, the primary source of disagreement remained the East/West divide, with the Soviet Union and its allies emphasizing economic and social rights as fundamental, whereas the United States and its allies focused on political and civil rights as basic human rights.<sup>207</sup> The UNGA responded by splitting the covenants into two separate documents, eighteen years after the UDHR. Both covenants became effective on January 3 1976, after the USSR ratified the ICCPR and the ICESCR in 1973.<sup>208</sup>

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<sup>202</sup> Vyshinsky (n 195) 104.

<sup>203</sup> Bowring (n 108) 213–214.

<sup>204</sup> See generally William Schabas and Manfred Nowak, *U.N. International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (3rd revised edition, NP Engel, Publisher 2019).

<sup>205</sup> Poghosyan, 'The Soviet View on Democracy in International Law' (n 7) 203–208.

<sup>206</sup> Stanislav V. Chernichenko, *Lichnost' i Mezhdunarodnoe Pravo* [Personality and International Law] (Mezhdunorodnye otnoshenija 1974) 5.

<sup>207</sup> See generally Schabas and Nowak (n 204).

<sup>208</sup> Poghosyan, 'The Soviet View on Democracy in International Law' (n 7) 203.

In fact, the USSR directly impacted the negotiations of the 1966 UN covenants, for example, by arguing that including review procedures in the ICCPR system would violate state sovereignty. Consequently, the jurisdiction of the HRC to handle individual complaints under the ICCPR provisions was made optional.<sup>209</sup> For the Soviets, emphasis on sovereignty acted as a defence against the external examination of their domestic human rights conditions, effectively demonstrating that the covenants essentially served as declarative and propagandistic instruments.<sup>210</sup> This line of thinking is evident amongst the writings of Soviet legal scholars on democracy. For example, Soviet legal scholar Ushakov highlighted that firm respect for the sovereignty of all States and non-interference in their internal affairs lay at the heart of the politics of the USSR.<sup>211</sup> He maintained that the principle of human rights should be realised via other principles of international law such as “sovereign equality, non-intervention into internal affairs, and self-determination of peoples, cooperation between States”.<sup>212</sup>

These concepts help to clarify the Soviet reluctance to recognize individuals as subjects of international law, maintaining instead that only States qualify as such subjects.<sup>213</sup> For example, Tunkin claimed that the Conventions did not grant rights directly to individuals but established obligations on the part of States to grant such rights to individuals. He reaffirmed that protecting human rights remained primarily a domestic matter for governments, and the international protection of human rights, mainly achieved through international legal procedures, was only a secondary means of upholding those rights.<sup>214</sup>

Furthermore, the 1975 Helsinki Final Act, while a political document, had a substantial political impact on how the ICCPR was seen.<sup>215</sup> Nonetheless, Soviet law stipulated that relevant domestic legal regulations had to be passed for norms of international agreements to be implemented in domestic law in all other situations.<sup>216</sup> To domestically enforce such international human rights instruments, the USSR, as illustrated, had indeed passed laws; all the human rights mentioned at the Helsinki Conference were enumerated in the 1977 Constitution.<sup>217</sup> Never-

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<sup>209</sup> Bill Bowring, *Law, Rights and Ideology in Russia: Landmarks in the Destiny of a Great Power* (1st edition, Routledge 2014) 213–214.

<sup>210</sup> Mälksoo, ‘The Controversy over Human Rights, UN Covenants, and the Dissolution of the Soviet Union’ (n 104) 261.

<sup>211</sup> Nikolai Ushakov (ed), *Konstitucionnye Osnovy vneshnei politiki SSSR i mezhdunarodnoe pravo* [The constitutional foundations of the USSR’s foreign policy and international law] (Nauka 1985) 176.

<sup>212</sup> *ibid* 200.

<sup>213</sup> Chernichenko (n 206) 5.

<sup>214</sup> Tunkin (n 182) 83.

<sup>215</sup> Mälksoo, ‘The Controversy over Human Rights, UN Covenants, and the Dissolution of the Soviet Union’ (n 104) 273.

<sup>216</sup> *ibid*.

<sup>217</sup> *Supra* note Ch. 6.2.1.

theless, in the Western sense, human rights were not recognised in the Soviet Union and were subject to interpretation in line with Soviet legal philosophy.

The Soviet approach to human rights was starkly evident in how they treated dissidents, who frequently noted routine violations of the ICCPR's provisions by the USSR. In addition, Western human rights law researchers had also expressed the opinion that, despite the USSR having ratified the ICCPR, it continued to violate fundamental human rights stipulated in the treaty, such as the right to democratic elections outlined in Article 25. Thus, it is rightly observed that the Helsinki Final Act, which was a legally non-binding instrument, had more immediate political influence than the ICCPR. This can be explained by the fact that there was no efficient implementation mechanism in place and that the Optional Protocol of the ICCPR was not immediately enforceable for the state parties to the ICCPR.<sup>218</sup>

The counter-Western rhetoric was also very well observed in the writings of Soviet legal scholars, as indicated in Article 3. Alongside the abovementioned developments, the Soviet rhetoric maintained that the Western liberal democratic principles "within 'bourgeois' international law" served as a deceptive façade for the self-interests of 'imperialist' and 'interventionist' powers. They criticized the West for perceived human rights violations, specifically accusing the US and several other states of "systematic violations of human rights due to their negative stance towards the covenants."<sup>219</sup> Chikvadze, for example, deemed the US claim of leading a morally based foreign policy 'shameless demagoguery' aimed at camouflaging systematic violations of fundamental human rights and freedoms in the USA.<sup>220</sup>

Domestically, the Soviets argued their democracy to be the best version achieved by humanity, serving the people and driving economic progress, unlike what they saw as a Western 'evil' system, which, they argued, served the interests of the 'bourgeois'.<sup>221</sup> They viewed the USSR and other socialist states as champions of 'true' democratic principles, emphasising the idea of socialist internationalism, which highlighted the solidarity and cooperation among socialist nations, positioning them as proponents of democratic values against "imperialist and capitalist Western states."<sup>222</sup> In this sense, democracy, and human rights, while having solid ideological support on paper, were instrumentalised in their struggle with the West.

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<sup>218</sup> Mälksoo, 'The Controversy over Human Rights, UN Covenants, and the Dissolution of the Soviet Union' (n 104) 274.

<sup>219</sup> Viktor Chikvadze and Elena Lukasheva (eds), *Socialisticheskaja Konceptcija Prav Cheloveka* [The socialist conception of human rights] (Nauka 1981) 197.

<sup>220</sup> Viktor Chikvadze, *Demokratija i pravovoj status lichnosti v socialisticheskom obshhestve* [Democracy and the legal status of the individual in a socialist society] (Nauka 1987) 17.

<sup>221</sup> Kerimov, Mal'cev and Nedavnij (n 180).

<sup>222</sup> *ibid.*

### 6.2.3. The Soviet View on Self-Determination in International Law: Challenging the Western Liberal Model

As discussed previously, in the context of democracy, the Soviets also argued that democracy should be interpreted within the broader context of international law principles, such as self-determination.<sup>223</sup> Nonetheless, the discussion in Article 2 on the Soviet approach to self-determination revealed that their approach at its core was distinct from the Western approach and consistently reflected the principles of Soviet legal philosophy from the earliest stages onwards.<sup>224</sup> Specifically, it had the end goals of communism and not the independence of nations at its core and in practice was accompanied by territorial acquisitions.<sup>225</sup> Consequently, they used self-determination as a strategic tool to advance their policy objectives.<sup>226</sup> This explained the ease with which USSR positioned itself at the forefront of the decolonization movement.<sup>227</sup>

In international law, the Soviets greatly influenced the promotion of self-determination and strategically used the rhetoric of anti-colonialism and anti-imperialism against their Western counterparts.<sup>228</sup> They claimed that self-determination had been effectively addressed within the USSR via its autonomous units in a federal setup, and considered it pertinent solely to Western colonial powers—a stance that was also widely echoed by Soviet legal scholars.<sup>229</sup> The main objection to the Soviet effort in including a clause on self-determination in the covenants had to do with hypocrisy: these would not apply to the people within the USSR and had been applied only to Finland in the former Tsarist Empire.<sup>230</sup> Thus, there was no genuine self-determination in the USSR as understood in the Western liberal sense.<sup>231</sup>

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<sup>223</sup> See further Supra note 6.2.1.

<sup>224</sup> Poghosyan, ‘Russian Approaches to the Right to Peoples to Self-Determination’ (n 20) 184.

<sup>225</sup> *ibid* 185.

<sup>226</sup> For more on territorial acquisitions by the Soviets see Mark R Beissinger, ‘Self-Determination as a Technology of Imperialism: The Soviet and Russian Experiences’ (2015) 14 *Ethnopolitics* 479, 481–482.

<sup>227</sup> Tero Lundstedt, ‘The Changing Nature of the Contemporary Russian Interpretation of the Right to Self-Determination under International Law’, *Russian Discourses on International Law* (Routledge 2018) 197.

<sup>228</sup> See further Poghosyan, ‘Russian Approaches to the Right to Peoples to Self-Determination’ (n 20) 185–186.

<sup>229</sup> Dmitriy Baratashvili, ‘Princip Ravnopravija i Pravo Narodov Rasporjazhat’sja Svoej Sud’boj’ [‘The Principle of Equality and the Right of Peoples To Control Their Own Destiny’] in Nikolai Ushakov (ed), *Konstitucionnye osnovy vneshnej politiki SSSR i mezhdunarodnoe pravo* [‘Constitutional Foundations of USSR Foreign Policy and International Law’] (Nauka 1985) 205.

<sup>230</sup> Bowering (n 209) 84.

<sup>231</sup> Poghosyan, ‘Russian Approaches to the Right to Peoples to Self-Determination’ (n 20) 183–187.

The Soviets successfully maintained their advocacy for a self-determination agenda, later asserting that self-determination became a recognised principle of international law due to their “persistent struggle.”<sup>232</sup> This claim is not wrong, though it fails to recognize the underlying motives and ultimate objectives of Soviet position. To illustrate, an article on self-determination was included in the UN Charter, in line with the proposal of the Soviet delegation.<sup>233</sup> The Soviets viewed this as the triumph of the USSR against the colonial system of imperialism. Indeed they played a decisive role in drafting the two major UNGA resolutions on de-colonisation; UNGA resolution 1514<sup>234</sup>, and resolution 1541.<sup>235</sup> This accomplishment was accompanied by the so-called Salt Water Thesis, which stipulated that self-determination may be invoked only by territories geographically separate from the colonising power or those divided by blue water.<sup>236</sup> This favoured the Soviets greatly, as it meant that self-determination would not be exercised in opposition to their interests. As the project continued, a critical point for advancing self-determination as a right in international law was including a relevant provision in the 1966 UN treaties, the ICESCR and ICCPR.<sup>237</sup>

They criticised Western European powers for their imperial and colonial realities while objecting to any similar criticism levelled at themselves.<sup>238</sup> The Western states, for their part, opposed any provision for self-determination as they pursued their colonial interests. Still, they eventually acknowledged the possibility of secession in the colonial context.<sup>239</sup> The prevailing understanding was that while the covenants entailed non-colonised peoples’ entitlement to a form of internal governance within their mother state, these peoples did not acquire a right to seek independence. Colonised peoples were understood to be granted the right to decide their international status and political fate freely.<sup>240</sup>

Nevertheless, they failed to mention the fact that the Soviets resorted to force or threat of force to coerce certain nations to join the Soviet Union, such as the case of the Baltic states and Georgia. Later on, they also called their commitment to self-determination into question with the 1968 military invasion of

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<sup>232</sup> Tunkin (n 182) 61.

<sup>233</sup> See generally Lundstedt (n 227) 85.

<sup>234</sup> Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960), art 2.

<sup>235</sup> Principles that should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the UN Charter, UNGA Res 1541 (15 December 1960).

<sup>236</sup> Jeff Corntassel, ‘Toward Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse’ (2008) 33 *Alternatives: Global, Local, Political* 105, 108.

<sup>237</sup> ICCPR art 1.

<sup>238</sup> Mälksoo, ‘The Soviet Approach to the Right of Peoples to Self-Determination’ (n 110) 16.

<sup>239</sup> Helen Quane, ‘The United Nations and the Evolving Right to Self-Determination’ (1998) 47 *International & Comparative Law Quarterly* 537, 543.

<sup>240</sup> Milena Sterio, *The Right to Self-Determination under International Law: “Selfistans,” Secession, and the Rule of the Great Powers* (Routledge 2012) 11.

Czechoslovakia,<sup>241</sup> which has been characterised as directing “highly intense coercion against the territorial integrity and political independence of Czechoslovakia.”<sup>242</sup> For justification, they produced an unsigned document implying that Czech leaders had ‘invited’ the Warsaw Pact forces to enter Czechoslovakia.<sup>243</sup> Thus, the Soviet approach to self-determination was marked by inconsistency and double-standards. This shows that despite using the language of democracy and formally stressing sovereignty and non-intervention in international law, the Soviets’ actions actually contravened these principles, reflecting the imperialism of a Great Power.

### **6.3. Contemporary Russian Approaches to Democracy in International Law: Identifying Breaks and Continuities with the Soviet Approach**

*Overview of the discussion:* The findings in this section show Russia’s resistance to democratic entitlement in international and regional law frameworks (6.3.1) and highlight that the current Russian approach is conceptually flexible, unlike the Soviet approach (6.3.2); Russia advocates for a blend of universalist and particularist principles that both critique and reinforce Western concepts of democracy in international law. Like the Soviet approach, Russia formally emphasises non-intervention and sovereignty, strategically using anti-imperialism and anti-colonialism rhetoric, nonetheless in practice displays double standards.

Based on the discussions in section 6.3 and the preceding section 6.2, it is difficult to assert the existence of a conceptually unique Russian approach to democracy in international law that encompasses both Soviet and contemporary Russian perspectives. However, it is plausible to identify a Russian approach that integrates other elements from both eras, showcasing continuities between Soviet and contemporary Russian approaches. This approach emphasizes the ‘democracy of international law’, formally focusing on sovereignty and non-intervention (primarily for great powers) and resisting the ‘democratic entitlement’ paradigm, viewing it as an intrusion into domestic affairs. Similar conclusions are drawn from analysing the writings of Russian legal scholars (6.3.3). Hence, this section demonstrates both breaks and continuities between Soviet and contemporary Russian approaches.

