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“Sovereign democracy” and international law: legitimation and legal ideology

P. Sean Morris

1. A general background on what triggered sovereign democracy

The participation of Russia in international law has been, and remains, a matter of its vested interests only. Moreover, contemporary international law with its mission of globalisation has been viewed in Russia as an attempt at removing the sovereignty of the Russian state. But, where Russia participates in the treaty system of international law, such participation, is at best, as a result of a compromise, due to the failure of diplomacy or negotiations. Thus, on the one hand, Russia is cautious of Westphalian international law that reduces the sovereignty of the nation state, and, on the other, Russia accepts the treaty system of international law based on the various *compromissory* clauses in those treaties that are ‘designed to address the concerns’ of different states.¹ This acceptance of international law by Russia, wary of Westphalianism, but cautiously embracing the treaty system of international law, allows Russia to carve out a unique and fascinating approach to international law.² Often time, that approach can be caught up in an ideological maelstrom, and, one such maelstrom was *sovereign democracy* where debates on sovereignty, national identity, great power status and *Russianness* captured the Russian intelligentsia during the second term (2004 – 2008) of Vladimir Putin’s first presidency (2000 – 2008).

¹ *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, para. 143.

² Lauri Malksoo, *Russian Approaches to International Law* (OUP, 2015); Bill Bowring, *Law, Rights and Ideology in Russia: Landmarks in the Destiny of a Great Power* (Routledge, 2013); Axel Kaehne, *Political and Social Thought in Post-Soviet Russia* (Routledge, 2007).

The *Georgia v Russia* case at the International Court of Justice (ICJ) in 2011 was one of the few international cases where Russia's vision of sovereign democracy played out in a legal setting and confirmed Russia's resurgence as a great power status. In the case, which was as a result of an armed conflict in 2008 between Russia and Georgia and the self-determination status of two breakaway regions in Georgia, the ICJ essentially ruled that modern treaty law in the international legal system is a series of compromises due to the failure of negotiations and diplomacy on the interests of states. Yet, what was crucial about that dispute, was how Russia perceived itself in international relations especially on key issues of state sovereignty and the interests of Russia as a great power. This conception of renewed great power status had its origin in a domestic ideology that reawakened conservatism in Russia. This was even more evident in the fact that the *Georgia V Russia* case as litigated before the ICJ was not actually about the armed conflict between the two former Soviet states in 2008, but, rather, whether Russia violated an international treaty on racial discrimination during the armed conflict. Eventually, the ICJ upheld Russia's objections to the case (with strong dissent among the Court's rank where dissenters accused the court of being bias)³ leaving Russia victorious on two fronts. The first victory for Russia was the ruling itself, and, the second victory, was the "acquisition" of territories that were *de jure* Georgia. These victories were, as this chapter posit, as a result of the ideology of sovereign democracy – a form of Russia exceptionalism.

At the end of the cold war, the world was plunged into a new conflict. This was a silent conflict, in which, the victors of the cold war, represented by capitalists states had to choose either to disband their huge military industrial complexes to fit the new era of integrating post-Soviet states in the world of pure capitalism. The other choice was to continue to reassert capitalist hegemony through warfare and farcical conflicts. The latter was chosen and there was a sense of urgency to fight new

³ Above (n 1), dissenting opinion of Judge Abraham, p. 158, para. 4; dissenting opinion of Judge Trinidad, p. 239, who invariably made references to "great power" status, example in para. 39.

enemies such as radical Islamic terrorism, and, at the same time, spread the deeds of democracy and human rights on an industrial scale around the world. In this mission to democratize the post-Soviet world and fight Islamic terrorism – the most important country that the Western capitalist states fought during the cold war – Russia – was ignored, and, or, its concerns were dismissed in the international relations of states. Apart from being coerced into negotiations for capitalist instruments such as the World Trade Organisation (WTO) charter, and, human rights treaties such as the European Convention on Human Rights (ECHR) – the West, throughout the 1990s and the early 2000s no longer saw Russia as a credible player in international relations. The order of the day was unipolarity. Russia was left on its own to sink into the dismal abyss of pre Peter the Great Russia – a backward country whose peoples were neither European nor necessarily Asians. Simply Russians.

