

RESEARCH BRIEF

BEYOND POWER AND POLITICS: ENGAGING RUSSIA IN A FRACTURED WORLD

EXECUTIVE SUMMARY

The human rights situation inside Russia needs to be understood in the context of the war with Ukraine and the historical drivers that led to its invasion in February 2022.

Over the past two decades, Russia has engaged in a pattern of reinforcing control over former Soviet bloc states. The Second Chechen War lasted from August 1999 to April 2009, followed by the short yet significant Georgian five-day war. Russia justified such military actions as necessary measures to safeguard its national security interests – a narrative that resonated strongly with the Russian people. Indeed, Russia's sphere of influence has been on the decline since the end of the Cold War, and despite repeated assurances by EU member states,¹ the gradual yet consistent eastward expansion of NATO since 1989 has worked to reinforce the Kremlin's narrative on existential threats. Ukraine's accelerated plans to join the military alliance after the ouster of Viktor Yanukovich during the Maidan uprising in 2014 was widely regarded as a final straw. Rationalizing that Crimea would be used to host a NATO naval base, Putin identified a tangible threat and annexed the peninsula.² Russia's 'special military operation' against Ukraine, which started in 2022, marks the most recent iteration of this trajectory.

These events have been framed domestically as legitimate responses to external threats on Russia's integrity and security. In turn, this has created a backdrop against which the Kremlin could crack down on human rights activists, portraying them as agents attempting to undermine the stability of the nation. One result is that (perhaps a significant) part of the population see shrinking civil liberties as the price necessary to ensure protection. Put differently, it is not that many Russians do not value human rights; rather, they prioritize national security and consider it their duty to support the state's approach to achieving this.³ This perspective has been reinforced by the fact that Russia's war economy has largely raised living standards and effectively mitigated the negative effects of economic sanctions imposed by the West. In short, whether they support the status quo or feel unable to alter the situation, a large part of the public feels compelled to adapt to the existing reality rather than fight against it.⁴

This raises complex questions around the role of and pathways towards accountability. To the extent that Russian civil society remains severely curtailed and domestic courts lack independence, external accountability measures – suspensions, legal proceedings and sanctions – may appear both reasonable and justified.⁵ However, it is important to consider the risk that externally imposed measures may have limited efficacy and fuel further resentment against the West. Simply put, beyond being possibly unattainable, measures may be ineffective in promoting long-term peace and stability, and unable to prevent the recurrence of new violations. Against this backdrop, this paper posits that any effective approach to accountability must form part of a sober and realistic strategy, willing to engage in realpolitik, and aware that perceptions of Western domination may entrench commitment to the status quo. Specifically, it examines the pursuit for accountability for human rights violations by Russia, and the potential roles that might be played by the international community.

Part 1 considers the human rights situation in Russia, particularly how the conflict with Ukraine has coincided with an erosion of the rule of law and backsliding on civil society and civil liberties. This has significant implications: the absence of robust human rights protection works to 'legitimize' Russia's war in Ukraine by stifling opposition critical of its imperial foreign policy. Moreover, the war – framed and perceived as a vital national security interest – justifies a disregard for human rights. Not only do human rights serve to limit State powers (compromising Russia's ability to protect itself), they are also portrayed as a tool of influence wielded by the West – an institutionalized means of meddling in the affairs of sovereign states. The human rights situation in Russia might thus be likened to a snake eating its own tail, whereby human rights violations both facilitate and is facilitated by the ongoing war in Ukraine.

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This paper then discusses potential responses to the human rights situation, with a specific focus on the role played by the international community. It highlights that international human rights law — as it is based on the idea of coordination rather than subordination — has few enforcement mechanisms. Although various mechanisms exist at regional and international levels to monitor compliance with human rights law, such as the Universal Periodic Review by the Human Rights Council, most of these bodies can only make recommendations rather than enforceable decisions. Additionally, there are no systems in place to ensure the implementation of these recommendations or decisions. One result is that Russia's compliance with such norms is dependent on its goodwill, which is largely absent. It also sets out that against strong demands for accountability around the situation in Ukraine, the international community's response to the human rights situation in Russia has been comparatively weak. This is despite the clear linkage between repression at home and aggression abroad.⁶ Given this context, there is a clear need to (re)consider the purpose of the pursuit for accountability, outline the avenues through which to accomplish it, and perhaps most importantly, consider its potential drawbacks in light of the current geopolitical climate.

Parts 2 and 3 unpack the geopolitical realities in which contemporary accountability efforts must be situated. A triple-problematic is presented. First, it is posited that the war in Ukraine has reinforced the opinion that international law is weak and ineffectual. Certainly, the West's perceptions and actions towards Russia seem to invoke faulty assumptions about international law that might be partly responsible for failures in deterrence. Second, the war is being framed as part of a larger, ideological battle against Western hegemony, and international (human rights) law has been used as a tool to consolidate this narrative. Third, these narrative wars are being playing out in the context of a world in transition, marked by a decline of unipolarity and the rise of geopolitical tensions and authoritarianism. It is argued that Russia seems to be winning the 'narrative battle' and part of the reason is the poor deployment of the West's 'defending democracy' narrative. Simply put, the notion has been stretched so wide and simultaneously remained so hollow that it is perceived as Western states merely defending their own interests. As a result, it resonates poorly with the rest of the world. This situation begs further interrogation. Indeed, while much attention has been given to Russia's control over information streams, little consideration has been given to the West's ability to influence foreign audiences with a more convincing narrative.⁷ A more impactful strategy would need to move beyond mere Russia-rejection, by combining geostrategy with democracy promotion, and leaning further into the war's narrative and kinetic aspects, as well as the origins and implications of a world in transition.

Part 4 offers recommendations rooted in a more nuanced understanding and strategic recalibration of accountability efforts. It advocates for adapting existing approaches and exploring innovative methods to address human rights violations given today's dynamic global context. By critiquing exclusionary practices like Russia's suspension from international bodies, it urges instead for engagement within the framework of international human rights law. Specifically, it stresses the importance of the Special Rapporteur on the Situation of Human Rights in the Russian Federation, dismissing concerns about politicization and underscoring the necessity of independent scrutiny and accountability to prevent instrumentalization. It also considers the proposition of initiating International Court of Justice (ICJ) proceedings against Russia, employing third-party countermeasures, and combining ICJ efforts with International Criminal Court (ICC) proceedings for accountability. Finally, it emphasizes the importance of independent investigative mechanisms and bottom-up approaches driven by civil society, especially against the backdrop of a largely stagnate UN Security Council (UNSC).

SUMMARY OF REFLECTIONS ON ACCOUNTABILITY MEASURES

1. SUSPENSION

Russia's suspension from international bodies may have undesired effects. Such actions rely on there being scope for reputational damage, which may prove ineffective given Russia's anti-Western stance. Russia's suspension from the Human Rights Council (HRC) does carry weight however. Despite losing membership, Russia retains observer status and the opportunity for future membership, maintaining accountability for human rights violations while preserving the council's integrity.

2. SPECIAL RAPPORTEUR

The mandate of the Special Rapporteur on the situation of human rights in the Russian Federation is crucial to countering biases and misinformation at the global stage. While it is unlikely that Russia concerns itself with these reports, the mandate underscores the international community's commitment to monitoring and addressing human rights issues in Russia, reaffirming the importance and validity of international human rights law.

3. ERGA OMNES PARTES PROCEEDINGS

The current Western narrative of 'defending democracy' lacks resonance beyond continental borders. To emphasize the global significance of the Russia question and the West's commitment to defending democracy globally, the international community could consider submitting applications to the International Court of Justice against Russia for alleged breaches of obligations owed to all parties concerned (*erga omnes partes*), such as the International Convention for the Suppression of the Financing of Terrorism.

4. THIRD-PARTY COUNTERMEASURES

The international community might explore utilizing third-party countermeasures to address breaches of international law or threats to global stability. While the right of an injured state to resort to countermeasures is widely accepted, the legitimacy of third states' right to respond with countermeasures remains controversial, contributing to legal uncertainty despite arguments

suggesting their justification under peremptory norms in international law.