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<sup>241</sup> David W Paul, ‘Soviet Foreign Policy and the Invasion of Czechoslovakia: A Theory and a Case Study’ (1971) 15 *International Studies Quarterly* 159, 178.

<sup>242</sup> Richard M Goodman, ‘The Invasion of Czechoslovakia: 1968’, *Int’l L.* (HeinOnline 1969) 57.

<sup>243</sup> *ibid* 44.

### 6.3.1. Russia's Approach to Democracy in the Context of International and Regional Legal Orders: Resisting the Democratic Entitlement while Retaining the Language of 'Democracy'

*Russia and democracy under the UN framework:* Article 4 illustrates that, despite its formal commitments to democracy within the UN system, Russia consistently resisted the 'right to democracy' paradigm from the outset. Over time, it showed preference for the 'democracy of international law,' theme reflecting its increasing opposition to the democratic entitlement.<sup>244</sup> After the USSR's dissolution, Russia formally adopted the USSR's commitments to democratic governance principles under international law, based on the doctrine of state continuity and translated its international legal duties into domestic legislation at this stage. Specifically, in 1993, Russia adopted a new Constitution that laid the legal foundation for a liberal democratic transition, including protecting fundamental human rights, a multiparty system, and a separation of powers.<sup>245</sup>

Nevertheless, it resisted the democratic entitlement paradigm in international law. For example, during the 1999 HRC discussions on the "Promotion of Democracy" Resolution, Russia's representative Malguinov, in response to Cuba's proposal to amend the title, acknowledged the value of democracy but expressed skepticism about it being a legal right, stating that "it would be premature to introduce this concept in intergovernmental documents".<sup>246</sup> Although Russia voted in favor of the declaration, this passage illustrates its early resistance to a 'right' to democracy in international law during its transition.

Over time, this resistance evolved into support for declarations emphasizing the 'democracy of international law', which includes concepts favored by the Global South, such as self-determination, the right to development, solidarity, and a healthy environment. As discussed earlier, these resolutions often gained support from countries that abstained from those initiated by Northern members and faced opposition from Northern states on the Commission.<sup>247</sup> Examples are resolutions on promoting a democratic and equitable international order adopted in 2008<sup>248</sup> and 2011,<sup>249</sup> by the HRC, which succeeded the Commission in 2006. Interestingly, many supporters of these resolutions are authoritarian states, such as North Korea, Belarus, and Syria, while Northern members of the Council typically voted against them. This dynamic echoes Cold War patterns. Russia's stance closely aligns with the Soviet approach, which emphasized expanding democracy in international relations through anti-colonial and anti-imperial rhetoric and a focus on self-determination.

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<sup>244</sup> Poghosyan, 'Russia's Discourse on Democracy in International Law' (n 22).

<sup>245</sup> See further Michael Burawoy, 'Transition without Transformation: Russia's Involuntary Road to Capitalism' (2001) 15 East European politics and societies 269.

<sup>246</sup> United Nations, Resolution on Promotion of Democracy adopted by Human Rights Commission, Press Release, 28 April 1999, HR/CN/937, available at: <https://press.un.org/en/1999/19990428.hrcn937.html> (accessed 30 April 2024).

<sup>247</sup> Supra Ch. 6.1.1.

<sup>248</sup> Promotion of a democratic and equitable international order (n 139).

<sup>249</sup> Promotion of a democratic and equitable international order (n 140).

***Russia and democracy in the context of its CoE membership:*** Article 4 provides an overview of the main challenges to democracy in Russia within the context of its CoE membership. It highlights persistent issues since Russia joined the CoE, revealing the extent of democratic challenges. Ultimately, Russia's path to democracy, assisted by CoE accession, was precarious from the start. Despite initial optimism, it was evident that Russia's democratic systems were nascent and flawed. However, the prevailing view was that including Russia in the organization would better facilitate the 'teaching' and promotion of democracy there.<sup>250</sup>

During its time as a CoE member, Russia generally had the highest share of pending cases at the ECtHR, which considers cases alleging civil and political rights violations outlined in the European on Human Rights (ECHR). Many of the ECtHR cases concerning Russia resulted in rulings against the Russian government for human rights violations.<sup>251</sup> When Russia was found to have violated human rights, it often complied by providing compensation without altering its behaviour.<sup>252</sup> This demonstrated Russia's regard for the ECtHR rulings' financial implications and disregard for the underlying causes.<sup>253</sup>

Nevertheless, the major disruptions in the relationship between Russia and the CoE were primarily due to geopolitical tensions. The first major turning point was Russia's annexation of Crimea in 2014, leading to the Parliamentary Assembly of CoE suspending Russia's voting rights.<sup>254</sup> After over two decades of a tense relationship, Russia was expelled from the organisation on 16 March 2022 and ceased to be a Contracting Party to the ECHR on 16 September 2022, following its invasion of Ukraine.<sup>255</sup> The CoE cited Russia's aggression against Ukraine and blatant human rights violations as an attack on the organization's values, marking the end of Russia's attempt to join the European family of democracies.<sup>256</sup>

***The silence on democracy in Russia's regional integration efforts:*** Article 4 also discusses and demonstrates the absence of democratic language in Russia's

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<sup>250</sup> Poghosyan, 'Russia's Discourse on Democracy in International Law' (n 22).

<sup>251</sup> Some significant cases against Russia in the European Court of Human Rights (ECtHR) include *Yukos v Russia* (2005) ECHR 103; *Navalnyy v Russia* (2018) ECHR 399; *Estemirova v Russia* (2021) ECHR 689.

<sup>252</sup> See generally Kirill Koroteev, 'Non-Execution of Strasbourg Judgments against Russia: The Case for a Trust Fund' (2024) 9 *Russian Politics* 121; Galina A Nelaeva, Elena A Khabarova and Natalia V Sidorova, 'Russia's Relations with the European Court of Human Rights in the Aftermath of the Markin Decision: Debating the "Backlash"' (2020) 21 *Human Rights Review* 93.

<sup>253</sup> See further Koroteev (n 252).

<sup>254</sup> See further Mikael Madsen, *From Boom to Backlash? The European Court of Human Rights and the Transformation of Europe* (Helmut Aust and Esra Demir-Gürsel eds, 2021).

<sup>255</sup> *The Russian Federation Is Excluded from the Council of Europe*, Council of Europe, 16 March 2022, available at: <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe> (accessed 30 April 2024).

<sup>256</sup> United around our values, Reykjavik Summit, 4th Summit of Heads of State and Government of the Council of Europe' 16-17 May 2023, available at: <https://rm.coe.int/4th-summit-of-heads-of-state-and-government-of-the-council-of-europe/1680ab40c1> (accessed 4 June 2024).

regional integration efforts.<sup>257</sup> It suggests that Russia's efforts in shaping regional integration frameworks reflect its ambition to maintain regional dominance and safeguard its strategic interests, actively working to prevent the rise of any popular or democratic movements that could challenge its authority. Moscow values stability over the proliferation of democracy, mainly when political leadership in the post-Soviet space leans towards Western alliances. Within these organisations, sovereignty and non-intervention are prioritised as principles of international law over democracy, which is viewed as a matter solely within the domestic jurisdiction of individual states. Hence, regionally Russia shows resistance to democratic entitlement.<sup>258</sup>

To illustrate, democratic conditionality is missing from two major regional organisations—the EAEU and the CSTO. Moreover, CSTO's first collective intervention in its thirty-year history in Kazakhstan, in response to January 2022 protests at the request of Kazakhstan's President Tokayev, indicated a strong willingness to act against any popular uprising that tells a lot about its implicit aims.<sup>259</sup> The official reason for deploying CSTO forces was peacekeeping, but in practice, Putin framed the intervention as a collective effort to shield regional allies from 'colour revolutions', which he attributed to external interference.<sup>260</sup>

As for the EAEU, Art. 3 of the Treaty on Eurasian Economic Union, for example, emphasises the principles of "respect the commonly recognised principles of the international law, including the principles of sovereign equality of the Member States and their territorial integrity; respect the differences of political structures of the Member States; provide the mutually beneficial cooperation, equality and the national interests of the Parties."<sup>261</sup> The EAEU's founding treaty preamble emphasizes the organization's commitment to state sovereignty, constitutional rights and freedoms, and enhancing unity and cooperation among its peoples, while respecting their historical, cultural, and traditional heritage.<sup>262</sup>

### 6.3.2. Russia's Approach to Democracy in International Law

The discussion in this section outlines three main stages in the evolution of the official Russian discourse on democracy in international law from the early 2000s to 2024. Although the discussion is presented chronologically, the transitions between these stages are not sharply defined, and there are overlapping elements.

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<sup>257</sup> Poghosyan, 'Russia's Discourse on Democracy in International Law' (n 22).

<sup>258</sup> *ibid.*

<sup>259</sup> Sultan Sakhariyev, 'Collective Security Treaty Organization (CSTO)' in Sergey Sayapin and others (eds), *International Conflict and Security Law* (TMC Asser Press 2022) 617.

<sup>260</sup> M. Seddon, *Vladimir Putin vows to stop 'colour revolutions' after sending troops to Kazakhstan*, Financial Times, 10 January 2022, available at: <https://www.ft.com/content/ee9005ee-7269-4081-801a-61011b233e78> (accessed 30 April 2024).

<sup>261</sup> Treaty on the Eurasian Economic Union (signed 29 May 2014, entered into force 1 January 2015), Art. 3.

<sup>262</sup> *ibid* Preamble.

As such, this categorization should be viewed as a guiding flexible framework for understanding these developments, not as a strict delineation.

### **6.3.2.1. Stage 1 – From Western Liberal Democratic Ideals to Sovereign Democracy: An Incomplete Breakaway from Soviet Approach to Democracy**

*Early embrace and adaptation of Western liberal democratic ideals:* The discussion in Article 4 suggests that although Russia’s path to democracy was precarious from the beginning, particularly during Yeltsin’s rule, the slide towards authoritarianism is generally linked to Putin’s rise to power.<sup>263</sup> Consequently, the focus of discussion is primarily on the post-2000 period as it clearly marks a shift in Russia’s political trajectory. The analysis demonstrates that in the early stages of Putin’s first presidency (2000–2004), the discourse on democracy predominantly revolved around Western liberal democratic ideals, with little emphasis on particularism, marking a clear conceptual break from the Soviet approach.<sup>264</sup> Putin advocated for Russia to adopt approaches similar to other established democracies, highlighting the necessity of embracing universal principles despite Russia’s unique features, and asserting that “without these universally acknowledged principles, establishing a normal democratic state is unattainable.”<sup>265</sup> He also acknowledged the link between democratic principles, collective security, and international cooperation, viewing Europe as a “single space of democracy, prosperity, and equal security for all its states.”<sup>266</sup>

Russia’s formal position on democracy at this stage revealed a preference for ‘substantive’ or ‘thick’ approach and mere electoral processes were viewed as “a veil and a screen for undemocratic principles of a state”.<sup>267</sup> Furthermore, Putin did not strongly advocate for a particularist interpretation of democracy, emphasising that, “Russia has no right to claim any exclusive status in this area.”<sup>268</sup> Nonetheless, he simultaneously considered a robust state apparatus a fundamental prerequisite for democratisation.<sup>269</sup> He considered the adoption of the Western

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<sup>263</sup> See generally Colton and McFaul (n 107).

<sup>264</sup> Poghosyan, ‘Russia’s Discourse on Democracy in International Law’ (n 22).

<sup>265</sup> V. Putin, *From an Interview with the Polish Newspaper Gazeta Wyborcza and the Polish TVP Channel*, 15 January 2002, available at: <http://en.kremlin.ru/events/president/transcripts/21471> (accessed 30 April 2024).

<sup>266</sup> V. Putin, *Interview with the Newspaper Welt am Sonntag (Germany)*, 11 June 2000, available at: <http://en.kremlin.ru/events/president/transcripts/24202> (accessed 30 April 2024).

<sup>267</sup> V. Putin, *Speech at an International Conference of the Association of Election Organisers in Central and Eastern Europe*, 26 September 2002, Moscow, available at: <http://en.kremlin.ru/events/president/transcripts/21731> (accessed 30 April 2024).

<sup>268</sup> V. Putin, *Interview to The New York Times*, Novo-Ogaryovo, 4 October 2003, available at: <https://en.kremlin.ru/events/president/transcripts/22145> (accessed 30 April 2024).

<sup>269</sup> V. Putin, *Address at a Meeting with NGO Representatives*, 11 June 2001, available at: <http://en.kremlin.ru/events/president/transcripts/21259> (accessed 30 April 2024).

liberal democracy model as appropriate for Russia and considered it complementary to strengthening state institutions, not contradictory arguing that Russia's unique historical path required the integration of both elements.<sup>270</sup>

Thus, despite the robust 'democracy' discourse, national security and sovereignty themes remained prominent, reflecting the deep-seated priorities that would guide Putin's rule at the later stages.<sup>271</sup> At that time, Russia's political system met the criteria of electoral democracy in a minimalist sense, and its foreign policy appeared to lean towards the West, especially in the context of post-9/11 global anti-terrorism efforts.<sup>272</sup> To illustrate, the 2000 FPC of Russia that recognised the differing strategic interests between Russia and the North Atlantic Treaty Organization (NATO), yet maintained a greater willingness to cooperate.<sup>273</sup> Likewise, while Russia's 2000 National Security Concept acknowledged NATO's eastward expansion as an increasing concern, it emphasized the importance of democracy, and underscored the centrality of sovereignty and security in shaping the nation's defense and strategic policies.<sup>274</sup>

***Democracy transformed—from liberal ideals to 'sovereign democracy':*** Article 4 suggests that during Putin's second presidential term (2004–2008), there was a gradual shift from supporting Western liberal democracy to promoting a more particularist approach, emphasizing sovereignty and non-interference. This shift aimed to counterbalance Western liberal ideals without entirely rejecting them, signalling a partial return to Soviet-era rhetoric on democracy after a brief departure.<sup>275</sup> The change in discourse occurred against the background of significant domestic power consolidation. The 2004 legislative amendment that changed the selection of regional governors from public elections to Kremlin appointments highlighted a significant shift towards centralisation.<sup>276</sup> This change and the creation of federal districts significantly altered Russia's federal

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<sup>270</sup> V. Putin, *Interview with the French weekly Paris-Match*, 6 July 2000, available at: <http://en.kremlin.ru/events/president/transcripts/24166> (accessed 30 April 2024).