Having lost its seat at the table of the super powers in the chaotic years of the 1990s and early 2000s – Russia watched as the United States rolled into various nations through conflict interventions (presumably with the strategic aim of capturing natural resources), or, as, the United States built military bases on Russia's door-steps in the so called "near-abroad" of the former Soviet commune. Further insults to Russia were the eastward expansion of the European Union (EU) as former satellite and constituent states of the Former Soviet Union (FSU) were painting over their red coats blue in the great 2004 accession.⁴ Russia was not seen as a great power and its role was literally reduced to that of supplying the new *colonial* outlook of Western capitalist's states through hydrocarbons, minerals, grains and other resources. Moreover, Russia did not meet the financial requisites to have a seat at the table where money matters – and was excluded from the most powerful financial club of capitalist states the Group of Seven (G7); although Russia occasionally dined as "G7 plus one." As the insults and humiliations mounted on Russia in the grand game of great power politics (and

⁴ On 1 May 2004 ten countries acceded to the European Union, of which three were former Soviet Countires, Estonia, Latvia and Lithuania, and five were former soviet satelites: Hungary, Czech Republic, Slovakia, Slovenia, and Poland, see eg, Francis Snyder (ed), *Enlargement and the New Europe after 2004* (Brussels: Bruylant, 2005).

sometimes in the practice of international law), the once most powerful alternative to a nuclear-armed United States – Russia was in pain. It was during these dark moments that Russia underwent a period of soul-searching to restore its great power status lead by Vladimir Putin – the enigmatic KGB trained international lawyer, former provincial bureaucrat, former prime minister and president for (2000 – 2008), (2012 – 2018), (2018 – 2024). As president, Putin during his first term surrounded himself with loyalists and removed from influential positions business barons, state bureaucrats, and powerful political appointees. By the time Putin was getting ready to run for a second term as president in 2004, his sights were set on restoring Russia's rightful place in the world as a powerful country, an alternative to the West.

In order for Russia to regain great power status, Putin saw his tasks to include that of restoring Russia's pride in international relations and the international legal process; a reformed military with quick strike capabilities; a new military doctrine with nuclear deployment; economic and social reforms, and most importantly – the Kremlin as the prime decision maker through a system of vertical power with a single command structure to manage the Russian democratic process: the answer was sovereign democracy. The new ideological doctrine of sovereign democracy would grow as a phenomena that was uniquely Russian combining elements of past ideologies such as communism, capitalism and fascism. The ideology of sovereign democracy was both intellectually chaotic, and, at the same time, embodied Russian philosophical traditions that portrayed Russia as a collective entity where the people coalesce into a *obshina* - for the greater good of the fatherland. In that obshina, a strong *sovereign* as head of state and the shield of the Orthodox Church was all that matters. Democracy as a western phenomenon, notion and concept that has alien-like features to such obshina. But, in the modern Russia, where sovereign democracy as an idea once thrived, it was an opportunity for Russia to demonstrate a grand strategy at the international level covering

economic independence, military might and control over domestic political sovereignty.⁵ It was only then, Russia would no longer be seen as at the periphery of great power status, but, as a key player in global affairs. In this regard, Russia was no longer keen on creating a path that leads to the salvation of Western democracy. What mattered was a strong Russia, a Russia capable of maintaining her pride and defending her peoples internally and externally. Russia was prepared to attack hegemony with hegemony and Vladimir Putin was keen on putting a stop to Western “crusades”⁶ especially those that affected the national interests of Russia. For Putin, the world was uncharacteristically about power-relations, and any imbalance in such power relations shifts the gravity of force unfavourably to a single nation.

For a while, from 1993 through to 2003 that imbalance was represented by the United States, given that, what Putin referred to was the overnight disappearance of the Soviet Union; the United States was able to dilute the laws of wars through the invasion of Iraq in 2003 and the Kosovo conflict in 1999/2008. On all occasions international law and international relations were *scientific* fields that failed miserably: international relations failed to orient Russia westwards through constructive dialogue and international law failed when the US invaded Iraq in 2003. By 2004 when the Iraq war