5. INTERNATIONAL CRIMINAL COURT

The perception of the ICC's legitimacy has been compromised by the Kremlin's narrative and the United States' hostility towards it, along with its perceived bias against Africa in past indictments. Despite these concerns, scholars have highlighted the educational potential of international criminal courts, as seen in the trial of Charles Taylor. However, pursuing criminal accountability for figures like Putin is complex, as a criminal justice perspective oversimplifies systemic issues and fails to address root causes beyond individual actors.

6. INFORMATION AND EVIDENCE

The UN General Assembly might advocate for establishing investigative mechanisms focused on atrocities committed by the Wagner Group, facilitating fairer application of Magnitsky sanctions. Magnitsky sanctions are measures imposed by various states and the EU to target individuals involved in human rights abuses and corruption, typically by freezing their assets and banning their entry. Indeed, while Magnitsky sanctions frameworks have been established by various states and the EU, concerns persist regarding their potential violation of fundamental human rights, some of which an investigatory mechanism could address.

7. BOTTOM-UP APPROACHES

Bottom-up approaches to accountability are crucial, especially in contexts where states are either unable or unwilling to address human rights violations. In Russia, diasporic justice advocates play a vital role in documenting violations and advocating for accountability, leveraging their relative security and access to international policymakers to foster greater momentum for accountability efforts while also contributing to truth-seeking, reparations, and memorialization initiatives.

PART 1. THE HUMAN RIGHTS SITUATION IN RUSSIA AND SCOPE FOR ACCOUNTABILITY

1.1 AN EROSION IN HUMAN RIGHTS PROTECTION

The past two decades has seen a steady decline in human rights protection across Russia, marked by a shrinking civil society space, the silencing of political opposition and an erosion of judicial independence. In particular, enforced disappearances, extrajudicial killings and torture have become more frequent, with limited scope for recourse.⁸ As the Special Rapporteur on the Situation of Human Rights in the Russian Federation points out: The environment of impunity, the unpredictability of changes to the law, in addition to their ambiguity, sheer number and scope, along with arbitrary enforcement, has forced many Russians into exile.⁹ The targeting of these rights is both strategic and mutually reinforcing; their erosion enables leaders to tighten their hold on power and operate with fewer constraints, thereby increasing the likelihood of further rights violations.¹⁰ Further consolidating these trends, legislative reforms have entrenched the supremacy of domestic law over international law, transforming the rule of law into a ‘rule by law’.

Freedom of expression

While Russia’s 1993 Constitution guarantees the freedom of expression,¹¹ new laws on extremism, terrorism and ‘fake news’ have significantly limited independent media outlets and civil society, simultaneously solidifying the dominance of state-controlled media.¹² Moreover, shortly after the February 2022 invasion, the government banned anti-war protests and introduced new laws prohibiting ‘public actions aimed at discrediting the use of the Armed Forces of the Russian Federation.’¹³ In one case, a Moscow protestor carrying a poster reading ‘Give Peace a Chance’ was found guilty for discrediting the Russian military forces, despite the fact that there was no direct reference to the war or the army.¹⁴

Freedom of association

Freedom of association is also severely limited in Russia, with further restrictions on the operation of non-governmental organizations imposed by the 2022 Foreign Agents Law. In the subsequent months, criminal proceedings were initiated against numerous

organizations, forcing them to dissolve because they could not meet imposed fines, or self-liquidate as a pre-emptive measure.¹⁵ Legislation on ‘undesirable organisations’ has had a similar effect. Foreign or international non-governmental organizations can be designated as ‘undesirable’ if their activities are perceived as a threat to the foundational aspects of the country’s constitutional order, defence capacity, or overall security. Those so-listed currently include Bellingcat, an independent investigative collective that played a pivotal role in uncovering the plot behind the assassination attempt of now-deceased Alexei Navalny in 2020. Also blacklisted is the Human Rights House Foundation, an NGO that had been vocal in its support of the mandate of the Special Rapporteur on the situation of human rights in Russia.¹⁶ The consequences of being designated an ‘undesirable’ are severe: organizations must close existing branches and are prohibited from establishing new ones in Russia, they are banned from working with banks and other financial institutions, and they cannot store and disseminate their material including on the internet.¹⁷

Freedom of assembly

While freedom of assembly is constitutionally protected in Russia, legal restrictions on peaceful protests have increased sharply over the last decade. Police brutality and arbitrary detention during protests have notably increased, first after the arrest and sentencing of opposition leader Alexei Navalny in 2021, and again in the weeks following the February 2022 invasion of Ukraine. Between February 2022 and June 2023, over 20,000 individuals were arrested for engaging in anti-war protests, and more than 600 criminal cases were launched against individuals involved in activities opposing the war.¹⁸ Organizations such as Human Rights Watch have reported that protestors are routinely subject to inhuman and degrading treatment, and in some cases torture.¹⁹

International law and independence of judiciary

Judges in Russia have long faced external interference, especially when dealing with high-profile and politically sensitive cases.²⁰ This has worsened in recent years with legislative amendments curbing the judiciary’s independence. Recent reforms have given the President full discretion to appoint and initiate the dismissal of judges, including those in the Constitutional Court,

Supreme Court, and federal courts.²¹

Reforms have also subordinated international law to domestic law. However, the 1993 Russian Constitution initially took a notably progressive approach to international law. Article 15(4), for example, stipulates that universally-recognized norms of international law and international treaties and agreements of the Russian Federation, had precedence over national provisions in cases of contradictory rules. Moreover, article 17(1) recognizes and protects the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law. While these provisions survived the constitutional overhaul of 2020, other articles have seen problematic revisions. Article 79 for example, which originally stated that Russia could only become a party to international organizations if this did not threaten the foundations of the constitutional order, now holds that decisions of interstate mechanisms adopted on the basis of provisions of international treaties are not enforceable in Russia if they are inconsistent with the Constitution. Article 125(5) underwent a similar transformation. Originally, the Constitutional Court of the Russian Federation (RCC) was tasked with interpreting the Russian Constitution. In its revised form, the provision grants the RCC not only the power to interpret the constitution but also the authority to adjudicate and prohibit the implementation of a decision from an interstate mechanism related to an international treaty if it conflicts with the Russian Constitution. Such amendments are in direct contravention of Russia's obligations under international law. According to Article 27 Vienna Convention on the Law of Treaties (VCLT), to which Russia is a party, a state cannot invoke domestic law provisions, including its constitution, to justify its failure to perform an obligation owed under international law.²²

1.2 THE CHALLENGE OF ENFORCING INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

All members of the international community have a vested interest in seeing the human rights situation in Russia improve. Weak rights protection coupled with a culture of impunity not only facilitates further human rights abuses but also works to embolden authoritarianism. Beyond upholding the universalism inherent in international (human rights) law, the situation inside Russia arguably has spillovers for global peace and security.

But while it may be desirable, there are few options to compel Russia to adhere to international human rights law — compliance is almost entirely contingent upon goodwill. This leaves the role of the international community ambiguous. Indeed, Russia's democratic backsliding over the past decade has not gone unnoticed, yet little (if any) constructive action to stop it has accrued. The Russian Federation is party to seven international human rights instruments under the United Nations (UN) system, a member of the Organization for Security and Co-operation in Europe (OSCE), and, until March 2022, a member of the Council of Europe (CoE). However, as Angelika Nußberger observes, 'these institutions have a system for monitoring human rights. Their alarm bells were ringing constantly. But there was no reaction that would have substantially improved the situation. Since all systems of co-operation and supervision are based on goodwill, they cannot work if there is a lack of goodwill.'²³

The necessity of 'goodwill' Nußberger speaks of refers to dual, interwoven tensions: the principle of sovereignty — the inviolable right of each sovereign state to self-govern without external interference — and the limited enforcement mechanisms in international human rights law. Indeed, the UN system is built on the notion of state sovereignty. The principle is guaranteed under article 2(1) of the UN Charter, while article 2(4-7) recognizes that each state has full control over its own territory, has the authority to make decisions within its borders, and is protected from interference by other states.²⁴ States are, however, free to 'surrender' parts of their sovereignty, by signing and ratifying international treaties. This trend began with the UN Charter in 1945 and continued with the principal human rights treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, both adopted in 1966. Of 193 Member States, these treaties have been ratified by 173 and 171 states respectively, illustrating the crucial role that relinquishment has played in shaping and expanding international human rights law.²⁵