<sup>271</sup> Poghosyan, 'Russia's Discourse on Democracy in International Law' (n 22).

<sup>272</sup> Michael McFaul, 'Russia's Road to Autocracy' (2021) 32 *Journal of Democracy* 11, 17.

<sup>273</sup> MFA of the Russian Federation, *Foreign Policy Concept of the Russian Federation* (approved by Vladimir Putin, President of the Russian Federation on 28 June 2000).

<sup>274</sup> President of the Russian Federation, *National Security Concept of the Russian Federation* (Presidential Decree No 24 of 10 January 2000).

<sup>275</sup> Poghosyan, 'Russia's Discourse on Democracy in International Law' (n 22).

<sup>276</sup> Federal'nyi Zakon ot 11 dekabria 2004 g. N159-FZ "O vnesenii izmenenii v Federal'nyi Zakon "Ob obshchikh printsipakh organizatsii zakonodatel'nykh (predstavitel'nykh) i isplonitel'nykh organov gosuderstvennoi vlasti sub'ektov Rossiiskoi Federatsii" i v Federal'nyi Zakon "Ob osnovnykh garantiyakh izbiratel'nykh prav i prava na uchastie v referendumе grazhdan Rossiiskoi Federatsii" (Federal Law of December 11, 2004 N159-FZ [On amendments to the Federal Law 'On the general principles of organization of the legislative (representative) and executive organs of state power of the subjects of the Russian Federation' and to the Federal Law 'On the basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum']).

structure, reducing regional autonomy, aligning them more closely with federal sovereignty.<sup>277</sup>

Despite Russia's dissatisfaction with the West, the Western liberal discourse on democracy was not entirely abandoned during this period; it simply moved down the priority list. For example, in his 2004 inauguration speech, Putin emphasized national security, state-driven development, and economic prosperity while retaining democratic elements like political pluralism and individual liberties.<sup>278</sup> Nonetheless, the promotion of Western liberal democracy was increasingly seen as intrusive.<sup>279</sup> Domestically, there was a shift towards a more particularist interpretation of democracy, advocating for a vision considering each nation's unique cultural, historical, and political contexts.<sup>280</sup> In practice, Russia began to reinforce its sovereignty both internally and externally. Putin implemented strict measures to prevent unrest, curtailed opposition activities, and initiated pro-government groups like Nashi.<sup>281</sup> The Kremlin intensified oversight of Non-governmental Organisations (NGOs), especially those with foreign funding, linking regime stability to national security. Putin's remark that democracy is not a 'street bazaar' reflects his distaste for public dissent.<sup>282</sup>

At this point, the concept of 'sovereign democracy' emerged, coined by Vladislav Surkov, encapsulating these changes. It sought to define the distinctiveness of Russian democracy, despite many of its aspects being viewed as undemocratic from a Western perspective. Hence, behind the guise of democracy, this concept sought to assert Russia's independence from perceived Western influences and reinforce its ability to operate as a sovereign state within the international system.<sup>283</sup> Sovereign democracy ultimately became a "politico-intellectual cover to Russian actions in the wake of growing international criticisms",

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<sup>277</sup> Morris (n 27) 19–20.

<sup>278</sup> V. Putin, *Inauguratsionnaya rech Vladimira Putina 7 maya 2000 goda* [Inauguration, Moscow, 7 May 2007], available at: [https://www.mn.ru/blogs/blog\\_reference/80928](https://www.mn.ru/blogs/blog_reference/80928) (accessed 30 April 2024).

<sup>279</sup> V. Putin, *The way democracy is established and consolidated should not compromise the concept of democracy itself*, 24 February 2005, available at: <http://en.kremlin.ru/events/president/news/32852> (accessed 30 April 2024).

<sup>280</sup> S. Lavrov, *Speech by Russian Minister of Foreign Affairs Sergey Lavrov at the Third Summit of the Council of Europe, May 16, 2005*, 16 May 2005, available at: [https://mid.ru/en/foreign\\_policy/news/1592880/](https://mid.ru/en/foreign_policy/news/1592880/) (accessed 30 April 2024).

<sup>281</sup> Nashi is a youth movement in Russia established in 2005 and known for its strong support of the Kremlin, see generally Maya Atwal and Edwin Bacon, 'The Youth Movement Nashi: Contentious Politics, Civil Society, and Party Politics' (2012) 28 *East European Politics* 256.

<sup>282</sup> V. Putin, *Transcript of Annual Big Press Conference*, Moscow, 14 February 2008, available at: <http://en.kremlin.ru/events/president/transcripts/24835> (accessed 30 April 2023).

<sup>283</sup> V. Surkov, *My stroim suverenuyu demokratiyu*, RG, 29 June 2006, available at <https://rg.ru/2006/06/29/kreml.html> (accessed 30 April 2024).

providing “an ideological firewall for the Kremlin against the dominant post-Cold War liberal international order.”<sup>284</sup>

It reflected Russia’s growing concerns about its diminishing influence and NATO’s growing presence within its claimed ‘sphere of influence’.<sup>285</sup> Russia perceived the Iraq War and Kosovo conflict as evidence of the erosion of international law, intensifying its scepticism about the use of international law to justify US unilateral actions. These events also underscored to Russia that it had lost its status as a ‘superpower’, compounding a sense of humiliation as the successor of a former great power.<sup>286</sup> These trends were ultimately encapsulated in Russia’s updated 2008 FPC and 2009 NSS documents; these documents asserted Russia’s role as a major power, and other great powers, revealing Russia’s great power status anxiety.<sup>287</sup> This suggests that democracy in Russia increasingly came to be viewed as linked to the loss of its Cold War-era superpower status, and as a means for Western interference in Russia’s internal affairs.

Nonetheless, universalist vision of democracy was not fully abandoned in the official state discourse of Russia. To illustrate, former Russian President Dmitri Medvedev (2008–2012) voiced his reservations about the ‘sovereign democracy’, suggesting that democracy is more effective without any qualifiers. Consequently, the term ‘sovereign democracy’ did not resonate strongly during his presidency. Instead, Medvedev shifted the narrative towards recognising democracy as a universal value with local nuances, complementing rather than contradicting Putin’s perspective.<sup>288</sup> Medvedev’s approach extended its appeal to the Western audience, portraying Russian democracy as unique and specific while retaining universal elements.<sup>289</sup>

Ironically, in attempting to distance itself from Western models, implementing ‘sovereign democracy’ in Russia led to a consolidation of power and a reduction in democratic pluralism, replicating the same inequalities within its own system that it criticized in the West.<sup>290</sup> Domestically, ‘sovereign democracy’ is viewed to have enabled a smooth power transition between the president and prime

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<sup>284</sup> Anirban Chatterjee, “‘Sovereign Democracy’: Russian Response to Western Democracy Promotion in the Post-Soviet Space” (2023) 27 *Jadavpur Journal of International Relations* 143, 148.

<sup>285</sup> See generally Mikhail Suslov, “‘Russian World’ Concept: Post-Soviet Geopolitical Ideology and the Logic of ‘Spheres of Influence’” (2018) 23 *Geopolitics* 330.

<sup>286</sup> *ibid.*

<sup>287</sup> President of the Russian Federation, National Security Strategy of the Russian Federation to 2020 (Presidential Decree No 537, 12 May 2009); MFA of the Russian Federation, The Foreign Policy Concept of the Russian Federation (approved by Dmitry A Medvedev, President of the Russian Federation, 12 July 2008).

<sup>288</sup> D. Medvedev, *Interview with journalists from the G8 countries*, Moscow, 3 July 2008, available at: <http://en.kremlin.ru/events/president/transcripts/48259> (accessed 30 April 2024).

<sup>289</sup> *ibid.* 89.

<sup>290</sup> See further Viatcheslav Morozov, *Russia’s Postcolonial Identity: A Subaltern Empire in a Eurocentric World* (Springer 2015) 108.

minister in 2008.<sup>291</sup> This move solidified United Russia's dominance and hinted at a shift towards a one-party system, underpinning significant legislative changes that expanded presidential powers.<sup>292</sup> This tactic persisted until the Russian Constitution was amended, allowing Putin to seek a second presidential term in 2012.<sup>293</sup> This also resulted in major legislative changes restricting civil liberties and other aspects of Western liberalism.<sup>294</sup>

These developments were reflected in Russia's 2009 UPR, part of its first cycle of reviews under the UNHRC. Specifically, the report of the High Commissioner for Human Rights highlighted serious concerns about democracy, judicial independence, and human rights in Russia. It identified systemic issues such as political interference in the judiciary, impunity for law enforcement, and inadequate remedies for rights violations. The report also warned of threats to journalists and activists, restrictive laws on NGOs, vague legislation enabling arbitrary actions, and state control over media, all contributing to an environment that stifles dissent. Additionally, challenges such as corruption, poor governance, and inadequate social services were noted as obstacles to democratic progress in Russia.<sup>295</sup>

Many countries had submitted advance questions concerning human rights, judicial independence, freedom of expression, minority protections, including LGBTQ+ rights, and Russia's implementation of ECtHR rulings.<sup>296</sup> In its self-report, while addressing these questions, Russia acknowledged these issues while portraying the country as a democratic nation working to align its domestic policies with international standards for governance and human rights.<sup>297</sup> Altogether the outcome of the 2009 Universal Periodic Review report on Russia highlighted progress in democratic reforms and institution building, yet underscoring persistent challenges with democratic governance.<sup>298</sup>

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<sup>291</sup> *ibid* 18.

<sup>292</sup> *ibid*.

<sup>293</sup> *Ibid*.

<sup>294</sup> *ibid*.19

<sup>295</sup> United Nations Human Rights Council, *Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1: Russian Federation* (2008) UN Doc A/HRC/WG.6/4/RUS/2, available at [https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session4/RU/A\\_HRC\\_WG6\\_4\\_RUS\\_2\\_E.PDF](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session4/RU/A_HRC_WG6_4_RUS_2_E.PDF) (accessed 1 July 2024).

<sup>296</sup> United Nations Human Rights Council, *Advance Questions Submitted to the Russian Federation* (2009) <https://www.ohchr.org/en/hr-bodies/upr/ru-questions> (accessed 1 July 2024).

<sup>297</sup> Russian Federation, National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: 1st Cycle (2009) UN Doc A/HRC/WG.6/4/RUS/1, available at [https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session4/RU/A\\_HRC\\_WG6\\_4\\_RUS\\_1\\_E.PDF](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session4/RU/A_HRC_WG6_4_RUS_1_E.PDF) (accessed 1 July 2024).

<sup>298</sup> United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Russian Federation (5 October 2009) UN Doc A/HRC/11/19, available at <https://documents.un.org/doc/undoc/gen/g09/162/59/pdf/g0916259.pdf> (accessed 1 July 2024).

### 6.3.2.2. Stage 2 – Russia’s Contestation of Western ‘Hegemonic’ Ideas of Democracy: Return to Soviet Era Rhetoric on Democracy in International Law

#### *The concept of multipolarity and counter-western/counter-imperial narrative:*

Article 4 demonstrated that, alongside growing anti-Western discourse on democracy domestically, Russia began emphasizing multipolarity, anti-colonialism, and anti-imperialism internationally. This stance, signified resistance to Western hegemony, reflecting a resurgence of Soviet-era rhetoric on democracy in international law.<sup>299</sup> To illustrate, Putin’s pivotal 2007 Munich speech openly contested Western dominance, calling for multipolarity to prevent global dominance by a single superpower. He primarily criticized the US for overstepping its boundaries in promoting democracy.<sup>300</sup> The idea of multipolarity gradually took center stage in Russia’s foreign policy discourse and appeared in the updated 2008 FPC.<sup>301</sup> Other state officials like Lavrov consistently advocated for a multipolar framework, while resisting the imposition of a single model of democracy.<sup>302</sup> At the same time, multipolarity discourse also significantly echoed Soviet-era anti-Western rhetoric, with Russia’s discourse on democracy frequently questioning the integrity of Western democracies. For example, at the 2013 Valdai meeting, Vladimir Putin highlighted flaws in democracies such as the US.<sup>303</sup>

Nonetheless, a significant flaw of this model is considered its negligible concern for the internal political regimes of actors.<sup>304</sup> Specifically, multipolarity, seen merely as a redistribution of global power among various centres, tends to sideline the fundamental principles of democracy or equates democracies with non-democracies. Thus, multipolarity, as Russia advocates it, reflects resistance to democratic entitlement in international law.<sup>305</sup> Russia’s multipolarity and anti-Western discourse draws parallels with the Soviet-era argument that the democratization of international relations began with decolonization from the 1960s to the 1980s. In both instances, an anti-Western stance is evident, characterized by deflecting criticism by highlighting the faults of others. Both the USSR and

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<sup>299</sup> Poghosyan, ‘Russia’s Discourse on Democracy in International Law’ (n 22).

<sup>300</sup> V. Putin, *Speech and the Following Discussion at the Munich Conference on Security Policy*, 10 February 2007, available at: <http://en.kremlin.ru/events/president/transcripts/24034> (accessed 30 April 2024).

<sup>301</sup> Foreign Policy Concept (2008) (n. 287).

<sup>302</sup> S. Lavrov, *Speech of the Minister of Foreign Affairs of Russia S. V. Lavrov at the International Parliamentary Forum “Modern parliamentary and the future of democracy”*, Moscow, 10 December 2012, available at [https://mid.ru/en/foreign\\_policy/news/1654581/](https://mid.ru/en/foreign_policy/news/1654581/) (accessed 30 April 2024).

<sup>303</sup> V. Putin, *Meeting of the Valdai International Discussion Club*, Novgorod Region, 19 September 2013, available at: <http://en.kremlin.ru/events/president/news/19243> (accessed 30 April 2024).