⁵ Graeme Herd, ‘Security Strategy: Sovereign Democracy and Great Power Aspirations,’ in Mark Galeotti (ed), *Politics of Security in Modern Russia* (Ashgate, 2010) 9 (also noting that sovereign democracy identified with the wresting of the Russian economy and resources from the Oligarchs and the chaotic 1990s, safeguards against Western intervention into domestic politics such as Ukraine and Georgia, single administrative bureaucratic chain of command, and a means of breaking patterns of revolutions endemic to Russia). But see, Valentina Fedotova, ‘Sovereign Democracy and a National Model for Modernism,’ in Abdusalam A Guseinov (ed), *Democracy for Russia, Russia for Democracy* (Institute of Philosophy, Russian Academy of Science, 2008) 12 – 15 (original Russian, В.Г. Федотова, СУВЕРЕННАЯ ДЕМОКРАТИЯ И НАЦИОНАЛЬНАЯ МОДЕЛЬ МОДЕРНИЗМА); Victoria Hudson, ‘Sovereign Democracy as a Discourse of Russian Identity’, in Philipp Casula and Jeronim Perovic (eds), *Identities and Politics During the Putin Presidency: The Discursive Foundations of Russia’s Stability* (Columbia University Press, 2009) 189 – 210.

⁶ Ronald Dannreuther, ‘Russia and the Arab Spring: Supporting the Counter-Revolution’ (2015) 37 *Journal of European Integration* 77, 83 quoting Putin as likening UN Resolution 1973 for intervention into Libya as ‘medieval appeal for a crusade.’

was in full swing – a number of other events were quietly taking shape in Russia’s near abroad beginning with Ukraine and the Orange Revolution and other notable coloured revolutions in Georgia and Kyrgyzstan. These former Soviet countries were shedding the final coat of enhanced ruling, a form of authoritarianism, and were embracing the gospel according to the American crusaders – liberal democracy. These were not only threats to the cohesive nature of the Russian Federation but were also a direct challenge to the Kremlin. Moreover, for Russia, the cold war relic military organization, the North Atlantic Military Organisation (NATO) adopted new military doctrines that were seen as counterproductive to the post-Soviet world order.

Whilst these developments were taking place, a little known Kremlin bureaucrat Vladislav Surkov, whose initial tasks as a *politologist* (the Kremlin’s chief political ideologue) to shape the intellectual discourse of the Kremlin’s policies introduced the concept of “sovereign democracy” to the Moscow intelligentsia and the upper echelons of the Kremlin controlled ruling political party – *Edinnaya Rossiya* (United Russia). The aim was to explain how Russia’s control over political and foreign relations would further mature. The new ideology of sovereign democracy was for a statist approach to policies that were compatible with Russia’s history and was largely defined to include how political powers and authorities control the decision making process of the Russian people. There is no precise definition of sovereign democracy, as it emanated from concepts such as power vertical, managed democracy and *Russianness*. Surkov, however, contended that the core elements of sovereign democracy emanated from a unique political culture in Russia that requires ‘(a) political unity through centralisation of governmental competence’; (b) ‘idealisation of the means of political struggle’; and (c) ‘personification of political institutions.’⁷ In other words, sovereign democracy ought to be construed as a way the sovereign (Kremlin ruler) centralises authority in a top down manner for the effective implementation of laws and policies. Although within and outside of Russia

⁷ Mikail Antonov, ‘Conservatism in Russia and Sovereignty in Human Rights’ (2014) 39 *Review of Central and East European Law* 1, 29.

there have been various interpretations and analyses on the true meaning of sovereign democracy⁸ there are no consensus of its relevance but it certainly attracted (and still does) huge interests from scholars and the general intellectual discourse in Russia. Furthermore, the intellectual and political pursuit of sovereign democracy as a new ideology would test the fields of international law and international relations. At the peak of the intellectual debate of sovereign democracy in Russia (2006 – 2008) its first external test was during Russia's engagement in the armed conflict in Georgia in the summer of 2008 where Russia challenged the international rules of armed conflict and state