Compared to their widespread acceptance, mechanisms for enforcing international human rights have progressed slowly. Only in the 1970s did modest mechanisms begin to emerge, such as self-reporting requirements for treaty states and the potential for public condemnation by UN bodies. Over time, more meaningful but non-binding enforcement mechanisms were established. These included

optional individual complaint procedures and oversight by UN experts and working groups. It was not until the Cold War ended that binding enforcement mechanisms were introduced. The evolution of international criminal prosecution, the establishment of the International Criminal Court, and the development of the doctrine of universal jurisdiction highlight this well. Still, binding international enforcement remains uncommon. In addition, while non-binding mechanisms like inter-governmental pressure, third-party governments, and non-governmental organizations can exert influence, they often fail to overcome political, security, or personal interests of government leaders. Soft law mechanisms, state reporting, and regional human rights bodies offer platforms for monitoring and issuing recommendations, albeit without binding authority. Treaty bodies, comprising independent experts, conduct periodic reviews and provide influential recommendations that often spur domestic reforms. The Universal Periodic Review (UPR), facilitated by the HRC, promotes dialogue among states through a peer-review process, despite lacking direct enforcement powers. These mechanisms collectively contribute to advancing human rights worldwide, albeit within the confines of political realities and state cooperation.²⁶

It is important to note that the enforcement lacuna is not filled by the United Nations Security Council (UNSC). This is because permanent members of the UNSC (which include the Russian Federation) can invoke their veto power to block resolutions perceived as counter to their interests. While Article 27(3) of the Charter calls upon UNSC members to refrain from voting in disputes in which they are involved, this recommendation has been disregarded by all permanent members.

The challenge, therefore, is not that international (human rights) norms do not exist, nor that states — at least formally — do not accept such norms. Rather, the problem lies in states' use of sovereignty as an instrument to curtail obligations under international law — invoking sovereignty to deflect criticism, safe in the knowledge that IHRL enforcement mechanisms are weak or non-existent.

1.3 IF NOT ENFORCEMENT, THEN ACCOUNTABILITY?

Pursuing accountability has become the predominant means of fighting human rights violations and impunity worldwide. In what has been dubbed the 'age of

accountability',²⁷ calls to 'hold perpetrators accountable' and 'eliminate a culture of impunity' have become central rallying points for human rights movements globally in the twenty-first century.²⁸ However, the conceptual ambiguity surrounding accountability often obfuscates its pursuit. As noted by Jutta Brunnée, 'Notwithstanding its increasingly frequent invocation by international lawyers, the concept of accountability has not acquired a clearly defined legal meaning.'²⁹ What purposes does accountability actually serve? Is it primarily to punish wrongdoers? Prevent future violations? Provide closure and remedies to victims? Induce behavioural change? Or is it all of the above?

Taking a step back, an accountability relationship is one in which an individual, group, or other entity demands that an agent reports on his or her activities and can impose costs on the agent.³⁰ While accountability comes in various forms, the focus of international lawyers has historically been on legal accountability (also referred to as accountability through the rule of law). This form of accountability is characterized by two main features. First, it implies holding an actor accountable for actions in contravention with international obligations. Second, it implies that the process of justifying these actions and determining potential consequences is regulated by established laws.³¹ The aforementioned tension between state sovereignty and enforcement thus re-emerges. One characteristic of power is its ability to shield the holder from accountability, as accountability relationships are inherently entwined with power dynamics.³² If a hierarchical relationship vis-à-vis an actor does not exist, then legal accountability will, again, largely depend on 'goodwill'. Powerful states like Russia, China and the United States will only accept to be held accountable when it is in their self-interest.³³ In practice, this translates into the invocation of principles such as sovereignty and self-defence in justification of atrocities, the vetoing of UNSC resolutions, and a willingness to dismiss judgments from regional human rights courts.

What then, if anything, can encourage sovereign states to comply with their obligations under international law? Some scholars have argued that reputational accountability is the only form of accountability that can constrain the behaviour of powerful actors.³⁴ Indeed, any country aspiring to maintain a long-term leadership role has a vested interest in the legitimacy of global governance

and its status as a leader.³⁵ And while Russia often acts unilaterally on specific issues, dismissing calls for accountability from external actors, it also has objectives that require voluntary cooperation from other states for success.

Another argument is that the pursuit of accountability can be decoupled from regulating the behaviour of a certain actor. In other words, pursuing accountability in international law is essential irrespective of whether there is a direct enforcement mechanism. For example, pursuing legal accountability, even without enforcement, upholds the normative value of the legal framework and reaffirms fundamental principles on the global stage. As such, it helps maintain the credibility and legitimacy of the international legal system, preventing impunity and reinforcing the rule of law.³⁶ Further, the pursuit of accountability plays an essential role for victims. Beyond direct redress, ‘mere’ acknowledgment contributes to societal healing and reconciliation. Closely related, accountability efforts establish precedents, shaping future actions and decisions, while raising public awareness and mobilizing support for justice and reform among civil society and international actors.³⁷ Last, although it is contested within the scholarship, an active pursuit of accountability can serve as a deterrent against future violations.³⁸

1.4 JUST BECAUSE WE CAN, DOESN'T MEAN WE SHOULD

Against this backdrop, how strong is the case for the pursuit for accountability? In the wake of World War II, a general consensus emerged that the protection of human rights within a country should not be left to that country alone. Over time, it was increasingly acknowledged that international oversight was essential to prevent the recurrence of dictatorial systems, and safeguarding peace and security for the global community.³⁹ This idea of mutually existing inter-personal responsibilities is referred to as cosmopolitanism, and the concept arguably underpins the logic of universal human rights. As the preamble of the Universal Declaration of Human Rights states: [the] recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.⁴⁰ Cosmopolitanism posits that moral obligations exist towards all human beings solely based on our shared humanity, irrespective of factors such as

race, gender, nationality, ethnicity, culture, religion, political affiliation, state citizenship, or other communal affiliations.⁴¹ It logically follows that extending moral concern beyond borders is justified, rejecting indifference to the needs and suffering of individuals merely because they are deemed ‘outsiders’.⁴² In practice, this suggests that the pursuit of accountability is necessary.

It is important to acknowledge that the idea of cosmopolitanism is not undisputed. At the heart of ‘anti-cosmopolitanism’ lies the claim that morality is inherently local, rendering cosmopolitanism both unattainable and undesirable.⁴³ The most prevalent and robust articulations of anti-cosmopolitanism is realism. Realism contends that the reality of international relations prevents the realization of cosmopolitan ethics because, within this context, states are morally obligated to prioritize their national interests over the common good.⁴⁴ One could argue that the atrocities unfolding on Ukraine’s territory as a result of the ongoing conflict surpass any debate of morality, as the crimes are of such a heinous character that they render them universally indefensible. However, in the Russo-Ukrainian war, both sides have convinced themselves — and are trying to convince the rest of the world — that they are the ones fighting the noble fight against oppression. This begs a question: whose struggle for self-determination and fight against oppression should be supported, and whose behaviour should be rejected under the banner of cosmopolitanism? The answer inevitably hinges on particular perspectives. Understood in this context, pursuing accountability for human rights violations becomes inherently political, with different parties claiming the universal to advance their own policy imperatives.

The above is not a plea to abandon the idea of moral cosmopolitanism; doing so would equate to letting go of human rights altogether. It is evident that, for all its challenges, human rights have greatly contributed to the welfare of humanity globally. The language of universal human rights has become enshrined as a self-evident dogma in the struggle against oppression and injustice, to the point where Russians and Ukrainians, Israelis and Palestinians, and Turks and Kurds all compete for the favours of the public opinion using the same discourse of human rights.⁴⁵ This understanding hints towards a characteristic of human rights that must be appreciated — above all, the normative framework is essential as a

language. Analogously with how Martti Koskenniemi describes international law: it may serve many masters — but it will also socialise [states] in a culture biased in favour of participation over selectivity, transparency over secrecy, and responsibility for the choices it has been used to justify.⁴⁶ Herein lies perhaps the real potential of the pursuit for accountability — it is inherently political, and this is precisely the point.