<sup>304</sup> Andrey Makarychev, ‘Russia and ‘International Democracy’: Unlocking the Concept’, *Decentring the West* (Routledge 2016).

<sup>305</sup> *ibid.*

Russia have resisted external criticism as interference in their domestic affairs, yet persistently critiqued others, contradicting their stated commitment to non-intervention. This tactic, known as whataboutism, shifts focus by accusing opponents of similar or different misconduct. While it can effectively challenge norms and expose double standards, it also suggests a reluctance to accept responsibility and adopts a cynical view that faults exist on all sides.<sup>306</sup>

Russia's modern alliances with countries like India, China, Brazil, and South Africa can be partially traced to postcolonial connections. This perspective suggests that Russia is seen as continuing the USSR's legacy as a leading figure in these relationships. It extends the narrative that Russia's engagement with these nations is not merely geopolitical but also carries historical and ideological undertones reminiscent of the USSR's influence in the postcolonial world order.<sup>307</sup> Specifically, the emphasis on multipolarity is also commonly emphasised in Russia-China joint statements and declarations, as despite the differences in their internal governance philosophies and practices, evidenced by their unified statements and declarations to challenge the liberal idea of democracy, lends credibility to this argument.<sup>308</sup>

The joint statement released by Russia and China in February 2022 indicates that Russia and China view Western, specifically US-led, democracy-promotion efforts as attempts to undermine their regimes.<sup>309</sup> Following the Russia-China summit in March 2023, Putin stated, "We are working in solidarity on the formation of a more just and democratic multipolar world order, based on the UN, its Security Council, international law, and the UN Charter."<sup>310</sup> This stance echoes the Soviet Union's post-1945 discourse on international law, positioning itself as a leader of a 'true democratic bloc'. Putin's approach revisits this narrative, challenging Western 'hegemony' and linking to the postcolonial theme, continuing the USSR's legacy in shaping global democratic discourses.<sup>311</sup>

The popularity of the 'democratic multipolarity' rhetoric in countries lacking democratic credentials is revealing.<sup>312</sup> It suggests that this alliance and approach are part of a deliberate effort to reshape international norms and values to better align with their geopolitical goals and ambitions. As noted by Makarychev, Russia appears more interested in replacing one hegemonic system with another that

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<sup>306</sup> Eliav Lieblich, 'Whataboutism in International Law' (2024) 65 *Harvard International Law Journal*.

<sup>307</sup> *ibid.*

<sup>308</sup> See e.g. *Press statements by President of Russia and President of China*, Moscow, 21 March 2023, available at: <http://en.kremlin.ru/events/president/news/70750>; *Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development*, President of Russia, 10 April 2023, available at: <http://en.kremlin.ru/supplement/5770> (both accessed 30 April 2023).

<sup>309</sup> *ibid.*

<sup>310</sup> *Press statements by President of Russia and President of China*, (n. 308).

<sup>311</sup> Poghosyan, 'Russia's Discourse on Democracy in International Law' (n 22).

<sup>312</sup> Deon Geldenhuys, *Deviant Conduct in World Politics* (Springer 2004) 2–3.

suits its interests rather than promoting equality as the foundation of a new global order.<sup>313</sup> This intention becomes particularly evident when examining Russia's transition from mere discourse to action, especially in the context of its aggression towards Ukraine.

The 2013 UPR report highlighted the growing authoritarianism in Russia, revealing a disconnect between its international promotion of democracy and the deteriorating domestic situation. Recurring questions from the previous UPR cycle underscored ongoing concerns about democracy and human rights, particularly regarding minority rights, freedom of expression, and the restrictive "foreign agents" law targeting NGOs.<sup>314</sup> The Human Rights Commissioner's report echoed concerns over these trends, noting increased discrimination against LGBT individuals, journalists, and activists, alongside laws that further restricted civil society and freedom of expression, indicating a continued regression in Russia's democratic and human rights commitments since 2009.<sup>315</sup>

Meanwhile, Russia's self-report adopted a more defensive tone compared to 2009, responding to criticisms with claims of improved legal frameworks and institutions, and dismissing specific cases of violations of human rights as exceptions to the norm.<sup>316</sup> Despite this, the outcome of the 2013 UPR cycle highlighted growing international concerns that the country was drifting towards greater authoritarianism. This shift was marked by increased control over freedom of expression, assembly, and the activities of NGOs and human rights defenders. The repeated calls to repeal or amend restrictive measures indicated a widening gap between Russia's domestic policies and its international human rights obligations, signaling a regression from earlier commitments.<sup>317</sup>

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<sup>313</sup> Makarychev (n. 304), 77.

<sup>314</sup> United Nations Human Rights Council, Advance Questions Submitted to the Russian Federation (2013) <https://www.ohchr.org/en/hr-bodies/upr/ru-index> (accessed 1 July 2024).

<sup>315</sup> United Nations Human Rights Council, Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Russian Federation (11 February 2013) UN Doc A/HRC/WG.6/16/RUS/2, available at <https://documents.un.org/doc/undoc/gen/g13/108/74/pdf/g1310874.pdf> (accessed 1 July 2024).

<sup>316</sup> United Nations Human Rights Council, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Russian Federation (6 February 2013) UN Doc A/HRC/WG.6/16/RUS/1, available at <https://documents.un.org/doc/undoc/gen/g13/106/51/pdf/g1310651.pdf> (accessed 1 July 2024).

<sup>317</sup> United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Russian Federation (8 July 2013) UN Doc A/HRC/24/6, available at <https://documents.un.org/doc/undoc/gen/g13/155/09/pdf/g1315509.pdf> (accessed 1 July 2024).

### 6.3.2.3. Stage 3 – From the 2014 Annexation of Crimea to the 2022 Full-scale Invasion of Ukraine: Return to Soviet Era Practice of Democracy in International Law

*Towards the 2014 annexation of Crimea:* Articles 4 and 2 collectively underscore a significant shift in Russia’s approach to democracy and self-determination, starting with the 2008 war in Georgia and solidifying with the 2014 annexation of Crimea—a trajectory that was further cemented by the 2022 invasion of Ukraine.<sup>318</sup> From 1991 to 2013, Russia consistently resisted recognizing self-determination beyond colonial contexts, reflecting its sensitivity to domestic issues, particularly in regions like Chechnya and Tatarstan.<sup>319</sup> Nonetheless, Russia’s foreign policy saw a marked assertive shift since 2008, with the annexation of Crimea viewed as the turning point in Russia’s approach to international law.<sup>320</sup> By the time of the 2014 annexation of Crimea, Russia’s rhetoric on democracy had become deeply ingrained, consistently repeating the same arguments in the following years with more emphasis on civilizational arguments.<sup>321</sup>

The theme of civilizational and conservative identity became more pronounced in the updated versions of Russia’s strategic documents. The 2013 FPC, skillfully merged universal principles with particularist views on democracy—a flexibility that had been evident since the early years of Putin’s presidency. It also highlighted the significance of civilizational identities and the need to respect local interpretations of democracy.<sup>322</sup> Furthermore, the 2015 NSS, consistently stressed themes like multipolarity and the importance of preserving Russia’s civilizational identity and promoting “traditional Russian spiritual and moral values as the foundation of Russian society” as a counterbalance to perceived Western cultural and ideological influence.<sup>323</sup>

Similarly, the 2016 FPC echoed Russia’s preference for multipolarity and resistance to what it viewed as Western ideological pressure, particularly in areas such as democracy promotion and human rights. It depicted Russia “a nation committed to universal democratic values” advocating for the recognition of civilisational differences and diverse paths to development and governance.<sup>324</sup> This cycle culminated in the 2021 NSS, which outlines and discusses extensively a comprehensive list of traditional Russian values. The document views these values as threatened by Westernization, which it argues jeopardizes Russia’s

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<sup>318</sup> Poghosyan, ‘Russian Approaches to the Right to Peoples to Self-Determination’ (n 20); Poghosyan, ‘Russia’s Discourse on Democracy in International Law’ (n 22).

<sup>319</sup> Christakis (n 109).

<sup>320</sup> Poghosyan, ‘Russian Approaches to the Right to Peoples to Self-Determination’ (n 20).

<sup>321</sup> Poghosyan, ‘Russia’s Discourse on Democracy in International Law’ (n 22).

<sup>322</sup> MFA of the Russian Federation, Concept of Foreign Policy of the Russian Federation (approved by Vladimir Putin, President of the Russian Federation on 12 February 2013).

<sup>323</sup> President of the Russian Federation, National Security Strategy of the Russian Federation (Presidential Decree No 683, 31 December 2015).

<sup>324</sup> MFA of the Russian Federation, ‘The Foreign Policy Concept of the Russian Federation’ (approved by Vladimir Putin, President of the Russian Federation on 30 November 2016).

cultural sovereignty.<sup>325</sup> Essentially, the strategy signifies a decisive departure from the liberal rhetoric of the 1990s, replacing it with a moral code deeply anchored in Russia's own traditions.

***Leveraging 'democracy' rhetoric to legitimize acts of aggression:*** Amid a conservative shift in Russian politics and entrenched anti-Western rhetoric, Russia leveraged Western concepts like the UN's non-binding Responsibility to Protect (R2P) principle to justify its acts of aggression.<sup>326</sup> Initially, R2P was invoked during the 2008 use of force in Georgia (South Ossetia). The arguments resurfaced during the annexation of Crimea in 2014 and were used again to justify the 2022 invasion of Ukraine by citing allegations of genocide.<sup>327</sup> Russia strategically redefined R2P to defend ethnic Russians in post-Soviet countries from perceived human rights violations, portraying them as vulnerable populations needing protection from 'hostile governments' and justifying its interventions.<sup>328</sup> While Russia initially supported the R2P concept in a limited sense, as reflected in the 2005 World Summit Outcome<sup>329</sup> and several UN Security Council resolutions,<sup>330</sup> it opposed the broader application of R2P, particularly regarding Kosovo's unilateral declaration of independence in 2008, arguing that the situation did not warrant remedial secession.<sup>331</sup>

In addition to R2P, Russia employed various arguments to justify its 2014 annexation of Crimea, which was later utilized to justify the 2022 full-scale invasion of Ukraine, further instrumentalising these principles for realist end goals. This general line of argumentation is reflected in President Putin's address on March 18, 2014.<sup>332</sup> The arguments fall into two main classes: issues related to

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<sup>325</sup> President of the Russian Federation, National Security Strategy of the Russian Federation (Presidential Decree No 400, 2 July 2021).

<sup>326</sup> R2P is an international principle that seeks to ensure that the international community never again fails to halt the mass atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity.

<sup>327</sup> *Address by the President of the Russian Federation*, 18 March 2014, available at: <http://en.kremlin.ru/events/president/news/20603> (accessed 30 April 2024).

<sup>328</sup> Charles E Ziegler, 'Russia on the Rebound: Using and Misusing the Responsibility to Protect' (2016) 30 *International Relations* 346.

<sup>329</sup> 2005 World Summit Outcome, UNGA RES/60/1, (16 September 2005) UN Doc A/RES/61 paras. 138, 139.

<sup>330</sup> UN SC Res 1674 (28 April 2006); 1706 (31 August 2006); 1970 (26 February 2011), 1973 (17 March 2011), 1975 (30 March 2011), 2014 (21 October 2011); 1996 (8 July 2011) 2121 (10 October 2013).

<sup>331</sup> Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo (Request for Advisory Opinion), Written Statement by the Russian Federation (16 April 2009), paras. 31–32, available at: <https://www.icj-cij.org/public/files/case-related/141/15628.pdf> (accessed 30 April 2024).

<sup>332</sup> 'Obrazhenie Prezidenta Rossijskoj Federacii. Ofitsial'nye setevye resursy Prezidenta Rossii' ['The Address of the President of the Russian Federation: Official Internet Resources of the President of Russia'] (18 March 2014) <<http://kremlin.ru/events/president/news/20603>> (accessed 10 February 2024).

self-determination and secession (referendum, Ukrainian (claimed) violations of human rights, the Kosovo precedent, and self-determination) and other arguments (political crisis in Ukraine, Crimea after 2014, the West being to blame, Crimea's history, and protecting compatriots).<sup>333</sup>

The Crimea speech asserted that the referendum resulting in Crimea's incorporation into Russia was conducted "in complete accordance with democratic processes and international standards."<sup>334</sup> This speech also reflected Moscow's perceived grievances about the 'colour revolutions', Western encroachment on its sphere of influence, and Western democracy promotion efforts that, according to Moscow, ignored the distinct cultural and historical backgrounds of other countries. Putin argued that enforcing Western democratic norms often led to turmoil and conflict, omitting that Russia itself had initiated military aggression against its neighbouring countries.<sup>335</sup> Russia also sought to justify the invasion legally, claiming it was invited by Viktor Yanukovich. Additionally, Russia's actions echoed Soviet-era tactics seen in the occupation of the Baltic states and the 1968 invasion of Czechoslovakia.<sup>336</sup> Much like the Soviet approach to democracy and self-determination in international law, which despite the rhetoric, prioritized and reflected self-interests and realist end goals in practice, as reflected by territorial acquisitions,<sup>337</sup> Russia has mirrored this pattern in its actions. In both cases, the rhetoric of democracy and self-determination serve as tools for great power politics.

Counter-Western rhetoric and cultural-relativist arguments continued to deflect attention from Russia's domestic issues, even as the domestic reality increasingly diverged from its claims of defending a democratic international order.<sup>338</sup> This divergence is reflected in the next cycle of UPR (2018) that highlighted and reiterated concerns about growing authoritarianism, shrinking media freedom, and the persecution of human rights defenders.<sup>339</sup> It also called for judicial independence, fair elections, and reforms to address these issues.<sup>340</sup> Nonetheless, Russia, for the first time started from defensive to offensive language portraying these reviews as means of interference in its domestic affairs by stating Russia's willingness to pursue a dialogue on human rights agenda, based "on the promotion of equitable and mutually respectful cooperation in the

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<sup>333</sup> Poghosyan, 'Russian Approaches to the Right to Peoples to Self-Determination' (n 20).

<sup>334</sup> *ibid.*

<sup>335</sup> *ibid.*

<sup>336</sup> *ibid.*

<sup>337</sup> See more, *supra* note Ch. 6.2.