⁸ One of the finest treatment of the ideological notion of sovereign democracy by a Russian author for a western audience is Viatcheslav Morozov's, 'Sovereignty and Democracy in Contemporary Russia: A Modern Subject Faces the Post-modern World' (2008) 11 *Journal of International Relations and Development* 152 (noting that sovereign democracy was a symptomatic and ideology that suffered from genealogical greatness in Russia's Soviet past). In general, the origin of sovereign democracy as an ideology in Russia has been credited to one time Kremlin chief ideologist, Vladislav Surkov's various public speeches at press writings that culminated in a "scientific" assessment and publication by the Philosophy Institute of the Russian Academy of Sciences. See Vladislav Surkov, 'Nationalism of the Future, A Few Paragraphs in Favour Sovereign Democracy', in Abdusalam Guseinov (ed), *Democracy for Russia, Russia for Democracy* (Institute of Philosophy, Russian Academy of Science, 2008) 71 – 86 (Владислав Сурков, НАЦИОНАЛИЗАЦИЯ БУДУЩЕГО. ПАРАГРАФЫ ПРО СУВЕРЕННУЮ ДЕМОКРАТИЮ), an English translation can be found at Vladimir Surkov, 'Nationalisation of the Future: Paragraphs pro Sovereign Democracy', (2009) 47 *Russian Studies in Philosophy* 8. Note that the English title of Surkov's publication in this footnote is mine and may differ slightly from other translations. There is evidence that prior and after Surkov's publication, sovereign democracy as an ideology was already creeping into Russian society based on Putin's ascent to the Presidency in 2000, and both the popular press and the academic literature was inundated with discussions on sovereign democracy. Eg, Михаил Рогожников, 'Что такое "суверенная демократия"' 14 ноя 2005, *Эксперт* №43 (489) [Mikhail Rogozhnikov, 'What is Sovereign Democracy? 43 *Ekspert* 489, 14 November 2005]; Andrey Kokoshin, 'Real Sovereignty and Sovereign Democracy,' (2006) 4 *Russia in Global Affairs*, 13 October 2006; Филиппов А.В, История России. 1945-2008 гг. Книга для учителя, (2008), глава 6, Суверенная демократия; А. А. Казанцев, «Суверенная демократия» в современной России: структура концепта и идеологемы [AA Kazansev, 'Sovereign Democracy in Contemporary Russia: The Structure of the Concept and Ideologism']. Derek Averre, "'Sovereign Democracy" and Russia's Relations with the European Union,' (2007) 15 *Demokratizatsiya* 173 – 190; Sergei Prozorov, 'The paradox of infra-liberalism: Towards a genealogy of "managed democracy" in Putin's Russia,' in Alexander Woll and Harald Wydra (eds), *Democracy and Myth in Russia and Eastern Europe*, (Routledge, 2008), 186 – 202.

⁸ Herd (n 5); but see, Fedotova (n 7).

recognition by asserting Russian sovereignty over Georgian territory. Another crucial test for the ideology of sovereign democracy in Russia was how it influenced the domestic legislative process by rolling back what was considered liberal gains towards the rule of law and the western system of democracy. For all intent and purposes 2008 was the year, as a result of the armed conflict with Georgia (and cyber-attacks on Georgia and Estonia) that Russia restored its place at the table of great powers. More importantly, the ideology of sovereign democracy that flourished in the mid-noughties in Russia played a crucial role in that restoration of great power status.

2. The Western origins of sovereign democracy

Although the ideology of sovereign democracy that flourished in the mid noughties in Russia first appeared as a home-grown ideology, its roots was actually more European – intellectual offshoots of Thomas Hobbes (1588 – 1679) and Carl Schmitt (1888 – 1985). Hobbes and Schmitt developed their most important works while conflicts (ideological and armed) were raging in their homelands. Hobbes wrote most of his works during the English civil war, and some of Schmitt's works appeared before and after World War two. Therefore, decoding the legal, philosophical and sociological impact of sovereign democracy as a political thought or ideology on Russia requires taking into consideration the influence of past Western intellectual thoughts. This is a natural trajectory given that Russia's home grown ideologies are often complex or mostly rooted in its Orthodox and Slavophilic nationalism. The external impact of non-Russian ideologies however are often more devastating. The impact of foreign ideological thoughts has been supreme to Russia's search for a place in the world especially where Russia believes that a void has been left open due to hegemonic actions by a single state or the moral decline of shared traditional values. If Western intellectual influence on Russia thrived for a while through Marxism and Communism, Russia ironically, reincarnated the chief Nazi legal ideologue Carl Schmitt as the intellectual grandfather of sovereign democracy, or, its version of conservatism. But prior to Marx, there was also an English connection – a variant of conservatism that fit the Russian narrative.