1.5 PRACTICAL CONSIDERATIONS

However, attention must also be drawn to some practical ramifications of pursuing accountability. Most importantly, seeking accountability and justice can undermine peacebuilding efforts.⁴⁷ Holding perpetrators of human rights abuses accountable, especially if they hold significant political or military power, can escalate tensions and exacerbate conflict dynamics. This could lead to retaliatory actions, further violence, or breakdowns in diplomatic relations. Pursuing accountability in conflict-affected regions can thus also pose security risks for victims, witnesses and human rights defenders.

The heart of this debate lies in the much-discussed conceptual tension between two principles: conflict resolution and accountability for human rights violations, often framed as a dichotomy between peace and justice. An alternate view is that peace and justice are not opposing forces, but rather complementary objectives; their ultimate convergence is not only feasible but also essential for sustainable peacebuilding efforts. More concretely, conflict resolvers, as emphasized by Chandra Sriram et al., are deeply invested in establishing sustainable, long-term peace and mitigating the risk of relapse into conflict. This entails a commitment to upholding the rule of law, promoting democratic governance, and safeguarding human rights. Similarly, human rights advocacy plays a crucial role in contributing practically to conflict resolution.⁴⁸ As highlighted by Laurel Fletcher and Harvey Weinstein, holding perpetrators accountable serves societal goals by reinforcing acceptable norms, removing threats to new regimes, and deterring future abuses.⁴⁹

This analysis begs an important question: should cases of ‘mega-politics’⁵⁰ be brought before international courts? One argument is that, against the improbability of such courts resolving disputes involving powerful entities like Russia, such attempts will most likely reinforce narratives

of ‘lawfare’ or ‘juristocracy,’ as Hirschl famously termed it.⁵¹ The opposing argument, presented by Karen Alter and Mikael Madsen, is that international courts can overcome the difficulties of adjudicating mega-political issues, and often yield constructive outcomes for dispute resolution. Even in ongoing conflicts, international adjudication can offer positive contributions for future cases and the normative order international courts seek to uphold. Moreover, they show that bringing mega-political issues before international courts can empower marginalized actors and reinforce normative frameworks. Despite potential challenges stemming from socio-political changes within member states, international adjudication has not resulted in dejudicialization or direct attacks on ICs, indicating effective strategies for managing mega-political disputes. Addressing concerns about the risk of an anti-democratic juristocracy, they posit that IC interventions generally bolster the rule of law and human rights. Moreover, while ICs may not always provide mutually satisfactory conflict resolutions, they significantly contribute to conflict resolution efforts. As judicialization continues to expand in international relations and multilateralism faces resistance, there may be a rise in mega-political issues brought before ICs in the near future, underscoring ICs’ resilience in grappling with political complexities.⁵²

In summary, despite the absence of direct enforcement mechanisms, the international community can still seek accountability for Russia’s violations of international (human rights) law. The aims of this extend beyond merely regulating the behaviours of a powerful state; a further objective can be to uphold fundamental principles globally, which helps maintain the credibility and legitimacy of the international legal system and reinforces the rule of law. Yet, it is important to be cognizant that pursuing accountability — even in the name of the ‘universal’ and ‘cosmopolitanism’ — is a policy decision which brings both moral and practical considerations to the fore. As such, the policy imperatives in play are as important as the ‘ways and means’ through which actors pursue accountability. Specifically, crafting a geopolitical strategy, and the position of accountability efforts within it, necessitates a careful analysis of the contextual factors relevant to the human rights crisis in Russia.

PART 2. HUMAN RIGHTS AND THE WAR IN UKRAINE AS MUTUALLY CONSTITUTING

To forge an effective accountability strategy, the human rights situation inside Russia needs to be understood in the context of the war with Ukraine and the historical drivers that led to its invasion in February 2022. Indeed, Russia has been involved in almost continuous conflicts since the start of the century. The Second Chechen War lasted from August 1999 to April 2009, followed by the short yet significant Georgian five-day war. Russia intervened militarily in Syria starting in September 2015, and the war with Ukraine began in 2014, with a full-scale invasion on 24 February 2022.⁵³ These events have been framed domestically as legitimate responses to external threats on Russia's integrity and security. In turn, this has created a backdrop against which the Kremlin can discredit dissenters, activists and civil society agents, portraying them as agents attempting to undermine the stability of the nation.

2.1 UNPACKING THE DRIVERS OF THE KINETIC WAR

The origins and drivers of the situation in Ukraine are complex to untangle. President Putin's position is that the decision to invade Crimea — or as he termed it, to protect its right to self-determination from Ukrainian nationalists and terrorists — was a spontaneous and necessary decision after the ouster of Ukrainian president Yanukovich on 22 February 2014.⁵⁴ Those who criticize Russia or view the situation through a Cold War lens argue that the invasion of Crimea was an expansionist action, akin to what happened in Chechnya and Georgia.⁵⁵ Others point an accusing finger towards the United States and the European Union. As Mearsheimer argues: The West's triple package of policies – NATO enlargement, EU expansion, and democracy – added fuel to a fire waiting to ignite (...) Imagine the outrage in Washington if China built an impressive military alliance and tried to include Canada and Mexico in it.⁵⁶ Theories based solely around security are inadequate, at best.⁵⁷ Alternate and more nuanced perspectives thus deserve attention.

A first set of scholars highlight the economic imperatives at stake. Some contend that Russia's occupation of Crimea was, at least in part, a consequence of a clash between Russian and European 'civilizational choices' for Ukraine — with Russia's and the EU's views on sovereignty pitted

against one another. When the EU initiated negotiations with Ukraine in 2009 to enhance economic and energy cooperation, facilitate increased freedom of movement, and foster democracy and the rule of law — including an Association Agreement and a Deep and Comprehensive Free Trade Area — the EU was establishing policies that coincided with Russia's interests. Both Russia and the EU then engaged in competition without considering the potential harm to Ukraine, and arguably without respecting its sovereignty. Both the EU and Russia thus bear some responsibility for internationalizing the Ukrainian political crisis. However, it was Brussels that initiated the competition, aiming to change the existing status quo in Ukraine at the expense of Russia, while Moscow sought to maintain that status quo without compromising EU interests. The responsibility for the militarization of the competition, including resort to covert and overt war, lies solely with Moscow however.⁵⁸

Other posit that the Russo-Ukrainian War was sparked by a trade dispute. From the EU's standpoint, it had extended a relatively uncontroversial offer to Ukraine: a free trade agreement. Russia, on the other hand, sought closer trade ties with Ukraine, but as a member of a more inflexible customs union that categorically rejected the EU proposal. Putin feared that European products entering the Russian market with minimal duties through Ukraine would have severe economic repercussions, including for the agriculture, aviation and automobile manufacturing sectors. This would have compelled Russia to terminate its preferential trade agreements with Ukraine. Caught in the middle, Ukraine desired access to both markets, but it could not agree to a free trade deal with the EU if it meant adhering to the external custom rates of the Eurasian Economic Union (EEU).⁵⁹

In these discussions, it is important to consider the roles and perspectives of the Ukrainian public. In the run-up to Euromaidan, Ukrainians, particularly in the western regions, were deeply frustrated by Russia's pressure on Yanukovich's government to abandon talks with the EU (talks that had been promised during previous elections).⁶⁰ Therefore, engagement by Ukraine should not be viewed as passive, but instead as stemming from a strong desire within society to align more closely with Europe. In other words, the EU's involvement with Ukraine was a response to genuine calls for integration from the Ukrainian people, and should be scrutinized accordingly.⁶¹ The

EU's decision to offer accession talks to Georgia but not Armenia, supports this analysis. Georgia's population has actively demonstrated their desire for closer ties with the EU, including through large-scale domestic protests. If the EU were solely driven by a desire to counter Russia, it would extend similar offers to Armenia. That it has not done so suggests a more nuanced approach shaped by the aspirations of each country's populace.