<sup>338</sup> V. Putin, *Interview to German newspaper Bild. Part 2*, Sochi, 12 January 2016, available at: <https://en.kremlin.ru/events/president/news/51155> (accessed 30 April 2024).

<sup>339</sup> United Nations Human Rights Council, *Compilation on the Russian Federation: Report of the Office of the United Nations High Commissioner for Human Rights* (19 March 2018) UN Doc A/HRC/WG.6/30/RUS/2, available at <https://documents.un.org/doc/undoc/gen/g18/066/82/pdf/g1806682.pdf> (accessed 3 July 2024).

<sup>340</sup> *ibid.*

promotion and protection of human rights, in accordance with the principles of international law, on suppression of the practice of double standards and on preventing the use of human rights issues as a pretext for interference in the internal affairs of sovereign States.”<sup>341</sup>

***From Russia’s Annexation of Crimea to its Full-Scale Invasion of Ukraine In 2022: The End Game of Russia’s Democracy Discourse:*** Given Russia’s entrenched rhetoric and approach to democracy in international law, it is unsurprising and consistent with this approach that it invoked democratic discourse to justify its invasion of Ukraine. Russia reiterated the same arguments, framing the invasion as part of its broader claimed effort to restore a democratic and multipolar international order. In his 24 February 2022 address, Putin cited NATO expansion and Ukraine’s situation as threats to Russian security.<sup>342</sup> Even after the invasion, Russia continued promoting the rhetoric of democratising international affairs: at the 78th UN General Assembly in 2023, Lavrov emphasised the need for genuine global democratisation and criticized the US and its allies for undermining this process.<sup>343</sup>

Russia’s 2023 FPC further reaffirmed the importance of a multipolarity, emphasizing its commitment to deepening partnerships with non-Western countries and asserting strategic autonomy. It showcases a stronger rejection of Western ideals, with a focus on defending Russia’s cultural and ideological sovereignty.<sup>344</sup> Thus, it marks a more assertive approach by openly positioning Russia’s efforts to regionalise international law by challenging universality of international law norms, including democracy, and reshaping global governance. Russia’s assertiveness was also reinforced in its 2023 UPR report. Specifically, this cycle also, like the previous ones highlighted growing political repression, restricted freedoms, and concerns over the “foreign agents” and many other restrictive laws. It urged reforms, particularly regarding Russia’s actions in Ukraine, but Russia dismissed these human rights concerns.<sup>345</sup> However, the national report, while maintaining the democratic language, addressed these

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<sup>341</sup> United Nations Human Rights Council, National Report Submitted in Accordance with Paragraph 5 of the Annex to Resolution 16/21 of the Human Rights Council: Russian Federation (1 March 2018) UN Doc A/HRC/WG.6/30/RUS/1, available at <https://documents.un.org/doc/undoc/gen/g18/053/67/pdf/g1805367.pdf> (accessed 3 July 2024).

<sup>342</sup> V. Putin, *Address by the President of the Russian Federation*, Moscow, 24 February 2022, available at: <http://en.kremlin.ru/events/president/news/67843> (accessed 30 April 2024).

<sup>343</sup> S. Lavrov, Foreign Minister Sergey Lavrov’s statement at the General Debate at the 78th session of the UN General Assembly, New York, 23 September 2023, available at: <https://tinyurl.com/zvynax33> (accessed 30 April 2024).

<sup>344</sup> MFA of the Russian Federation, *The Foreign Policy Concept of the Russian Federation* (approved by President of the Russian Federation, 31 March 2023).

<sup>345</sup> United Nations Human Rights Council, National Report Submitted in Accordance with Human Rights Council Resolutions 5/1 and 16/21: Russian Federation (24 August 2023) UN Doc A/HRC/WG.6/44/RUS/1, available at <https://documents.un.org/doc/undoc/gen/g23/172/08/pdf/g2317208.pdf> (accessed 3 July 2024).

concerns by maintaining the confrontational tone established in the 2018 report, directly challenging criticisms from other nations.<sup>346</sup>

Russia's increasing authoritarianism, a pattern, among other things, evident across all four UPR cycles, underscores that its democratic rhetoric in international law is not rooted in a genuine commitment to domestic democracy. Instead, this rhetoric serves as a strategy to sideline the concept of "democratic entitlement" on the international stage, focusing more on securing sovereign, democratic, and equal relations with other Great Powers rather than with all states. The annexation of Crimea and later the 2022 full-scale of Ukraine, in violation of fundamental international law norms like sovereignty, territorial integrity, self-determination, and non-intervention—that Russia claimed to defend—reflect a strategic pursuit of geopolitical influence. If adhering to international law principles did not secure equal status with the West, Russia sought recognition by contravening these norms. Nevertheless, the fact that Russia feels compelled to use this language suggests a lack of viable alternatives to the Western liberal concept of democracy, ultimately reinforcing the premises of Western liberal ideas. It also reveals that Russia's primary objective is to leverage this concept to secure its position among Western major powers, rather than genuinely challenging the core of the Western democratic paradigm.<sup>347</sup>

### 6.3.3. Democracy in the Writings of Contemporary Russian Legal Scholars

Discussions about democracy in the context of international law have been relatively marginal in Russian legal scholarship, as evidenced by the limited debates there. This oversight can be partly attributed to the fact that democracy is a relatively novel subject of discussions within international law as well as the statist nature of Russian legal doctrine. Russia's international legal theory has traditionally prioritised legal positivism and state sovereignty.<sup>348</sup> These principles, prioritising state power over individual rights and strict legal compliance over moral or natural law considerations, have persisted from the Tsarist era to the post-Soviet period, highlighting Russian state's tendency towards authoritarian rule.<sup>349</sup>

A review of Law PhD dissertations from various Russian universities, accessed via the online portal *Dissercat*, reveals that while many dissertations

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<sup>346</sup> United Nations Human Rights Council, National Report Submitted in Accordance with Human Rights Council Resolutions 5/1 and 16/21: Russian Federation (24 August 2023) UN Doc A/HRC/WG.6/44/RUS/1, available at <https://documents.un.org/doc/undoc/gen/g23/168/12/pdf/g2316812.pdf> (accessed 1 July 2024).

<sup>347</sup> Poghosyan, 'Russia's Discourse on Democracy in International Law' (n 22).

<sup>348</sup> Lauri Mälksoo, 'International Legal Theory in Russia: A Civilizational Perspective, or Can Individuals Be Subjects of International Law?' in Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (1st edn, Oxford University Press 2016) 267.

<sup>349</sup> Richard Pipes, *Russia under the Old Regime: Second Edition* (Penguin Books 1997).

explore the concept of democracy, they omit the international law aspects of democracy in their discussions. Among these works, the sole PhD dissertation directly addressing the international law aspect of democracy is Arsen Daduani's work titled "The Role of the United Nations in Promoting Democracy: International Legal Aspects", submitted for defence in 2006.<sup>350</sup> Daduani currently serves as an advisor at the Embassy of the RF to the United Kingdom. In the dissertation, he briefly touches on the concept of 'democratic entitlement'; nonetheless, his primary attention remains on the 'democracy of international law'.<sup>351</sup> Notably, he generally echoes Western language of democracy, acknowledging the role of democracy within international law as an underlying principle. Nevertheless, he also underscores Russia's stance by citing statements from Russian officials, highlighting Russia's preference for particularist interpretations of democracy and emphasising the paramount importance of sovereignty in international law.<sup>352</sup>

Furthermore, one of the most comprehensive discussions comes from Kirill Kozhevnikov, Deputy Director of the Institute of Contemporary Applied Law. In his 150-page monograph from 2014, titled "Democracy and International Law: Illusion or Reality?", Kozhevnikov acknowledges the importance of democracy in international law but omits discussion of 'democratic entitlement'. His focus is instead on the 'democratisation of international affairs'. By weaving in insights from Western scholars like Robert Dahl and Samuel Huntington, alongside voices from non-Western thinkers such as the Dalai Lama and Abdu Filali-Ansari, his analysis starts by decentering Western dominant discourse while integrating the Russian perspective.<sup>353</sup> He concludes that "all historical experience shows that democracy cannot be replicated or stamped out according to a chosen mold".<sup>354</sup>

Kozhevnikov addresses democracy through the context of sovereignty, showcasing a flexible approach. He agrees that states frequently delegate certain national matters to international jurisdiction as international cooperation expands, limiting their sovereign rights to strengthen international law and collaboration. However, on the domestic front, he emphasises concepts like 'sovereign democracy' and the 'responsibility to protect', reiterating the Russian official position that limits the application of 'democratic entitlement' in international law.<sup>355</sup> His extensive use of quotations from Russian officials and Soviet scholars underpins his arguments. Kozhevnikov's analysis reflects Russia's official emphasis on

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<sup>350</sup> He is a "Candidate of Legal Sciences," which is the Russian equivalent to a Ph.D. in law.

<sup>351</sup> Arsen Givievich Daduani, 'Rol' Organizatsii Ob"edinennykh Natsii v sodeystvii demokratii: mezhdunarodno-pravovye aspekty' [The role of the United Nations in promoting democracy: international legal aspects] (kandidat yuridicheskikh nauk, 2006) 27.

<sup>352</sup> *ibid* 4.

<sup>353</sup> Kirill Konstantinovic Kozhevnikov, *Demokratiya i Mezhdunarodnoe Pravo: Illyuziya Ili Real'nost'?* [Democracy and international law: illusion or reality] (Yurist 2014) 20.

<sup>354</sup> *ibid* 130.

<sup>355</sup> *ibid* 83.

multipolarity, non-intervention, and sovereignty, emphasising the external dimensions of democracy and its constraints more than its internal aspects.

Furthermore, Vladimir Kartashkin, a distinguished legal scholar since Soviet times and Chief Researcher at the Institute of State and Law in Moscow, has contributed significantly to the discussion on democracy, particularly in his 2014 work “Human Rights and the Principle of Democracy.”<sup>356</sup> A long-time legal scholar from the Soviet era, Kartashkin’s contemporary views take on a more liberal tone, focusing on democracy as a concept that includes the full realisation of human rights, electoral processes, the rule of law, and civil society. He underscores the dual responsibility in international law: states must establish democracy internally, while the international community should support global democratic development and combat authoritarianism. Notably, Kartashkin’s approach in his brief analysis is distinct in its lack of references to Russian state officials, emphasising a broader, more universal perspective on democracy.<sup>357</sup>

Kartashkin’s perspective is intriguing because it leans more liberal despite his Soviet legacy. One might expect him to emphasise the Soviet contributions to democracy in international law or align with the Russian state’s stance, but this work suggests otherwise. This shift may be influenced by his extensive involvement with the UN as an international lawyer or personal changes in his views, though the exact reasons remain unclear. However, this liberal stance does not fully reflect his broader work, indicating that while his approach has significantly transformed, it is nuanced.

To continue, Kuz’min, like Kartashkin, has been a renowned legal scholar since the Soviet times, but he adopts a different perspective on the relationship between democracy and international law. In a 2011 article titled “International Law and Democracy”, he questions whether international law should intervene in a state’s internal affairs, especially regarding democratic institutions and individual political status. He often cites Soviet scholars like Tunkin, reflecting a traditional perspective that critiques external interference, such as ‘humanitarian interventions’ without UN approval, as destabilising international relations and global security.<sup>358</sup> He also highlights the challenges of achieving a unified definition of democracy in the international community, emphasising that democracy is interpreted differently based on political and cultural contexts. He argues against imposing a single model, particularly the American one, and advocates for a nuanced, context-sensitive approach to international law and democracy. Kuz’min’s cautious approach emphasises the risks of international law encroaching on state sovereignty and calls for a balanced, cooperative method in

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<sup>356</sup> Vladimir A Kartashkin, ‘Prava Cheloveka i Printsip Demokratii’ [Human Rights and the Principle of Democracy] [2017] *Sovremennoe Pravo* 113.

<sup>357</sup> *ibid.*

<sup>358</sup> Eduard Kuz’min, ‘Mezhdunarodnoe Pravo i Demokratiya’ [International law and Democracy] in A Ispolnova and A Batalova (eds), *Mezhdunarodnaya nauchno-prakticheskaya konferentsiya ‘Tunkinskie chteniya’ (sbornik dokladov i statey)* (Zertsalo-M 2011).

promoting democracy globally, contrasting with more liberal, interventionist views.<sup>359</sup>

These works addressing the subject substantively reveal that sovereignty and non-intervention remain the central themes of discussions, subtly highlighting democracy's marginal place in contemporary Russian legal doctrine. Despite the language of Western liberal democracy in some of these works, state-centric Russian legal doctrine continues to dominate the contemporary Russian legal thought and subtly uphold continuities to the Soviet approach through references to the writings of Soviet legal scholars.

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<sup>359</sup> *ibid.*

## **7. CONCLUSIONS**

### **7.1. Validating the Research Postulates**

#### **7.1.1. Validating the First Research Postulate**

The analysis validates the first postulate demonstrating that, the claim that there exists a right to democracy, specifically in the Western liberal sense, is widely contested in international law, indicating that democracy has not achieved the status of a universally recognised, hard legal right. Furthermore, the concept of a ‘right’ to democracy, especially in its liberal sense has not been clearly and consistently upheld by the practice, jurisprudence, and resolutions of the UN, its related bodies, and the international community.

In the European regional legal framework, democracy, understood in the Western liberal sense, is firmly recognised as a key principle and arguably a legal right. However, there is no explicit ‘right to democracy’ enshrined in the legal documents of the European regional framework of international law. Instead, a ‘right to democracy’ is implicitly inferred from the foundational principles of (Western liberal) democratic governance—such as the right to political participation, freedom of expression, and freedom of assembly—deeply embedded into the regional framework. Specifically, the presence of democratic conditionality in European regional organisations adds to the clarity of this claim. Nevertheless, questions remain about the nature of the said right.

Lastly, in both universal international law and the European legal framework, democracy is upheld as an important guiding principle for domestic governance. While universal international law does not support a specific form of democracy, the European framework upholds Western liberal democracy, in its various forms.

