

## Introduction

The topic for this thesis had lingered in my mind for a long time. I could not make sense of two contradicting narratives. They both concern Russia's influence on international humanitarian law (IHL).<sup>1</sup> One, however, is the tale of a sinner; the other the story of a saint.

On the one hand, we find what may be called the predominant "Western" narrative. It is exemplified by the following conversation that I had – in this or in a similar form – at various conferences, or family dinners, or over a glass of wine with my friends.

- "So, you are writing a PhD. What is your topic?"
- "Russia's contribution to the development of the laws of war."
- "Oh..., interesting!" My interlocutors would raise their eyebrows, smirk, and add hesitantly. "I can imagine their 'contribution.' Is there anything to write at all?"

I cannot blame my anonymised counterparts for their answer, because it corresponds to the mainstream Western narrative. Russia is not regarded as a nation that *makes* international law but rather *breaks* international law – both in the past and in the present.

In Russia, on the other hand, we find a completely different narrative. According to Russian scholars it is hard to "overstate [...] the role of Russia in the development of IHL."<sup>2</sup> They hail the role of Russian humanitarian pioneers like Nikolay Pirogov and Elena Pavlova and stress that these individuals acted as a precursor to the First Geneva Convention (1864).<sup>3</sup> Russian politicians often adopt the role of a strict schoolmaster,

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1 Throughout this thesis, I will use IHL when referring to the laws applicable in armed conflict/laws of war. I am, however, aware that the term IHL is in fact much younger than the field of law that it describes and only dates back to the 1949 Geneva Conventions, see n 1923 and n 1924.

2 The reader can find the full text of the speech at: <<https://www.icrc.org/ru/document/gaagskie-mirnye-konferencii-1899-i-1907-godov-rossiyskaya-iniciativa-i-dalneyshe-e-razvitiye>>.

3 И.И. Котляров [I.I. Kotlyarov], 'Вклад России в становление и развитие международного гуманитарного права [Russia's Contribution to the Formation and Development of IHL]' [2007] Российский Ежегодник Международного Права [Russian Yearbook of International Law] 62, 63. See also below n 83 and 'Хватит смотреть в рот Западу: Онищенко обвинил МККК в разведывательности на территории РФ и ДНР [Enough trying to appeal to the West! Onishchenko

reminding the US and other Western countries of their shortcomings in IHL, for example when Foreign Minister Sergey Lavrov accused NATO of violating the laws of war during the war in Serbia.<sup>4</sup>

This thesis tries to make sense of these two contradictory narratives. What *is* Russia? A sinner or a saint? Or perhaps both? Part I of this thesis will analyse Russia's historical contributions to the development of the laws of war. Part II will flesh out Russia's current approach to IHL. Finally, Part III will analyse and compare areas of continuity and change between Moscow's historical and current role.

At first glance, Russia seems to have undergone a spectacular transformation. The reader will discover that it made outstanding contributions to IHL. Historically, Russia was among the most important States – if not *the* most important State – in advancing, developing, and upholding IHL. However, Moscow's current contributions to IHL look rather bleak. Despite its legacy and its current involvement in numerous wars, Russia has done little to advance IHL since 1991. On the contrary, it has often undermined its own legacy in recent times.

This stark contrast between the past and the present reminded me of a famous biblical character who epitomises radical change: the story of Saul who was “breathing out murderous threats against the Lord’s disciples” but later turns into Paul, one of the most devoted defenders of early Christianity.<sup>5</sup> Russia, it seems, has completed the inverse transformation. In terms of IHL, it turned from Paul into Saul.

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accuses the ICRC of spying on the territory of RF and DNR]’ (Federal News Agency, 5 December 2018) <<https://prinmedia.ru/news/267/politics/politics/9840-hvatit-smotret-v-rot-zapadu-onisenko-obvinil-mkkk-v-razveddeatelnosti-na-territorii-rf-i-dnr?slug=hvatit-smotret-v-rot-zapadu-onisenko-obvinil-mkkk-v-razveddeatelnosti-na-territorii-rf-i-dnr>>. For details on Nikolay Pirogov, Elena Pavlova, and the origins of the First Geneva Convention see below at pp 29 et seq.

4 Sergey Lavrov, Press Conference (16 February 2019) at the 2019 Munich Conference on Security Policy: “Of course, anyone can interpret IHL as he wishes. When during the bombardment of Belgrade a passenger train on a bridge or a TV station became targets, this was also regarded as normal. We are not willing to follow such an interpretation of IHL.” Entire transcript available at <[https://www.youtube.com/watch?v=ovDFn8Ur\\_EA](https://www.youtube.com/watch?v=ovDFn8Ur_EA)>.

5 See Acts 9:1–19. Saul of Tarsus is said to have persecuted the early disciples of Jesus. When Jesus appeared to him on the road to Damascus in a bright light, however, Saul was struck blind and only after three days his sight was restored. This revelation prompted Saul to convert to Christianity and he was thereafter commonly called Paul the Apostle. In Acts 13:9 the Bible refers to him as Paul for the first time. His story became a metaphor for radical betterment.