Another set of explanations are rooted in social identity. Maxim Trudolyubov suggests that the annexation of Crimea and Russia's military operation in Ukraine are direct results of a Russian identity crisis in a post-Cold War era. Russia's 'Grand Choice' is about deciding whether to be feared as a superpower or to prosper as a nation — Crimea's annexation and the subsequent war indicates a pivot (and a return) towards the former. To this end, he argues that Russian authorities have been historically absorbed in empire-building, impeding the development of a cohesive national identity among its people. Consequently, the values of citizen well-being face challenges in Russia, and a notable portion of the population tends to default to preferring a *derzhava* (great power) identity over a national one.⁶²

Others believe that the war is more about Putin's image than anything else. Understood like this, Yanukovich's exit did not compel Putin to annex Crimea (as the Russian president claims) but instead provided him with an opportunity to take such action. In response to the unfolding situation, Putin emphasized his skilful management of the crisis and positioned himself as the protector of Russia.⁶³

2.2 WINNING THE NARRATIVE WAR

Equally as important to understanding Russia's motivations for initiating the war is how it is presented to external audiences. Putin is arguably aware that to retain and/or build a coalition of support at the multilateral level, he needs a universal ideology that is appealing to non-aligned states. This attempt to create an international movement against the hegemony of Western liberalism has transpired along three main lines: (i) pitching the war as a battle of ideologies, (ii) revising historical narratives to win allies, and (iii) challenging the universality of human rights.

Russia as a counterbalance to Western Hegemony

First, Russia has tried to transform the conflict into an ideological battle between a meddling, imperialistic West, and everyone else brave enough to oppose it. As Putin stated in his 2021 essay 'On the Historical Unity of Russians and Ukrainians':

'We are facing the creation of a climate of fear in Ukrainian society, aggressive rhetoric, indulging neo-Nazis, and militarizing the country. Along with that, we are witnessing not just complete dependence but direct external control, including the supervision of the Ukrainian authorities, security services, and armed forces by foreign advisers, military development on the territory of Ukraine, and deployment of NATO infrastructure.'⁶⁴

Along similar lines, in the recent 'Foreign Policy Concept of the Russian Federation', reference is made to an:

'imbalanced model of world development which has for centuries ensured the advanced economic growth of colonial powers ... the changes which are now taking place and which are generally favourable are nonetheless not welcomed by a number of states being used to the logic of global dominance and neocolonialism'.⁶⁵

Through this rhetoric, Russia portrays itself as a necessary counter-balance against Western hegemony, which itself is a threat to the development of Asian and African States, and an obstacle to a fairer and more equitable multipolar world order. Although the Ukraine question is largely avoided in the document, the response measures taken by 'the United States and their satellites' are said to serve only the goal of 'weakening Russia in every possible way, including at undermining its constructive civilizational role, power, economic and technological capabilities, limiting its sovereignty in foreign and domestic policy, violating its territorial integrity'.⁶⁶

It is important to highlight that part of Russia's narrative is using international law standards to justify its invasion of Ukraine, combining adherence to formal aspects of relevant international law with questionable claims about the application of that law.⁶⁷ Specifically, Putin has argued that the presence of an independent Ukraine is a destabilizing force for Russia's unity and strength, posing a threat to its sovereignty. Ukrainian sovereignty, however, is

depicted as an anti-Russia project that, if left unaddressed, will destroy the nation.⁶⁸ In short, international law has become part of the toolkit in a narrative war.

Memory diplomacy

A second tactic is Russia's employment of 'memory diplomacy' i.e. the strategic use of historical narratives, commemorations and cultural expressions to shape and influence the collective memory of historical events for political purposes.⁶⁹ This strategy has bolstered Russia's reputation and garnered support for the war, particularly in Africa and Asia. In Africa, Russia portrays itself as an anti-imperial and anti-colonial agent. Historically, the Soviet Union positioned its support for African states and armed opposition groups within the framework of promoting Pan-Africanism and resisting imperialism. Russia now capitalizes on this historical narrative, presenting its involvement in Africa as distinct from the former colonial powers. The normative emphasis on anti-imperialism makes Russia's role more acceptable to African leaders, even though there's an argument that Russia also pursues a geopolitical agenda, primarily catering to authoritarian leaders.⁷⁰ This is particularly the case in South Africa, where Russia relies on its non-colonial past and its support for the struggle against apartheid to strengthen ties between the two nations.⁷¹ In other African countries, Russia uses its historical ties in combination with education and health aid programmes to exploit and promote pre-existing anti-Western sentiments.⁷² In Asia, Russia's narrative is centred around World War II and the Cold War. In Northeast Asia, Moscow has been employing memory diplomacy focused on the former conflict to strengthen ties with China and criticize Japan for its backing of Ukraine.⁷³ In Southeast Asia, Russia invokes its support for nationalist movements in Vietnam, Laos, and Indonesia during the Cold War to strengthen their relations today.⁷⁴

The (non-)universality of human rights

A third tactic involves challenging the universality of human rights, sometimes rejecting them as tools of globalism or neo-colonialism. Particularly concerning LGBTQ+ rights, Russia has weaponized traditional values to forge alliances with similar-minded leaders, such as Viktor Orbán in Hungary, turning the conflict in Ukraine into an ideological and geopolitical confrontation against

Western liberalism.⁷⁵ Uganda, where homosexuality is punishable by death, has consistently abstained from condemning Russia's actions in Ukraine, partly due to their shared anti-gay rhetoric.⁷⁶

2.3 IMPLICATIONS FOR ACCOUNTABILITY AND THE ROLE OF THE INTERNATIONAL COMMUNITY

Understanding the context within which Putin can portray the West as a sinister force against which the Russian population must unite itself is important. Such insight does not, however, provide a clear way forward. As Elizabeth Wood highlights, [t]he primacy of Putin's image and ruler-centrism in this story makes it difficult to know what Western governments can do to deescalate and ultimately resolve the situation on the ground.⁷⁷ Ironically, Putin needs the West to sustain his legitimacy at home, leaving little wiggle-room for the latter to contribute to a sustainable solution to the conflict. A further complication is that Putin is not strictly bound by ideology, but selectively adopts positions based on the situation at hand. Indeed, Putin's decisions during the crisis diverge from the standard pragmatism of many Western politicians. Unlike the belief that political viability stems from economic success, Putin has consistently made choices that strain relations with longstanding trade partners and hinder the prospects of sustained economic growth. This stems from his conviction that the Russian people are willing to endure financial challenges to maintain the country's status as a great power. This lack of adherence to conventional rules adds to the uncertainty about the most effective approach for future engagement.⁷⁸

A further observation is that, while it may be distasteful, Russia may be winning the narrative war globally. For a certain group of states, Russia's narrative is appealing as the West's 'defending democracy' narrative lacks resonance. This has important implications for pursuing accountability. Chiefly, responses that invoke reputational accountability may not be effective and may even be counter-productive. At present, Russia has strategically positioned itself as a necessary counterforce against Western hegemony, using this justification to rationalize its violations of international law. It follows that while most states aspire to be recognized as trustworthy partners that adhere with international norms, Russia simply may not. The reputation it seeks involves it projecting a culture of strength, assertiveness and resistance;⁷⁹ a good human rights record is less of a concern.

PART 3. THE SCOPE FOR ACCOUNTABILITY IN A WORLD IN TRANSITION

A final lens through which the human rights situation in Russia needs to be viewed is the current state of multilateralism and shifting role played by international (human rights) law. In his annual report to the General Assembly in 1999, UN Secretary General Kofi Annan victoriously proclaimed that state sovereignty had been redefined by the forces of globalization and international cooperation.⁸⁰ Indeed, not so long ago people considered the triumph of liberal democracy as possibly 'the end of history',⁸¹ and that human rights prosecutions had changed world politics,⁸² allowing the world to live comfortably in an 'age of accountability'.⁸³ Fast forward to 2023 and Secretary General António Guterres spoke to the General Assembly of a 'world in transition', a rapid shift towards a multipolar, yet unhinged world, marked by a rise of geopolitical tensions, authoritarianism, inequality and impunity.⁸⁴ Indeed, the ongoing conflicts in Ukraine, Gaza, Myanmar, Sudan, and the Maghreb region, just to name a few, as well as the apparent inability (or unwillingness) of the international community to provide a solution, present a picture of multilateralism in crisis. Scholars now discuss 'the fall of the liberal international order',⁸⁵ 'the endtimes of human rights'⁸⁶ and 'a new age of impunity'.⁸⁷