#### **7.1.2. Validating the Second Research Postulate**

The analysis validates the second postulate, showcasing that during the period studied, the Soviets formally advocated a distinct approach to democracy and self-determination in international law, rooted in Marxist-Leninist principles and counter-Western socialist international law. They had a classless communist society rather than the political independence of nations or individual rights as end goals. In international law, they emphasised collective, specifically social and economic rather than political rights. They also formally underscored an external dimension of democracy that emphasised anti-imperialism, favoured sovereignty (understood as sovereignty for great powers), and non-interference in national governance. By consistently prioritising ‘the democracy of international law’, the Soviets backed the underlying claim that democracy (in Western liberal sense) should not have mattered in the international legal evaluation of states. The Soviet view formally entailed that as long as democracy was treated as a domestic matter, there could be understanding and collaboration on the international level

between states. In reality, they did not want to be affected by the standards of their ideological rivals.

Nevertheless, their practice was flexible, reflecting double standards domestically and abroad, aligning with foreign policy goals and self-interests. Despite this, the Soviets managed to mobilise discussions in the international arena about democracy and human rights, offering a different perspective on the subject.

### 7.1.3. Validating the Third and Fourth Research Postulates

These findings show that, within the context of international law, unlike the Soviets' distinct formal alternative, modern Russia has not developed a clear, conceptually distinct approach to democracy that would offer a meaningful alternative to the Western liberal model. Contemporary Russian strategies and discourses on democracy revolve around Western liberal concepts, using them when convenient to serve their interests. Therefore, it is difficult to confirm the existence of a uniquely Russian conceptual approach to democracy that also incorporates the Soviet perspective. Nonetheless, the answer changes when considering other aspects of their approach.

The similarity between Soviet and contemporary Russian approaches to democracy lies in their formal emphasis on sovereignty and non-interference in international law, rejecting external scrutiny over domestic matters. Like the Soviets, Russia strategically uses anti-imperialist and anti-colonialist discourse to focus on external dimensions of democratic relationships within international law. Their international legal practices reveal double standards domestically and abroad, serving geopolitical goals. Hence, in this context, there is indeed continuity between Soviet and contemporary Russian approaches. Thus, within this context, it is possible to claim the existence of a Russian approach to democracy in international law, which would be defined by a formal emphasis on the 'democracy of international law', with sovereignty and non-intervention at its core and not 'international law of democracy'. In this sense, this constitutes resistance to the 'democratic entitlement paradigm' by effectively emphasising the democratic relations in international law and viewing democratic entitlement as interference in domestic affairs.

However, as discussed, this distinctiveness does not carry over into theoretical or conceptual interpretations, underscoring the fundamental differences between Soviet and modern Russian approaches. Neither does it carry over to the contemporary Russian concept of democracy. Terms like 'sovereign democracy', which represent the Russian approach, capture various aspects of the evolving Russian perspective as discussed here, reflecting traditionalist resistance to Western liberal democracy. Yet, they do not develop into something genuinely original, lacking the strength and distinctiveness to present a new and robust alternative to the Western liberal model. Its interpretation conceptually is still deeply intertwined with and defined by the principles of Western liberal democracy.

## 7.2. Reflections on the Impact of Russian Approaches to Democracy on the Future of the Democratic Entitlement Thesis in International Law

One of the overarching theoretical questions of this study was to what extent Franck's vision of the emerging right to democracy has been realised and universalised in international law, given the discussion on Russian approaches. The findings present a dual perspective on the trajectory of democratic entitlement in international law, providing hope and concern for the supporters of liberal democracy. They indicate that despite challenges, the Western liberal paradigm remains the primary framework for developing democratic entitlement in international law. Nonetheless, despite the evolution of democratic principles in international law, a sovereignty-first approach still prevails. Franck's vision of democratic entitlement as a universally accepted legal right remains as distant today as it was in the 1990s. We are far from having established a universally recognised legal definition of democracy in international law, let alone fully endorsing the democratic entitlement paradigm universally.

Moreover, Russia's shift in the focus from the democratic entitlement paradigm to questioning the democratic legitimacy of international law raises significant concerns about the outcomes for 'the international law of democracy'. As Alvarez suggests, the structure of international law is inherently vulnerable to 'democratic' critiques, making it easy to challenge various aspects, a practice Russia actively engages in.<sup>360</sup> Russia's critique of the 'democratic deficit' reflects the two primary types of complaints identified by Alvarez: 'horizontal' and 'ideological'. However, issues persist within both categories of Russia's arguments.

First, while Russia formally advocates for sovereignty and non-intervention to address the 'democratic deficit' in international affairs, it mainly promotes sovereignty for 'great powers', thereby not fully addressing the democratic deficit in international law. Given Russia's significant influence, including its P5 membership at the UNSC, it already enjoys a 'greater' sovereignty. Additionally, Russia construes its sovereignty at the expense of its neighboring countries. This indicates that its use of 'sovereignty language' is rather strategic and entails 'great power' sovereignty for itself reflecting realist goals. Second, while Russia challenges Western liberal 'hegemony' over the concept of democracy, it continues to use the same language and, at times, accommodates it when it benefits its interests. Thus, Russia's use of anti-colonial and anti-imperial rhetoric is strategic, aimed at garnering support from the Global South, similar to Soviet tactics. However, Russia does not fully align with the vision of the Global South and offers little beyond challenging the West in ways that resonate with the anti-Western sentiments.

However, even if Russia were to advocate for sovereignty in international law for all sincerely as a means to address the democratic deficit, democratic

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<sup>360</sup> Supra note Ch. 4.1.1.

international affairs would not be the same as democracy domestically. As discussed in the literature review, this stance also conflates two concepts: the democratic legitimacy conferred by majority state agreement and the applicability of aggregative legitimacy in interstate relations. Also, presumed sovereign equality among states does not align with political equality and does not necessarily make international law more democratic, similar to the analogue domestically.<sup>361</sup>

Therefore, Russia's approach undermines democracy both internally and externally, aligning with Tom Ginsburg's concept of authoritarian international law. Russian approaches challenge the Western liberal democratic entitlement paradigm within international law, highlighting shifts in the world order and questioning the universality of Western democratic values. Like the USSR, modern Russia imitates and twists Western concepts for strategic purposes, using legal discourse to serve power politics. This tactic risks degrading the integrity of international law and weakening democratic norms. Despite lacking the power and resources of the Soviet Union, Russia's approach shows that democracy remains a dynamic concept within international law, shaped by those who hold enough power to define it. This fits well with the comparative international law perspective, which views the international legal system as built on diverse ideas and constantly reshaped by various actors. Thus, the future of democratic entitlement within international law will be shaped by the ideologies and values of those actors with greater power and influence in international affairs. The silver lining is that these challenges offer an opportunity to reflect critically on the whole Western liberal paradigm of democracy within international law, potentially leading to new and improved ways of thinking and navigating these issues and underlying shortcomings.

### 7.3. Future Research

The results of this study contribute to the discussions on the democratic entitlement thesis, providing valuable insights for experts in international law and international relations, as well as for academics from other related disciplines interested in democracy, Russia, the USSR, and human rights. The study highlights non-Western perspectives, not merely through broad criticisms or the presentation of general issues but by focusing on the specific vision of non-Western actors like Russia and its predecessor-Russia. Furthermore, the findings illustrate that international law does not develop in isolation but rather from the intricate interaction of political and strategic priorities of nations. Therefore, incorporating these political dynamics into scholarly research on international law is beneficial and essential.

Given the choices and limitations of this research project, future research could benefit by exploring aspects of this work that have not been adequately

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<sup>361</sup> Supra note Ch. 4.1.1.

addressed within the study's parameters.<sup>362</sup> While the current study focused primarily on international law discussions and practices, future research could instead prioritise and include a detailed analysis of domestic practices within Soviet and contemporary Russian contexts. Additionally, research could develop in a direction explicitly focusing on the context of the CoE, particularly systematically analysing decisions from the ECtHR concerning Russia. Also, while this study touched on the 'silence on democracy' in regional organisations led by Russia, future research could be extended to the post-Soviet region to include other states for comparative examination of the wider regional developments. Lastly, building on current discussions of Russia and China's collaborations in international affairs, future research could go specifically in this direction and examine how these interactions might forge a new vision for democracy under international law. This research has provided a broad and comprehensive analysis of Russia's approach to democracy in international law, and exploring and focusing on some of the very specific facets discussed here would help to widen and deepen this knowledge further.

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<sup>362</sup> *Supra* note Ch. 3.1.

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## 8. EESTIKEELNE KOKKUVÕTE

### Nõukogude ja Vene käsitused demokraatiast rahvusvahelises õiguses

#### 8.1. Sissejuhatus

**Uurimisobjekt.** Käesoleva väitekirja peamine eesmärk on analüüsida Nõukogude Liidu ja praegusaegse Venemaa käsitusi demokraatiast rahvusvahelises õiguses. Uuringu teoreetiliseks keskmeks on rahvusvahelises õiguses kasutatav „demokraatiaõiguse” (*democratic entitlement*) tees, mis on arenenud alates sellest ajast, kui Thomas M. Franck rääkis oma 1992. aasta artiklis rahvusvahelises õiguses tekkivast „õigusest demokraatiale”. Selles kontekstis käsitletakse nende sisenemisest seosest lähtudes ka Nõukogude ja tänapäeva Venemaa käsitusi enesemääramisõigusest. Seda seost rõhutab „demokraatiaõiguse” tees, mille kohaselt rahvusvahelises õiguses kinnitatud õigus demokraatiale tugineb olulisel määral enesemääramisõigusele.

Väitekirjas uuritakse Nõukogude ja praegusaegse Venemaa käsituste väidetavaid lahknevusi ja järjepidevusi ning küsitakse, kas on välja kujunenud selgelt eriomane Venemaa käsitus demokraatiast rahvusvahelises õiguses. Aluseks on võetud hüpotees, et kuigi Venemaal toimus lääne liberaalsetest põhimõtetest lähtuv demokratsiseerimine, säilisid seal ka mõned Nõukogude käsituse elemendid või vähemalt nende teatav mõju, nii et selle tagajärjel kujunes Venemaa eripärane käsitus demokraatiast rahvusvahelises õiguses. Nõukogude ja tänapäeva Venemaa käsituste seose eeldus põhineb rahvusvahelises õiguses kasutataval riikliku järjepidevuse doktriinil, millele Venemaa pärast NSV Liidu lagunemist ametlikult tugines.

**Käsitlusala ja meetodika.** Nõukogude Liidu käsituse osas keskendutakse uuringus Teise maailmasõja järgsel perioodil demokraatia ja rahvusvahelise õiguse küsimustes avaldatud ametlikele seisukohtadele, eelkõige seoses 1948. aasta inimõiguste ülddeklaratsiooniga ja 1966. aasta kodaniku- ja poliitiliste õiguste rahvusvahelise paktiga. Tänapäeva Venemaa puhul analüüsitakse eelkõige aastatel 2000–2024 toimunud arenguid, käsitledes Venemaa ametlikku seisukohta selliste rahvusvahelise õiguse jaoks pöördeliste sündmuste suhtes nagu Krimmi annekteerimine 2014. aastal ja täiemahuline sõjaline sissetung Ukrainasse 2022. aastal. See võrdlevast rahvusvahelisest õigusest lähtuv uurimus vaatlleb regionaalseid arusaamu nn demokraatiaõigusest. Selles kasutatakse erinevaid meetodeid, kaasa arvatud ajalooline ja õpetuslik analüüs, ning igas artiklis on neid meetodeid eri moel kombineeritud.

**Väitekirja osad.** Väitekirja koosneb sissejuhatavast peatükist (kompendium) ja neljast artiklist. Esimeses artiklis vaadeldakse rahvusvahelis-õigusliku demokraatiakäsituse kujunemist Euroopas.<sup>363</sup> Teises artiklis süvenetakse Nõukogude ja

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<sup>363</sup> Poghosyan, ‘The Idea of Democracy in International Law in Europe’ (n 115).

tänapäeva Venemaa käsitustesse enesemääramisõigusest rahvusvahelises õiguses.<sup>364</sup> Kolmas artikkel uurib Nõukogude arusaama demokraatiast rahvusvahelises õiguses Teise maailmasõja järgsel perioodil.<sup>365</sup> Neljas artikkel vaatleb tänapäeva Venemaa diskursusi demokraatia teemal.<sup>366</sup> Kompendiumis on esitatud nelja artikli järelduste süntees koos vajalike täpsustustega.

## 8.2. Peamised järeldused

### 8.2.1. Demokraatia koht universaalse rahvusvahelise õiguse raamistikus ja Euroopa regionaalses kontekstis: kaks erinevat käsitust

#### *1. kaitsmiseks esitatud väide*

- A) Väidet demokraatia (inim)õiguse olemasolust, eelkõige selle läänelikus liberaalses tähenduses, on universaalses rahvusvahelises õiguses laialdaselt vaidlustatud, mis näitab, et demokraatia ei ole saavutanud üldtunnustatud tugeva õiguse staatust.
- B) Euroopa regionaalse õiguskorra kontekstis on võimalik väita, et õigus demokraatiale eksisteerib, kuigi regiooni õigusdokumendid ei sisalda otsest viidet nn demokraatiaõigusele. See õigus on kaudselt tuletatud lääneliku liberaalse valitsemistava aluspõhimõtetest, mille hulgas on näiteks õigus poliitikas osaleda, sõnavabadus ja kogunemisvabadus ning mida selles regioonis tugevalt toetatakse. Seda väidet kinnitab lisaks ka Euroopa regionaalsetes poliitilis-õiguslikes institutsioonides kesksel kohal olev demokraatliku tingimuslikkuse põhimõte. Sellegipoolest on õhus küsimusi kõnealuse õiguse olemuse kohta.
- C) Üldiselt kirjeldatakse ja toetatakse demokraatiat rahvusvahelises õiguses kui olulist juhtpõhimõtet. Universaalses rahvusvahelises õiguses ei ole siiski ühte kindlat heakskiidetud demokraatia mudelit, samas kui Euroopas toetatakse tugevalt läänelikku liberaalset demokraatiat (selle eri variatsioonides), mida peetakse riigivalitsemise aluspõhimõtteks.