A. Hobbesian natural right to sovereign authority

The works of Hobbes has had a profound impact beyond the shores of England, as his works, are largely seen, from a legal perspective, the ideological bedrock of legal positivism. Furthermore, from a sociological point of view, Hobbes works are undeniably *the* great pillar of social theory. Taken together, these two aspects of Hobbes works creates an ideological circle in which those who are at the helm of government (sovereign) can use to formulate an ideal governance of society. Given that Hobbes penned his works during the English civil war, there is no doubt that some of his main concerns were governance and the rule of law. Two of Hobbes' main works captured these visions: *The Elements of Law, Natural and Politic* (1650) and *Leviathan, or the Matter, Form and Power of a Commonwealth Ecclesiastical and Civil* (1651). If Hobbes was writing during a time of great uncertainty as the English civil war ravished the land, and departed from the legal and political thought of previous philosophers that shaped English democracy; then, Russia in the mid-noughties had a similar awakening. Although Russia was immune from internal armed conflicts in the mid-noughties, the ideological⁹ conflict that was ongoing, in terms of Russia as a "civil society", had at its core, conservatism.¹⁰ If Hobbes was similarly concerned about conservatism, or rather, in a sociological interpretation of *Leviathan*, a conservative society flourishes within a social order, on the account that members of the society yield to a sovereign authority for their own wellbeing, then

⁹ See also, Samuel Huntington, 'Conservatism as an Ideology' (1957) 51 *The American Political Science Review* 454; Thomas Parland, *The Extreme Nationalist Threat in Russia: The Growing Influence of Western Ideas* (Routledge, 2005).

¹⁰ See also, Sergei Prozorov, 'Russian Conservatism in the Putin Presidency: The Dispersion of a Hegemonic Discourse' (2005) 10 *Journal of Political Ideologies* 121. I sometimes use "civil society" in two contexts. The first is a general reference to the engaged members that forms part of a society – "we the people", to protect civil liberties and in a different context, I also refer to civil society as part of a broader civilizational discourse that has been ongoing in Russia where demarcations among the state, socio-economic conditions and the general populace are drawn and the engagement of the people in the society-state relationship discourse through various formal and informal entities. But see, Sergej Ljubownikow, Jo Crotty and Peter Rodgers, 'The State and civil society in Post-Soviet Russia: The Development of a Russian-style civil society,' (2013) 13 *Progress in Development Studies* 153.

Russia during the first Putin presidency was charmed by these Hobbessian thoughts. The ideological conservatism that was brewing in Putin's Russia was that society should submit to a sovereign authority, and that central authority should be able to maintain stability and social cohesion through regulation. In Hobbesian terms, there was a *natural right* to sovereign authority especially if sovereign authority can also mean the central political seat of rulers in a nation state. What this means in modern times is the endorsement of a natural right to submit to a sovereign authority where enhanced ruling or a form of authoritarianism is acceptable in the political order of some societies. Although Hobbes endorsement of a sovereign authority appeals to a form of conservatism that is based on the *natural order* of nature or a higher *omnipotent order*¹¹ as one of the best form of social cohesion in a society he was appealing not only to England but to lands far and near with the same kindred spirit and traditions of the Christian world.

But a crucial Hobbessian element that seems to resonate with any comparison to modern Russia was the fact that Hobbes saw irresistible might as irresistible right¹² and the implication of this is that it has universal appeal and a 'reason for action',¹³ which incidentally, sovereign democracy on some occasions had been seen as a reason for action through Russia's irresistible military might. But, the main point is thus: Hobbes and his emphasis on natural law and social order served as part of the intellectual foundational elements of sovereign democracy as an ideology due to its vision of conservatism in traditional societies. In light of this, the next question is then how to interpret Hobbes within the realm of international law and then make a direct linkage to Russian sovereign democracy.

¹¹ See Ross Harrison, *Hobbes, Locke, and Confusion's Masterpiece: An Examination of Seventeenth-Century Political Philosophy* (CUP, 2003) 22 (discussing political power as a form of divinity).

¹² Ibid, 46, quoting Hobbes, *Leviathan* 31.5, p. 187: 'to those therefore whose power is irresistible, the dominion of all men adhereth naturally by their excellence of power'.

¹³ Ibid.