3.1 THE END OF THE UNIPOLARITY AND THE MALAISE OF INTERNATIONAL (HUMAN RIGHTS) LAW

This so-called human rights-malaise can be attributed to a more general disillusionment with the current state of multilateralism and the legacy of the liberal world order. To an extent, such discontent can be seen as self-inflicted and justified. Initial cracks in the system can be found around the turn of the century when the United States suffered the infamous 9/11 attacks. Its subsequent 'global war on terror' came to be perceived by many as turning 'terrorist states' into liberal democracies by force. Within three months, military forces led by the United States seized command of Afghanistan's urban areas and forced the al-Qaeda leadership to leave the country. In March 2003, Iraq suffered a similar fate — justified under the (since disproven) claim that the country was in possession of weapons of mass destruction.⁸⁸ These interventions can by no means be considered a success; indeed, the wider Middle East region remains greatly destabilized. The Taliban has taken control of Afghanistan, countries

like Syria and Yemen are still involved in civil wars, and Islamophobia around the world has sharply escalated.⁸⁹

Some scholars have drawn parallels between Russia's current transgressions and international community's response to the invasion of Iraq or the NATO bombing during the Kosovo War. According to Ginsburg: 'Kosovo was not fundamentally more soundly grounded in international law than was Putin's invocation of 'genocide' in the Donbas, but the action was acknowledged retroactively by the Security Council.'⁹⁰ While this analysis is by no means universally accepted, the surrounding narrative does need to be acknowledged. Simply put, while the West considers these interventions righteous acts in accordance with international law, others regard them as evidence of Western hegemony. Such missteps have arguably laid the foundations for legitimacy concerns regarding international law and multilateralism, and contributed to the rise of nationalism and populism we see today.

3.2 IMPLICATIONS FOR ACCOUNTABILITY AND THE ROLE OF THE INTERNATIONAL COMMUNITY

It may be that the era of unipolarity is over, and being replaced by an emerging era of multipolarity marked by a resurgence of authoritarian regimes. This places multilateralism at a crossroads. As Guterres almost prophetically called it, it is a matter of reform or rupture, requiring global compromise, even with authoritarian regimes.⁹¹ Many scholars anticipate that this will bring about changes within existing international law structures — a 'thinner web' of international law, continued decline in human rights enforcement,⁹² and a heightened emphasis on softer commitments and dialogue.⁹³

This raises important questions around the future utility of international law — specifically, its effectiveness as a tool to fight injustice and provide redress for human rights violations. Indeed, the 'Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law' clearly sets out what the new protagonists expect from international law: a return to the central principles of state sovereignty and non-intervention, without a defined role for human rights. International law should enable just and equitable international relations featuring win-win cooperation, creating a community of shared future for mankind,

and establishing common space of equal and indivisible security and economic cooperation.⁹⁴ In other words, it should not and cannot, be of any concern to other states how Russian and Chinese citizens are treated within their respective countries.

What then might be done to preserve an international liberal order built on human rights, democracy and international criminal justice? The argument presented here is that human rights need to gain the active support of emerging states if they are to maintain significant meaning in the future.⁹⁵ Indeed, recourse to international human rights law is perhaps the only legitimate tool that can be leveraged to urge the international community to end its support for authoritarian regimes.

From a pragmatic perspective, there is no reason to suggest that uniformity and universality need to be essential features of international law for it to survive and remain relevant.⁹⁶ As discussed, in their own struggle for legitimacy, even authoritarian regimes make use of the language of law to explain their (mis)conduct. Analysing international law only in terms of rule compliance overlooks the diverse intentions and actions of states within the legal framework. This narrow perspective oversimplifies the relationship between international law and politics. States do not just follow the rules; they negotiate and adapt their actions around them. While rules influence negotiations, focusing solely on compliance ignores the dynamic aspect of international relations.⁹⁷ International law is better seen as a place of inherent contestation — discussions over its interpretations prove its validity, not its irrelevance. As Karen Alter posits, such contestations can be desirable and may contribute to enhancing the legitimacy of international law.⁹⁸ It follows that a rejection of contestation diminishes the legitimacy of a discursive system. This is why Monica Hakimi suggests that instead of consistently attempting to limit, diminish, or diffuse contestations, preserving or even fostering them is beneficial for the future of international law.⁹⁹

These understandings counter the realist critique on international (human rights) law that power and normativity are binary opposites, and that instrumentalization of the law undermines its normative authority. As Hendrik Simon notes, law may be instrumentalised, but it simultaneously retains its

intrinsic potency (...) law does not depend solely on its enforcement or 'facticity', but also on its legitimacy, i.e. its validity as a norm.¹⁰⁰ Or, as Koskeniemi puts it, 'the law is instrumental, but what it is instrument for cannot be fixed outside the political process of which it is an inextricable part.'¹⁰¹

In short, international law's strength lies not in its uniform application or rigid universality, but rather in its capacity to engage in contestations and discussions. Its resilience therefore hinges on embracing contestations instead of fixating solely on compliance and enforcement. Moreover, its inseparable connection with politics underscores the inevitability of its fragmentation, especially in a post-unipolar era. This reality should be embraced, not resisted.

PART 4. STRATEGIC RESPONSES FOR A CHANGING WORLD

Any efforts towards accountability for human rights violations in Russia must fit into a wider geopolitical strategy that effectively tackles the 'snake eating its own tail' analogy. In this regard, understanding that the human rights crisis in Russia both *facilitates and is facilitated by* the ongoing war in Ukraine, must sit at the fore. Certainly, within Russia, the war is framed as part of a larger, ideological battle against western hegemony, and international (human rights) law has been used as a tool to consolidate this narrative. Another important consideration is that the declining human rights situation in Russia is taking place amid a world in transition, marked by a decline of unipolarity and the rise of geopolitical tensions and authoritarianism. As set out below, future steps must entail not only reinforcing (or revising) established strategies regarding accountability, but also exploring innovative approaches to the geopolitical realities at hand.

4.1 REFLECTING ON EXISTING MEASURES

Russia's suspension from international bodies

Russia's suspension from international bodies may have undesired effects for two reasons. First, such actions rely heavily on inflicting reputational damage, which may prove ineffective since Russia *seeks the reputation*

of an anti-Western actor. Second, suspensions from the Council of Europe and the Human Rights Council may delegitimize these institutions, by running counter to the understanding that contestations about international law have intrinsic value.

Indeed, following its suspension and exclusion from the Council of Europe, the Russian Federation accused both EU and NATO states of undermining the body, and transforming the council into 'another platform for preaching about Western superiority and for grandstanding.' Most importantly, with its exclusion Russia ceased to be a State Party from the ECHR, meaning the ECtHR no longer has jurisdiction over Russian human rights violations. While this might align with intergovernmental standards of holding states accountable, it has consequences for individual rights. Some might argue that the move was a poor trade-off: victims have lost the chance for remedial action on human rights violations in return for only marginal reputational harm,¹⁰² and a fostering of friction and hostility.

Similar reasoning was echoed after Russia's suspension from the HRC in 2022. Following the vote, the Russian representative to the UN accused the Council of being 'monopolised by one group of states who use it for their short term aims', before declaring that the Russian Federation was instead withdrawing from the HRC itself. The Chinese representative (who voted against the suspension), argued that Russia's suspension set a dangerous precedent that would only further intensify confrontation in the field of human rights, aggravate divisions, and jeopardize peace efforts.¹⁰³

It is important to note that Russia's suspension from the HRC does differ from its suspension from the CoE. HRC membership carries the weight of global leadership in human rights and demands a steadfast commitment to upholding its principles, a responsibility that Russia's actions may have called into question. If Russia had remained a member of the HRC, it could have called into question the Council's integrity, akin to the crisis that befell its predecessor, the Commission of Human Rights, when Libya controversially assumed its presidency in 2003. In any case, despite losing its membership, Russia retains observer status, allowing it to engage in discussions, propose resolutions, and negotiate, albeit without voting privileges. Further, Russia retains the opportunity to

pursue HRC membership in the future, as demonstrated by its candidacy to rejoin the HRC in October 2023.¹⁰⁴ As such, the decision to suspend Russia from HRC membership can be seen as a constructive measure for the international human rights system, preserving the Council's integrity and underscoring the accountability of powerful nations for gross human rights violations.

A mandate on the human rights situation in the Russian Federation

On 4 April 2023, HRC appointed a Special Rapporteur to monitor the situation of human rights in Russia, and to collect, examine and assess relevant information from all relevant stakeholders, with the aim of providing recommendations to the international community.¹⁰⁵ Foremost, the mandate of the Special Rapporteur is crucial for countering biases and misinformation at the global stage. As such, if there is indeed a narrative war being fought, the Special Rapporteur has an important role to play. Reports submitted by the Special Rapporteur can serve as advocacy tools, exerting pressure on the Russian government to address human rights issues and uphold international obligations. While Russia may not be overly concerned with these reports, they can still raise awareness and increase international engagement with civil society. Overall, the mandate underscores the international community's commitment to monitoring and addressing human rights situations, reaffirming the importance and validity of international human rights law.