**Allikad.** Esitatud väidet toetab eelkõige esimene artikkel, mis tugineb erinevatele õiguslikult siduvatele ja mittesiduvatele dokumentidele, nagu 1948. aasta inimõiguste ülddeklaratsioon, 1966. aasta kodaniku- ja poliitiliste õiguste rahvusvaheline pakt ning majanduslike, sotsiaalsete ja kultuuriliste õiguste rahvusvaheline pakt, ÜRO Peaassamblee resolutsioonid jne.

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<sup>364</sup> Poghosyan, 'Russian Approaches to the Right to Peoples to Self-Determination' (n 20).

<sup>365</sup> Poghosyan, 'The Soviet View on Democracy in International Law' (n 7).

<sup>366</sup> Poghosyan, 'Russia's Discourse on Democracy in International Law' (n 22).

## **Demokraatia universaalse rahvusvahelise õiguse raamistikus**

Nagu esimeses artiklis märgitud, ei ole demokraatia mõistel üldtunnustatud õiguslikku määratlust. Rahvusvahelises õiguses enamasti ei nimetata seda „õiguseks” ja tähtsamates inimõiguslepingutes seda otseselt ei mainita. Inimõiguste ülddeklaratsiooni artiklis 21 ning kodaniku- ja poliitiliste õiguste rahvusvahelise pakti artiklis 25 on loodud alus valimisõigusel põhinevale ehk n-õ õhukesele demokraatia määratlusele, kuigi sõna „demokraatia” otseselt ei kasutata. Samuti ei ole selge, kas väidetav „õigus demokraatiale” oleks suunatud individuaalselet või kollektiivsele tegevusele. Seda väidet toetab ka kodaniku- ja poliitiliste õiguste rahvusvaheline pakti järelevalveorgani, ÜRO Inimõiguste Nõukogu jurisprudentsi analüüs. Samuti nähtub ÜRO ja rahvusvahelise üldsuse praktika analüüsist, et sellise „õiguse” olemasolu tunnustatakse üksnes piiratud määral, kuigi toetus demokraatiale rahvusvahelise õiguse aluspõhimõttena on olemas. Sarnaselt ilmneb ÜRO resolutsioonide analüüsist, et kõnealust „õigust” toetatakse vaid piiratud ulatuses ning pigem on neis hakatud „demokraatiaõiguse” asemel rääkima rahvusvaheliste suhete demokratiseerimisest.

## **Demokraatia Euroopa regionaalses (rahvusvahelises) õiguskorras**

Esimeses artiklis on välja toodud sügav ja keerukas seos Euroopa ajaloo ja saatuse ning demokraatia mõiste vahel alates Vana-Kreekast ja valgustusajastust kuni tänapäevani. Seega on demokraatiani jõudmine Euroopas lahutamatu seotud rahvusvahelises õiguses esindatud läänelike liberaalsete väärtustega. Seoses Euroopa praegusaegse demokraatiaraamistikuga rõhutatakse esimeses artiklis Euroopa Nõukogu, Euroopa Liidu ning Euroopa Julgeoleku- ja Koostööorganisatsiooni (OSCE) otsustavat rolli. Need erinevaid, kuid üksteist täiendavaid ülesandeid täitvad organisatsioonid on olnud kogu regioonis demokraatlike väärtuste edendamisel ja säilitamisel määrava tähtsusega.

Käsitluses on peamiselt keskendunud Euroopa Nõukogule ja Euroopa Liidule, mis on andnud regioonis demokraatia edendamisse ja säilitamisse kõige suurema panuse. Demokraatia oli asutamisest peale mõlema organisatsiooni aluspõhimõte, mis lähtus Teise maailmasõja järel tekkinud püüdlustest edendada Euroopas rahu ja stabiilsust ning vältida tulevasi konflikte. See on olnud peamine ideaal ja juhtpõhimõte, mis mõjutas oluliselt nende otsustusprotsesse. Demokraatia on kätketud juba nende organisatsioonide struktuuri ja paljudes dokumentides toonitatakse demokraatia ülimuslikkust nendes, kuigi seda ei nimetata otsesõnu „õiguseks”. Demokraatiaõiguse olemasolule osutab ka mõlema organisatsiooni jaoks kesksel kohal olev demokraatliku tingimuslikkuse nõue. Sellegipoolest võib käsitluse põhjal järeldada, et palju lihtsam on demokraatiat kirjeldada kui aluspõhimõtet, mida toetab universaalne rahvusvaheline õigus ja rahvusvahelise õiguse Euroopa regionaalne kord.

## 8.2.2. Nõukogude käsitused demokraatiast rahvusvahelises õiguses: vastandumine lääne liberaalsele mudelile

### 2. kaitsmiseks esitatud väide

Nõukogude võimu esindajad kaitsesid ametlikult rahvusvahelises õiguses eriomast demokraatia (sealhulgas enesemääramisõiguse) käsitust, mille aluseks olid marksismi-leninismi põhimõtted ja läänevastane „sotsialistlik rahvusvaheline õigus”, millest nad rahvusvahelist õigust tõlgendades järjepidevalt juhindusid. Nad rõhutasid rahvusvahelises õiguses poliitilistest õigustest enam kollektiivseid, täpsemalt sotsiaalseid ja majanduslikke õigusi. Lisaks tähtsustasid nad vormiliselt demokraatia välist mõõdet, milles tõsteti retooriliselt esile imperialismivastasust, suveräänsust ja mittesekumist. Nende praktika oli siiski paindlik ja selles ilmnisid nii kodu- kui ka välismaal topeltstandardid, millega püüti välispoliitilisi eesmärke oma huvidega kooskõlla viia.

*Allikad.* See järeldus tugineb eelõige kolmandale artiklile ja osaliselt teisele artiklile, milles vaadeldakse NSV Liidu ametlikku seisukohta 1948. aasta inimõiguste ülddeklaratsiooni ja 1966. aasta kodaniku- ja poliitiliste õiguste rahvusvaheline pakti ettevalmistusmaterjalides, samuti Nõukogude õigusteadlaste kirjutisi jne.

### **Demokraatia Nõukogude õigusdoktriinis: eriomane käsitus**

Kolmandas artiklis on kirjeldatud Nõukogude Liidu läänevastast demokraatia-käsitust, mis lähtub marksismist-leninismist ja klassideta kommunistliku ühiskonna saavutamise lõppeesmärkidest. Edendati nn töölisklassi demokraatiat, mida vastandati nende poolt vaadates „kodanlikule” demokraatia ideoloogiale. Nõukogude võimu esindajad eelistasid kollektivistlikku inimõiguste tõlgendust, milles sotsiaalseid ja majanduslikke õigusi peeti olulisemaks kui individuaalseid õigusi, mida märkimisväärselt piirati ning mis allutati riigi ja ühiskonna huvidele. Samuti oli oluline kommunistliku partei roll ning üheparteisüsteemi õigustus lähtus veendumusest, et riik ja partei teavad, mis on inimestele kõige parem, välistades sellega kõik poliitilise mitmekesisuse ja opositsiooni tekke võimalused. Kuigi paberil muudeti teatud õigusi tugevamaks, puudus neil kohtulik kaitse. Seetõttu ei olnud Nõukogude „õigused” samaväärsed läänelikult mõistetud õigustega, sest neid käsitati riigi poolt antud võimalustena, mitte riigi vastu esitatavate nõuetena.

### **Nõukogude käsitus demokraatiast rahvusvahelises õiguses: vastandumine lääne liberaalsele mudelile**

Kolmandast artiklist ilmnis samasugune järjepidev käsitus rahvusvahelises õiguses. Nõukogude delegaadid rõhutasid 1948. aasta inimõiguste ülddeklaratsiooni läbirääkimiste ajal, et nad võitlevad sotsiaalmajanduslike õiguste eest, ning pidasid deklaratsiooni nõrkuseks konkreetsete garantiide puudumist. Vormiliselt kaitsesid nad oma käsitusega riiklikku suveräänsust ja avalikku huvi,

pidades riiki õiguste kaitsjaks, mitte nende potentsiaalseks rikkujaks. Lääne sekkumist kartes vastustasid nad kodaniku- ja poliitiliste õiguste kokkuleppimist. Seetõttu olid nad tugevalt vastu inimõiguskohtu loomisele, pidades seda vahendiks, millega individuaalsete õiguste kaitse kattevarjus püütakse legitimeerida imperiaalset ja koloniaalset ülemvõimu. NSV Liit jäi inimõiguste ülddeklaratsiooni hääletusel erapooletuks, põhjendades seda ideoloogiliste kaalutlustega ja seisukohaga, et deklaratsioonis puuduvad kirjeldatud õiguste jaoks piisavad õiguslikud ja materiaalsed garantiid ning see ei ühti tema arusaamaga demokraatiast.

NSV Liit jäi samadele aluspõhimõtetele kindlaks ka ÜRO 1966. aasta paktide läbirääkimiste vältel. Ta küll ratifitseeris need paktid, kuid rõhutas, et neid tuleb tõlgendada Nõukogude õigusfilosoofia valguses. Tema väitel rikuks kodaniku- ja poliitiliste õiguste rahvusvahelisse pakti läbivaatamismenetluste lisamine riikliku suveräänsust ja seetõttu jäi Inimõiguste Komitee pädevuse tunnustamine individuaalsete kaebuste lahendamisel vabatahtlikuks. NSV Liidu jaoks tähendas suveräänsus kaitsekilpi välise kontrolli eest ja ta käsitas pakke pigem deklaratiivsete vahendite kui siduvate kohustustena.

Kuigi 1975. aasta Helsingi lõppakt ei olnud õiguslikult siduv, avaldas see olulist poliitilist mõju NSV Liidu tõlgendusele kodaniku- ja poliitiliste õiguste rahvusvahelisest paktist. See mõju oli sisulisem kui kodaniku- ja poliitiliste õiguste pakti enda mõju, kuna viimasel puudus toimiv rakendusmehhanism ja koheselt jõustatav fakultatiivprotokoll. Kuigi NSV Liit kehtestas riigisisestel neid rahvusvahelisi inimõigusinstrumente jõustavaid õigusakte, tõlgendati inimõigusi endiselt läbi Nõukogude õiguse prisma, mitte läänelikus tähenduses. Nõukogude Liidus jätkati läänevastast retoorikat, väites, et „kodanlikus rahvusvahelises õiguses” esitatud lääne liberaalse demokraatia põhimõtted on pelgalt „imperialistlike” ja „interventsionistlike” suurriikide huvide kattevari. Seevastu Nõukogude demokraatiat kujutati ülimuslikuna, kuna see teenivat inimesi ja soodustavat majanduse arengut.

### **Nõukogude käsitus enesemääramisest rahvusvahelises õiguses: väljakutse lääne liberaalsele mudelile**

Nõukogude Liidu esindajad väitsid, et demokraatiat tuleb tõlgendada selliste rahvusvahelise õiguse põhimõtete kontekstis nagu enesemääramisõigus. Ent nagu teises artiklis on näidatud, lähtus nende käsitus Nõukogude õigusfilosoofiast, keskendudes riikliku iseseisvuse asemel hoopis kommunismi lõppeesmärkidele. NSV Liit mängis dekoloniseerimisperioodil kesket rolli enesemääramisõiguse tähtsuse suurendamisel ning tal õnnestus saavutada selle õiguse lisamine mõlemasse ÜRO 1966. aasta inimõiguspakti.

Rahvusvahelisel areenil kasutas Nõukogude Liit enesemääramisõiguse eest kõneledes läänevastast kolonialismi ja imperialismi taunivat retoorikat, kuid keeldus omaks võtmast mis tahes sarnast kriitikat enda suhtes. Ta väitis, et NSV Liidus on enesemääramisõiguse küsimus lahendatud ja seda tuleks kohaldada eelkõige lääne koloniaalriikide suhtes, kuigi seda õigust läänelikus liberaalses

tähenduses Nõukogude Liidus ei eksisteerinudki. Nõukogude esindajate püüd lisada paktidesse enesemääramisõiguse klausel oli silmakirjalik, sest NSV Liidus endas ei olnud enamikel rahvastel võimalik seda õigust kasutada. Samuti rakendas Nõukogude Liit jõudu, et sundida näiteks Balti riike ja Gruusiat endaga liituma. Enesemääramisõiguse kaitset kasutati ka 1968. aastal Tšehhoslovakkiasse tungimise ettekäändena.

### **8.2.3. Tänapäeva Venemaa käsitused demokraatiast rahvusvahelises õiguses: lahknevused ja järjepidevus võrreldes Nõukogude käsitusega**

#### ***3. kaitsmiseks esitatud väide***

Venemaa praegusaegne käsitus demokraatiast (ja enesemääramisõigusest) on arenenud vastuoluliselt ja selles on näha märkimisväärset kontseptuaalset paindlikkust: kokku on pandud universalistlikud ja partikularistlikud põhimõtted, millega ühtaegu kritiseeritakse ja kindlustatakse läänelikke arusaamu demokraatiast rahvusvahelises õiguses. Sarnaselt Nõukogude Liiduga rõhutab Venemaa rahvusvahelises õiguses ametlikult suveräänsust ja mitteseksumist (suurriikide puhul) ning kasutab lääne vastu strateegiliselt imperialismi- ja kolonialismivastast retoorikat. Venemaa keskendub rahvusvahelises õiguses demokraatlike suhete välistele aspektidele ning tema riigisiseses ja rahvusvahelises tegevuses võib näha toplotstandardeid, mis haakuvad tema praktilise kasu eesmärkidega.

#### ***4. kaitsmiseks esitatud väide***

See väide koosneb kahest põhiosast.