This question will form the centrepiece of my thesis. How did Russia shape IHL in the past and in the present and how can we explain the apparent contradiction which we find in Russia's relationship with IHL? Before I begin to explore this question, however, I would like to explain the scope of my research. First, you might ask: is it not madness to cover a time span of over 150 years? Analysing history and State practice in one thesis? I understand the reader's bewilderment. However, in my defence I would like to quote Lauri Mälksoo, one of the outstanding scholars studying Russia's legal history and current practice. He has embarked on the even more ambitious project of characterising Russian approaches to *general* international law including history, theorisation, and State practice in his recent book *Russian Approaches to International Law*. There, he answers his imaginary critic:

*"It is a quite ambitious project to connect these three sub-areas – history, contemporary legal theory, and recent state practice – in one monograph on international law. It is possible to write monographs on each of these sub-areas of international legal research. However, my deep conviction is that the three sub-areas are interconnected and only when analysed together will they enable us to arrive at a holistic understanding of Russian approaches of international law in the past and in the present."*<sup>6</sup>

I absolutely share this view and believe that it holds equally true for Russian contributions to IHL. Hence, I ask the reader not to regard the historical chapter as a lengthy prelude. They may rather see it as a point of reference. It is important to know where Russia came from, to understand its current position, and to reconcile both narratives mentioned above.

Secondly, I would like to add a clarification. I have spoken of Russia's contributions to IHL. To be more precise, however, I should speak of the *Russias'* contribution to IHL, since we are dealing with one country that – like ice, water, and steam – exists in three different states of matter. My historical overview starts in 1850 when Russia was a mighty Empire ruled by its monarch, the Tsar. In 1917, the October Revolution laid the Empire to rest and replaced it with the Russian Soviet Federative Socialist Republic (RSFSR) which later became the centre of power in the Soviet Union (USSR) founded in 1922. Finally, after the collapse of the USSR in 1991, the Russian Federation emerged – a "democratic, federative State

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6 Lauri Mälksoo, *Russian Approaches to International Law* (Oxford University Press 2015) 21.

of law with a republican form of government.”<sup>7</sup> Thus, when I speak of “Russia” I refer to a country with a split personality. Nevertheless, I am convinced that there is a sense of continuity – and many Russians would share this belief. Vladimir Putin spoke for (and to) them in his famous speech at the Munich Conference on Security Policy (2007):

*“Russia is a country with a history that spans more than a thousand years and has practically always used the privilege to carry out an independent foreign policy.”*<sup>8</sup>

I will of course deal with the complex (legal) issue of State succession below.<sup>9</sup> For the purpose of my comparison, however, “Russia” shall encompass all three states of matter: the Empire, the USSR, and today’s Russian Federation.

Finally, I would like to add two caveats. I am aware that comparing Russia’s historical and current approach dances at the edge of simplicity. First, it risks “humanising” Russia by suggesting that any country has a core, a soul that either remains stable or alters in the course of history. I am aware that this would be utterly simplistic. No country, and no person, for that matter, has such an identity nucleus. Rather, I share the conviction with which Hermann Hesse confronts his protagonist Harry Haller in *Steppenwolf*:

*“The mistaken and unhappy notion that a man is an enduring unity is known to you. It is also known to you that man consists of a multitude of souls, of numerous selves.”*<sup>10</sup>

What is true for a person like Harry Haller, is even more true for a complex construct like a State. It does not have one steady core, but a “multitude of souls.” At the same time, most would agree that countries do have their own ways. Their historical legacies shape their present. The revolutionary values of *liberté*, *égalité*, and *fraternité* still determine French identity and affect current policies, for example in the areas of immigra-

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7 Art 1 of the 1993 Russian Constitution.

8 President of Russia, ‘Speech and the Following Discussion at the Munich Conference on Security Policy’ (10 February 2007) <<http://en.kremlin.ru/events/president/transcripts/24034>>.

9 For the complex questions whether the RSFSR or the USSR succeeded the Russian Empire in legal terms, and whether the Russian Federation is the legal successor of the Soviet Union see below at pp 94 and 139.

10 Hermann Hesse, *Steppenwolf* (Creighton Basil tr, Bantam Books 1969) 218.

tion or religion (*laïcité*).<sup>11</sup> Germany's responsibility for the Second World War and the Holocaust continues to define its internal and foreign politics. Germany is still reluctant to use military force abroad and considers Israel's right to existence "*Staatsräson*."<sup>12</sup> Undoubtedly, a country's history defines its present. Often, the leaders themselves foster this narrative of continuity as Putin's reference to "a history that spans more than a thousand years" illustrates. Why should it be any different for IHL? *If* Russia was the driving force in developing this field of law in the 19<sup>th</sup> and 20<sup>th</sup> century, and *if* it took pride in this role, would it not be remarkable if it later completely reversed this legacy?

My second caveat concerns the pitfall of any historical comparison as such. Contrasting one aspect in the past and the present risks being simplistic if it disregards the changed context. We should be cautious in drawing obvious parallels since political ideas, legal concepts, and terms such as "humanity" or "sovereignty" might exist in both periods and yet have a completely different meaning. It is a truism that Russia's approach to IHL is not the only element to have changed over time. Warfare and international law itself have changed dramatically over the past 150 years. It would be foolish to ignore these changes. Hence, when I try to answer the overarching question of *if* and *why* Russia turned from Paul to Saul in Part III, I shall embed my assessment in today's altered context.

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- 11 See e.g. ECtHR, *Affaire Dogru c France*, No 27058/05, 4 December 2008: "En France, l'exercice de la liberté religieuse dans l'espace public, et plus particulièrement la question du port des signes religieux à l'école, est directement lié *au principe de laïcité, principe autour duquel la République française s'est construite*" (emphasis added).
  - 12 Angela Merkel, Speech in the Knesset (18 March 2008). See Bundeszentrale für politische Bildung, 'Israels Sicherheit als deutsche Staatsräson: Was bedeutet das konkret?' (30 January 2015) <<https://www.bpb.de/apuz/199894/israels-sicherheit-als-deutsche-staatsraeson>>.