But while the importance and utility of an independent human rights expert may appear evident to many, the Special Rapporteur's mandate is not universally supported. Indeed, while 17 countries voted in favour, 6 countries voted against, and 24 abstained.¹⁰⁶ China, for example, opposed the politicization and instrumentalization of human rights, while Zimbabwe noted that in the absence of Russia's consent, the work of the Special Rapporteur disregards the principles of cooperation and genuine dialogue on which the HRC is founded.¹⁰⁷

Both concerns arguably lack substance. As discussed earlier, the notion of 'politicizing' international (human rights) law is misplaced; what rights mean, how they are interpreted and how they are applied will always rest, to a certain degree, on power and politics. The non-political

normativity of human rights is therefore illusory.¹⁰⁸ Pursuing accountability for violations of human rights is part of policy, an instrument perhaps, yet its emancipatory potential hinges on its legitimate defence of the universal. Zimbabwe's assertion that the Special Rapporteur's work disregards principles of cooperation and genuine dialogue in itself contradicts international norms and standards regarding human rights monitoring. The HRC is founded on the principles of promoting and protecting human rights through transparent dialogue and cooperation. By opposing the mandate of the Special Rapporteur, China and Zimbabwe are implicitly dismissing the importance of independent scrutiny and accountability for human rights violations, which in itself is critical to prevent instrumentalization.

Action at the ICC

In light of the Kremlin's 'West vs. the rest narrative', and its posturing as an anti-colonial agent against western hegemony, the ICC's perceived legitimacy has arguably been compromised from the outset. A key issue is that the United States is openly hostile towards the Court and is up until today not a state party to the Rome Statute. Moreover, it has been argued that the ICC has a bias against Africa, as it has, until recently, only indicted African individuals. Bearing in mind the well-known aphorism 'justice must not only be done, but must also be seen to be done', this raises doubts about the potential of the ICC to provide meaningful outcomes.

However, legitimacy and guilt are not always binarily understood. As Marlies Glasius points out in relation to the situation of Liberia, the public overwhelmingly believed that Charles Taylor's falling out with the United States led to his eventual arrest and trial, perceiving a bias against Africans in international criminal justice. However, they also viewed the trial process as fair and the judges as independent. Moreover, they saw the trial as a powerful message that aggressive war and human rights violations would lead to accountability, highlighting the potential for international criminal courts to convey educational messages despite legitimacy concerns.¹⁰⁹

Still, pursuing criminal accountability for figures such as Putin is a delicate matter. A criminal justice approach often simplifies the world, portraying it as primarily inhabited by a few inherently bad individuals, and reinforcing

an idea that eliminating these individuals resolves the issue of evil. This viewpoint hinders a comprehensive understanding of the world and limits its effectiveness in addressing the root causes of human rights violations. By overlooking state accountability, it fails to recognize how bureaucracy, even through individual actors, contributes to the perpetuation of such violations.¹¹⁰ Koskenniemi calls this the paradox of criminal justice, having to choose between impunity and show trials: To convey an unambiguous historical 'truth' to its audience, the trial will have to silence the accused. But in such a case, it ends up as a show trial. In order for the trial to be legitimate, the accused must be entitled to speak. But in that case, he will be able to challenge the version of truth represented by the prosecutor and relativize the guilt that is thrust upon him by the powers on whose strength the Tribunal stands. His will be the truth of the revolution, and he himself a martyr for the revolutionary cause.¹¹¹

Bottom-up approaches

Attention should focus on the potential of bottom-up approaches, especially in cases where the state is unable or, in the case of Russia, unwilling to address human rights violations. Efforts in Syria, a country also marked by renewed authoritarianism and ongoing violent conflict, might prove instructive. Here, activist lawyers and diasporic civil society leaders are driving criminal accountability efforts against the State responsible for injustices. Notwithstanding the limitations in criminal justice approaches discussed above, these measures can hold significant symbolic value. They can attract the attention of and mobilize actors at both domestic and international levels. They can also lay the groundwork for longer-term mechanisms for truth and justice, such as land and property restitution. In this way, criminal accountability can be seen as one component of reshaping a broader political path, away from authoritarianism and towards a future where the affected society has addressed its past and the role of those who contributed to its injustices.¹¹²

Criminal accountability, particularly through universal jurisdiction, has become a powerful tool for accountability efforts in Syria, showcasing the influence of transnational alliances between home-state victims and international civil society organizations. This approach, driven by diasporic members, expands the spaces for state

disruption and victim recognition, utilizing third-state judicial institutions and a strategy leveraging criminal accountability for various purposes, including documentation, disruption, and recognition. Additionally, despite being restrictive in focusing on establishing judicial truths, criminal accountability is highly symbolic and can lead to the establishment of broader contextual truths. The process of collecting evidence, especially in cases pursued through universal jurisdiction, then becomes both a truth-seeking and justice-seeking imitative beyond strict prosecutorial accountability.¹¹³

In the context of Russia, diasporic justice advocates can be a significant support to their fellow citizens, even amidst the ongoing conflict. Documenting their experiences and pooling evidence, for example, can serve an important role in countering the narrative war being levelled by the Russia regime, and also be critical in subsequent truth-seeking, reparations, and memorialization efforts.¹¹⁴ Moreover, with their relative security and access to international policymakers and civil society organizations, they are well-positioned to play a strategic role in fostering momentum for accountability efforts.

4.2 NEW APPROACHES TO CONSIDER

Applications to the ICJ

Because the human rights crisis in Russia is so complex and is somewhat deadlocked, there is a clear need to think about the situation differently, or at least to view the situation in its broader context. Currently, the Western ‘defending democracy’ narrative is poorly deployed, and does not resonate deeply beyond continental borders. This is regrettable, as the human rights situation in Russia is anything but a regional geopolitical problem. Russia’s growing influence in Africa has extended beyond official channels and has since involved the utilization of extremely violent private military companies, exemplified by entities like the Wagner Group.

A fresh approach for the international community to explore — one that underscores the West’s commitment to defending democracy and fighting injustice globally — might be to explore the potential of submitting applications to the ICJ against Russia for alleged breaches of obligations owed to them *erga omnes partes*. *Erga omnes partes* refers to obligations a state owes to all parties of a specific treaty

or convention. These obligations, enforceable by the treaty parties, arise from the ratified treaty itself.

This approach would mirror that of The Gambia’s in 2019, when it initiated legal proceedings against Myanmar at the ICJ, alleging genocidal actions against the Rohingya. Asserting its status as a party to the Genocide Convention, The Gambia argued a shared interest in preventing genocide perpetrated by Myanmar.¹¹⁵ In a 2022 ruling, the Court recognized The Gambia’s legal standing and ordered Myanmar to take measures to halt genocidal activities targeting the Rohingya.¹¹⁶ The judgment rendered in *The Gambia v. Myanmar* indicate that there exist two conditions for employing *erga omnes partes* standing to invoke a State’s treaty-based obligations before the ICJ. First, standing is contingent upon the treaty in question conferring mandatory jurisdiction over disputes arising from the treaty. Second, the purported violations must possess an *erga omnes partes* nature, which means that the obligations must be of relevance to all States parties to the treaty.

When applied to the current situation, several sectoral counter-terrorism agreements establish mandatory jurisdiction for the ICJ and may confer the right to *erga omnes partes* standing, such as the International Convention for the Suppression of the Financing of Terrorism.¹¹⁷ Hypothetically, if the Wagner Group is considered a terrorist group for the purpose of the Convention, and Russia’s financial support can be demonstrated, then any state party to the convention can bring proceedings to the ICJ. By shaping the issue as a community interest, Russia’s conduct is elevated to a matter of universal concern.

It must be noted that the ICJ suffers from its own enforcement problems as it largely relies on the UNSC to enforce its judgements. An illustrative example is the 1986 *Nicaragua v. United States* case,¹¹⁸ where the United States wielded its veto power to thwart the Security Council’s resolution seeking full compliance with the ICJ’s judgment.¹¹⁹ Nothing can stop Russia from doing the same. Nonetheless, although enforcement is undeniably significant, it should not be the sole consideration.