- A) Kokkuvõtlikult seisneb Nõukogude ja Venemaa demokraatiakäsituste sarnasus selles, et rahvusvahelistes suhetes rõhutatakse ametlikult suveräänsust ja mitteseksumist ning taunitakse igasugust välist kontrolli riigi siseasjade suhtes. Samuti ilmneb see riigi praktilises tegevuses, mis on selektiivne ja mitmeti mõistetav, olles suunatud eelkõige praktiliselt kasulike eesmärkide saavutamisele. Seega on mõlemas näha liberalismile vastanduvaid aspekte, millest ilmneb vastuseis võimalusele, et demokraatia läänelikus liberaalses tähenduses võiks muutuda rahvusvahelises õiguses fikseeritud õiguseks.
- B) Vastus küsimusele, kas on välja kujunenud eriomane Venemaa käsitus demokraatiast rahvusvahelises õiguses, koosneb kolmest osast.
- d) Kontseptuaalselt on keeruline väita, et Venemaal oleks eripärane demokraatiakäsitus, mis hõlmab endas ka Nõukogude perspektiivi.
- e) Sellegipoolest on muid aspekte vaadeldes tõenäoliselt võimalik eristada mingisugust „Venemaa käsitust”, mis sisaldab nii Nõukogude kui ka tänapäeva Venemaa perspektiive. Seda käsitust iseloomustab vormiline rõhuasetus „rahvusvahelise õiguse demokraatiale”, mille kesksed dogmad on

suveräänsus ja mittesekumine (eelkõige suurriikide puhul). Selles ilmneb kasvav vastuseis „demokraatiaõiguse” paradigmale ning püüd rääkida selle asemel „demokraatlikest” suhetest rahvusvahelises õiguses.

- f) Kõnealune „eripära” piirdub praktikaga ning ei kandu üle teoreetilistesse ega kontseptuaalsetesse tõlgendustesse. Ka praegusaegsel Venemaal puudub lääne käsitusele sisuline kontseptuaalne alternatiiv, mida saaks pidada „eriomaseks”. Seega võib väita, et tänapäeva Venemaa käsitus demokraatiast rahvusvahelises õiguses on Nõukogude käsitusest kontseptuaalselt lahknev, kuid praktikas sellega järjepidev.

*Allikad.* Esitatud väiteid toetab neljandas ja kolmandas artiklis toodud analüüs, mis põhineb eelkõige Venemaa kõrgete ametiisikute avaldustel, tegevusel ja seisukohtadel rahvusvahelistes ja regionaalsetes organisatsioonides nagu ÜRO, Euroopa Nõukogu, Euraasia Majandusliit, ning kompendiumis esitatud eraldi käsitlus Venemaa õigusteadlaste seisukohtadest.

### **Üldine ülevaade Venemaa demokraatiakäsitusest: vastuseis „demokraatiaõigusele” ilma „demokraatiast” rääkimist lõpetamata**

Neljandas artiklis näidatakse, et pärast NSV Liidu lagunemist 1991. aastal võttis Venemaa üle rahvusvahelises õiguses NSV Liidule kehtinud demokraatliku valitsemise kohustused ja sätestas need liberaalses tõlgenduses oma riigisisestes õigusaktides. Hiljem on Venemaal siiski toimunud riigisisene pööre autoritarismi suunas, nagu on kirjeldatud ÜRO korralistes inimõiguste olukorra ülevaadetes. Rahvusvahelise õiguse kontekstis on Venemaa ÜROs küll vormiliselt tunnustanud demokraatiaga seotud kohustusi, kuid on olnud järjekindlalt vastu nn demokraatiaõiguse kehtestamisele. Aja jooksul on Venemaa hakanud järjest enam toetama deklaratsioone, milles rõhutatakse „rahvusvahelise õiguse demokraatiat” ja kasutatakse maailma lõunapoolsete riikide eelistatud kontseptsioone (nagu enesemääramisõigus), jäljendades külma sõja aegseid käitumismustreid.

Venemaa raskusi liberaalsete demokraatlike väärtuste omaksvõtmisel võis näha kogu selle aja vältel, mil ta oli Euroopa Nõukogu liige. Algele optimismile vaatamata oli Venemaal kõige rohkem Euroopa Inimõiguste Kohtus lahendamist ootavaid kohtuasju ning sageli tuli tal maksta inimõiguste rikkumise eest hüvitist, ilma et ta oleks kõrvaldanud probleemide algpõhjust. Geopoliitilised pinged tekitasid Venemaa ja Euroopa Nõukogu suhetesse suuri lõhesid. Nii peatati 2014. aasta Krimmi anneksiooni tõttu Venemaa hääleõigus Euroopa Nõukogu Parlamentaarses Assamblees. Pärast täiemahulist sissetungi Ukrainasse arvati Venemaa 16. märtsil 2022 Euroopa Nõukogust välja ning alates 16. septembrist 2022 ei ole ta enam Euroopa inimõiguste konventsiooni osaline. Sellega pandi märgiline lõpp Venemaa püüdlustele ühineda Euroopa demokraatlike riikide perega.

Neljandas artiklis on veel kirjeldatud demokraatliku keelekasutuse ja orientatsiooni puudumist Venemaa eestvedamisel toimuvates regionaalse lõimumise

organisatsioonides, nagu Euraasia Majandusliit ja Ühise Julgeoleku Lepingu Organisatsioon. Ametlikud tähtsustavad need organisatsioonid suveräänsust ja mittesekkumist rohkem kui demokraatiat ning väljendavad sisuliselt Venemaa kavatsust suruda oma strateegiliste huvide kaitsmiseks maha demokraatlikud liikumised, mis võiksid tema autoriteeti kõigutada. Siin kajastub regionaalselt tasandil vastuseis nn demokraatiaõiguse paradigmat.

## **Venemaa käsitus demokraatiast rahvusvahelises õiguses**

### *1. etapp – lääne liberaalse demokraatia ideaalidest suveräänse demokraatiani: poolik lahknemine Nõukogude demokraatiakäsitusest*

Neljandas artiklis esitatud arutelust nähtub, et Putini presidentuuri algusaegadel keerles ametlik demokraatiakäsitlus valdavalt lääne liberaalsete ideaalide ja põhimõtete ümber ning partikularismist kuigi palju ei räägitud. See näitab selget kontseptuaalset lahknemist Nõukogude käsitusest. Samas püsisid endiselt päevakorral riikliku julgeoleku ja suveräänsuse teemad, andes tunnistust sügavalt juurdunud prioriteetidest. Sellegipoolest algas lääne liberaalse demokraatia asemel n-õ suveräänse demokraatia edendamine alles Putini teisel ametiajal. Termin „suveräänne demokraatia” pakkus lääne ideedele vastukaaluks välja Vladislav Surkov, et näidata Venemaad võrdse suurvõimuna, ning sellest aimub Nõukogude ajastu retoorikat.

Nende aruteludega samal ajal toimus märkimisväärne riigisisese võimu konsolideerimine, mida iseloomustas suurenenud kontroll poliitiliste institutsioonide ja meedia üle. Rahvusvahelisel areenil tegi Venemaale järjest suuremat muret tema mõju vähenemine ja NATO laienemine aladele, mida ta pidas oma „mõjusfääriks”. Sellele vaatamata toimusid samal ajal arutelud demokraatia universaalsuse üle, mida võis eriti märkida Medvedevi presidentuuri ajal. Saatuse irooniana tõi nn suveräänse demokraatia rakendamine Venemaal kaasa võimu riigisisese konsolideerimise ja pluralismi vähenemise, mis sarnanes paljuski selle ebavõrdsusega, mida teiste riikide puhul kritiseeriti.

### *2. etapp – Venemaa vastuseis läänelikele „hegemoonsetele” demokraatia ideedele: tagasi nõukogudeaegse rahvusvahelise õiguse demokraatia retoorika juurde*

#### **Mitmepooluselise maailma mõiste ning lääne-/imperialismivastane narratiiv.**

Neljandas artiklis on näidatud, et koos läänevastase demokraatiakäsitluse hoogustamisega hakkas Venemaa rahvusvahelisel areenil järjest enam rõhutama selliseid mõisteid nagu mitmepooluseline maailm, antikolonialism ja antiimperialism. Seda muutust iseloomustab Putini 2007. aasta kõne Münchenis, milles ta kritiseeris avalikult lääne ülemvõimu ja ühepooluselist maailma. Aja jooksul tõusis mitmepooluselise maailma mõiste Venemaa välispoliitika diskursuses keskele kohale ning see on tihedalt seotud läänevastase retoorikaga, milles seatakse sageli kahtluse alla lääne demokraatlike riikide ausus. Samuti väljendub selles vastuseis „demokraatiaõiguse” paradigmat, sest mitmepooluselise maailma mudelis kalduetakse demokraatia aluspõhimõtteid riigisiselt kõrvale jätma.

See hoiak sarnaneb nõukogudeaegse retoorikaga, mis sidus rahvusvaheliste suhete demokratiseerimise dekoloniseerimisega. Venemaa koostöö maailma lõunapoolsete riikide ja näiteks Hiinaga tuleneb osaliselt postkoloniaalsetest sidemetest, jätkates NSV Liidu pärandit. Selline tegevus on tingitud ühtaegu geopoliitilistest eesmärkidest ning ajaloolistest ja ideoloogilistest seostest. Mitmepooluselisest maailmast rääkides väljendatakse ühist eesmärki hakata vastu lääne liberaalsetele normidele. Venemaa enda siht on pigem asendada üks hegemoonne süsteem teisega, mis teeniks tema huve, nagu on näha tema tegevusest, eelkõige kallaletungist Ukrainale.

Kuigi Venemaa õigusteadlaste kirjutised (mida on üsna vähe) ei ole otseselt seotud riigi ametliku hoiakuga, peegeldavad ja toetavad need tihti peale sarnaseid mustreid, haakudes riigi ametliku seisukohaga. Sageli keskendutakse neis demokraatia välistele aspektidele ja tõstetakse esile väljastpoolt lääneriike pärit käsitusi. Suveräänsust ja mittesekkkumist peetakse neis tähtsamaks kui sisemisi demokraatlikke protsesse. Nende vaated on kooskõlas riigikeskse lähenemisviisiga ja need kordavad demokraatiaga seotud küsimustes riigi ametiisikute seisukohti ilma neid sisuliselt kahtluse alla seadmata. Tähelepanuväärselt viidatakse neis isegi lääne demokraatia kontseptsioonidest rääkides sageli Nõukogude õigusteadlastele, mis osutab varjatud järjepidevusele nõukogudeaegse mõtteviisiga.

### **3. etapp – Krimmi annekteerimisest 2014. aastal täiemahulise sissetungini Ukrainasse 2022. aastal: tagasi nõukogudeaegse rahvusvahelise õiguse demokraatia praktika juurde**

Neljandas ja teises artiklis on kirjeldatud pärast Krimmi annekteerimist 2014. aastal toimunud olulist muutust Venemaa rahvusvahelise õiguse praktikas, millega seatakse kahtluse alla rahvusvahelise õiguse kesksed põhimõtted. Sellel etapil muutus Venemaa demokraatiakäsitlus stabiilseks ja kindlaks. Selles korduvad suveräänsuse, mittesekkkumise (suurriikide puhul) ja mitmepooluselise maailma teemad ning selle keskmes on läänevastane retoorika. „Demokraatiat” kasutati vahendina, millega õigustada Venemaa praktilise kasu eesmärkidel toime pandud rahvusvahelise õiguse rikkumisi. Venemaa kasutas nii 2014. aasta Krimmi anneksiooni kui ka 2022. aasta Ukraina sissetungi põhjendamiseks demokraatiast ja enesemääramisõigusest rääkivaid argumente koos ajalooliste ja poliitiliste nõudmistega, hägustades sellega rahvusvahelises õiguses omaks võetud kesksed läänelikke põhimõtteid. Selline teguviis näitab, et Venemaa on muutnud taolised rahvusvahelise õiguse alusmõisted nagu demokraatia ja enesemääramisõigus rahvusvahelise võimuvõitluse vahenditeks. Sarnaselt Nõukogude Liidu tegevusega külma sõja ajal ei ole siin eesmärk tuua rahvusvahelisse õigusse demokraatiat, vaid kindlustada Venemaa positsiooni „suurvõimuna”.

### 8.3. Järeldused

Arutlusest ilmnes, et universaalsust taotlevate lääne liberaalse demokraatia ideede probleemide valguses on Venemaa käsitus eriti intrigeeriv, kuna see asub Euroopa regionaalsele (rahvusvahelisele) õiguskorrale sedavõrd lähedal. Kuigi taolised Euroopa institutsioonid nagu Euroopa Nõukogu toetasid Venemaa üleminekut läänelikule liberaalsele demokraatiale, on selles protsessis ilmnenu sündinud sügavalt juurdunud ajalooline pärand. Venemaa käsitus demokraatiast rahvusvahelises õiguses on muutunud järjest sarnasemaks nõukogudeaegsele, sisaldades sellega võrreldes nii lahknevusi kui ka järjepidevust, mis kinnitab osaliselt väidet, et rahvusvahelises õiguses eksisteerib eriomane Venemaa käsitus demokraatiast. Nende käsituste järjepidevust võib näha selles, kuidas neis vormiliselt rõhutatatakse suveräänsuse ja mittesekkkumise tähtsust rahvusvahelises õiguses (suurriikide puhul) ning seistakse vastu lääne liberaalse „demokraatiaõiguse” teesile. Samas puudub neil ühine ideoloogiline alus. Need omadused osutavad, et „demokraatiast” rääkimist kasutatakse pigem strateegiliselt praktilise kasu eesmärkide saavutamiseks.

Kui arutleda selle üle, millist mõju Venemaa käsitus demokraatiaõigusest rahvusvahelises õiguses avaldab, on väljavaade liberaalse demokraatia pooldajate jaoks vastuoluline, sisaldades nii lootust kui ka muret. Sellest võib järeldada, et probleemidele vaatamata on lääne liberaalne paradigma endiselt peamine raamistik, mis kujundab „demokraatiaõiguse” arengut rahvusvahelises õiguses. Samas on endiselt ülekaalus esmajoonel suveräänsust rõhutav käsitus ning Francki visioon demokraatiast kui üldtunnustatud juriidilisest õigusest on täna sama kauge kui 1990. aastatel.

Edasise uurimistöö jaoks pakub käesolev uurimus võimalust vaadelda mitmeid selle teema tahke, mida ei ole väitekirjas selle käsitlusala ja piirangute tõttu täielikult lahatud. Kui käesolevas uurimuses keskenduti rahvusvahelisele õigusele, võiks edaspidises uurimistöös põhjalikumalt süveneda Nõukogude Liidu ja tänapäeva Venemaa siseriiklikku praktikasse. Samuti võib saada teadmisi regionaalsete arengute kohta, kui uurimistöö valdkonda laiendatakse nii, et see hõlmaks ka teiste nõukogudejärgsete riikide käsitusi.

## **PUBLICATIONS**

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