In a similar vein, the international community might explore the possibility of resorting to third-party countermeasures in the name of community interests. These measures typically involve actions taken by a state on behalf of the international community to address a

breach of international law. However, while the right of an injured state to resort to countermeasures is widely accepted and its limitations clearly defined in Article 49 and 50 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), the same does not apply to third states' right to respond with countermeasures. The recognition of a norm allowing countermeasures by states other than the injured has sparked controversy in academic circles and within the International Law Commission (ILC).¹²⁰ Some scholars, however, have argued that countermeasures taken by states other than the injured party are not only endorsed by state practice but are also necessitated as a corollary of the concept of *erga omnes* obligations in international law.¹²¹

An investigative mechanism

An important precondition for any accountability measure is information and evidence. In this regard, the UN General Assembly might push for the establishment of investigative mechanisms that could specifically focus on atrocities committed by various non-state armed groups, including the Wagner Group (now Africa Corps).

Such a process could serve a number of ends. First, it might allow for a fairer application of Magnitsky sanctions. In recent years, various states and the EU have established 'Magnitsky sanctions' frameworks, employing measures such as travel bans and asset freezes to target individuals presumed to be accountable for human rights violations located abroad. Such approaches have been criticized for their potential harm to ongoing investigations, and for violating fundamental human rights, such as the right to fair trial, as they effectively disacknowledge the presumption of innocence.¹²² If such sanctions were preceded by an investigatory mechanism, such concerns would be somewhat mitigated.

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- 25 Douglass Cassel, 'A Framework of Norms: International Human-Rights Law and Sovereignty' (2001) 22 *Harvard International Review*, 61-62.
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- 30 Ruth W Grant and Robert O Keohane, 'Accountability and Abuses of Power in World Politics' (2005) 99 *American Political Science Review* 29, 29.evident in theories of accountability at the nation-state level, between "participation" and "delegation" models of accountability. The distinction helps to explain why accountability is so problematic at the global level and to clarify alternative possibilities for pragmatic improvements in accountability mechanisms globally. We identify seven types of accountability mechanisms and consider their applicability to states, NGOs, multilateral organizations, multinational corporations, and transgovernmental networks. By disaggregating the problem in this way, we hope to identify opportunities for improving protections against abuses of power at the global level."container-title": "American Political Science Review", "DOI": "10.1017/S0003055405051476", "ISSN": "1537-5943", "0003-0554", "issue": "99", "language": "en", "note": "publisher: Cambridge University Press", "page": "29-43", "source": "Cambridge University Press", "title": "Accountability and Abuses of Power in World Politics", "volume": "99", "author": "[{"family": "Grant", "given": "Ruth W."}, {"family": "Keohane", "given": "Robert O."}], "issued": {"date-parts": [{"2005, 2}], "locator": "29"}], "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"} See further, Deirdre Curtin and André Nollkaemper, 'Conceptualizing Accountability in International and European Law' (2005) 36 *Netherlands Yearbook of International Law* 3, 9.
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45 Yuval Noah Harari, *21 Lessons for the 21st Century* (First Edition, Random House 2018) 119, 246-247. he explored our past. In *Homo Deus*, he looked to our future. Now, one of the most innovative thinkers on the planet turns to the present to make sense of today's most pressing issues. "Fascinating... a crucial global conversation about how to take on the problems of the twenty-first century."—Bill Gates, *The New York Times Book Review* NAMED ONE OF THE BEST BOOKS OF THE YEAR BY FINANCIAL TIMES AND PAMELA PAUL, *KQED* How do computers and robots change the meaning of being human? How do we deal with the epidemic of fake news? Are nations and religions still relevant? What should we teach our children? Yuval Noah Harari's *21 Lessons for the 21st Century* is a probing and visionary investigation into today's most urgent issues as we move into the uncharted territory of the future. As technology advances faster than our understanding of it, hacking becomes a tactic of war, and the world feels more polarized than ever, Harari addresses the challenge of navigating life in the face of constant and disorienting change and raises the important questions we need to ask ourselves in order to survive. In twenty-one accessible chapters that are both provocative and profound, Harari builds on the ideas explored in his previous books, untangling political, technological, social, and existential issues and offering advice on how to prepare for a very different future from the world we now live in: How can we retain freedom of choice when Big Data is watching us? What will the future workforce look like, and how should we ready ourselves for it? How should we deal with the threat of terrorism? Why is liberal democracy in crisis? Harari's unique ability to make sense of where we have come from and where we are going has captured the imaginations of millions of readers. Here he invites us to consider values, meaning, and personal engagement in a world full of noise and uncertainty. When we are deluged with irrelevant information, clarity is power. Presenting complex contemporary challenges clearly and accessibly, *21 Lessons for the 21st Century* is essential reading. "If there were such a thing as a required instruction manual for politicians and thought leaders, Israeli historian Yuval Noah Harari's *21 Lessons for the 21st Century* would deserve serious consideration. In this collection of provocative essays, Harari... tackles a daunting array of issues, endeavoring to answer a persistent question: 'What is happening in the world today, and what is the deep meaning of these events?'"—BookPage (top pick

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- 49 Laurel E Fletcher and Harvey M Weinstein, 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation' (2002) 24 *Human Rights Quarterly* 573. In the last decade, there has been a burgeoning interest in the question of how countries recover from episodes of mass violence or gross human rights violations. 2 This interest has focused on the concept of transitional justice, a term we use to describe the processes by which a state seeks to redress the violations of a prior regime. 3 Despite the fact that military and political leaders who ordered or directed mass terror generally have evaded accountability for their deeds, justice—in the form of criminal trials—has [End Page 574] been the rallying cry of many who seek to repair the injury individuals and communities have sustained as a result of these heinous acts. 4 As dictatorships and repressive regimes fell in Latin America in the 1980s and 1990s, human rights scholars and advocates pressed states to initiate domestic criminal proceedings against the notorious intellectual authors of mass terror and their faithful subordinates. 5 However, the fragile democracies, weak judiciaries, and amnesty laws made domestic trials difficult to institute. 6 Further, the character of war has shifted from inter- to intra-state conflict since World War II. 7 These wars reflect intense competition for power and [End Page 575] wealth among groups struggling for supremacy. Often characterized as racially, ethnically, or tribally motivated, one commonality among these conflicts is that warring forces target civilian populations, particularly women and children, and cause massive destruction of infrastructure. 8 Mass violence results in the breakdown of societal structures—social and economic institutions, and networks of familial and intimate relationships that provide the foundation for a functioning community. 9 Indiscriminate and episodic violence occurs at random and affects people at a neighborhood level. Even where the violence is centrally planned (as in Bosnia-Herzegovina or Rwanda)
- 50 Mega-politics typically refers to the large-scale political dynamics or power struggles that involve influential actors, such as major nations or international organizations, and have significant global implications. These can include geopolitical conflicts, international relations between superpowers, or global governance issues. In this context, it refers to complex political disputes involving powerful entities (such as Russia) that extend beyond traditional diplomatic negotiations.
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- 98 Alter (n 94) 23.
- 99 Monica Hakimi, 'Constructing an International Community' (2017) 111 *American Journal of International Law* 1, 355. as an alternative, a theory that accounts for the combined integration and discord that actually characterize most global governance associations. I argue that conflict, especially conflict that manifests in law, is not necessarily corrosive to an international community. To the contrary, it often is a unifying force that helps constitute and fortify the community and support the governance project. As such, international legal conflict can have systemic value for the global order, even when it lacks substantive resolution. The implications for the design and practice of international law are far-reaching. "container-title": "American Journal of International Law", "DOI": "10.1017/ajil.2017.22", "journal-abbreviation": "American Journal of International Law", "page": "1-40", "source": "ResearchGate", "title": "Constructing an International Community", "volume": "111", "author": [{"family": "Hakimi", "given": "Monica"}]; "issued": {"date-parts": [{"2017, 8, 9}]}]; "locator": "355"; "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"
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- 108 Koskeniemi (n 48) 153. to indict or support political leaders, to distribute resources and to expand or limit the powers of domestic and international institutions. International law is part of the way political (and economic
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