For Hobbes, the law of nations, or its contemporary version, international law was deeply rooted in the laws of nature. By identifying natural law with the laws of nations emanated from how Hobbes viewed the state at constant war and thereby international in nature. Again, one must take into consideration that the English civil war along with various claims to the English throne from continental sovereigns somehow influenced Hobbes thinking. In any case, Hobbes believed that all sections of society, sovereign rulers, the subjects of sovereign (the people) had a natural right, that, in the event of war, they have unlimited powers to defend the commonwealth (the nation). In other words, during conflicts, for Hobbes, the rulers of commonwealths have sovereign (authoritarian) rights and powers that determine how the commonwealth behave at the broader international level. As such, the sovereign right and powers that the central authority of the commonwealth possesses 'served to point to the presence of a basic framework of normative regulation for the relations among commonwealths.'¹⁴ This Hobbesian position could explain the nature of sovereign democracy during the early noughties (2000 – 2004) in Russia. But there was a problem. Russia was not war with any nations and Russia's position in international law was fairly "western" during that time, in that, it was in tune with the western conception of international law with no serious derogation.

It was during this relative period of calm that Russia turned inwards and began an ideological soul searching that started with the Russian political leadership and intelligentsia. But Hobbesian outlook of the world was not entirely satisfactory and a twentieth century legal and political luminary that served as the Chief Counsel to Nazi Germany – Carl Schmitt – ideas began to trickle down during the inward turn that Russia made. Hobbes and Schmitt shared a few personal traits. Both were born during the eighty-eight year of their respective century; they both viewed man as a dangerous creature, and, both Hobbes and Schmitt were strong defenders of an *omnipotent politic* in their writings and reflected through a sovereign authority in the state against liberal dilutions. Like

¹⁴ Charles Covell, *Hobbes, Realism and the Tradition of International Law* (Palgrave MacMillan, 2004) 61.

Hobbes who was writing during the English civil war, Schmitt, wrote most of his works during turmoil and conflicts, whether it was upheavals during the Weimar Republic, or, the rise of National Socialism and its armed conflicts across Europe. Moreover, one of Schmitt's most known work was an analysis of *Leviathan*¹⁵ originally published in 1938, and, was among other things, on the political philosophy of Hobbes. Russia's acceptance of Schmitt's political and legal conservative theory through the ideology of sovereign democracy, was of course, a bit of a paradox. However, let me try to and extrapolate the intellectual theories of Schmitt and its eventual reception in Russia.

B. Schmitt's conservative appeal to Russia

As a leading intellectual during the Weimar period one of Schmitt's target of his scholarly attack was parliamentarianism as evidenced by his 1923 work¹⁶ and its entrenchment in the Weimar constitution.¹⁷ Schmitt's theory on authoritarianism was quite appealing, and conservative academics have over the years investigated and found his writings non-ideological. Needless, to say, there have also been quite a number of critics of Schmitt's writings.¹⁸ For contemporary political conservatives and intellectuals in the academic world – the paradoxical world of Schmitt confronted legitimate questions pertaining to 'liberalism and democracy', 'politics and ethics' and 'enemies of state legitimization' and how this latter interacts with 'domestic and international politics.'¹⁹ For conservatives in Russia during the mid-noughties Schmitt's take on liberalism and democracy represented their own views on the peculiarity of Russia as a state and how it should develop and interact with the rest of the world. Therefore, for a start, Russia, the conservatives believe, should

¹⁵ Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol* (translated by George Schwab and Erna Hilfstein, Greenwood Press, 1996).

¹⁶ Carl Schmitt, *The Crisis of Parliamentary Democracy* (Ellen Kennedy translations, MIT Press, 1986).

¹⁷ Carl Schmitt, *The Concept of the Political (expanded edition, translated and with an introduction by George Schwab, with a foreword by Tracy Strong and Notes by Leo Strauss)* (University of Chicago Press, 2007) ix.

¹⁸ Eg, Matilda Arvidsson, Leila Brannstrom and Panu Minkinen (eds), *The Contemporary Relevance of Carl Schmitt: Law, Politics and Theology* (Routledge, 2016).

¹⁹ Schmitt (n 17), xiii.

continue with a *dictatorial* trajectory, in that Russia, for centuries has been accustomed to strong leadership (sovereign authority) and this must be reflected in the Russian rights and constitutional discourse. Mirroring the attempts to impose dictatorial powers under Article 48 of the Weimar Constitution (on presidential powers and executive government by decree), Russia actually followed suit in 2008 and amended its constitution and raised the presidential term from four years to six years. The thinking behind Schmitt's view was that politics 'cannot be made safe' and any such plans would 'result in the abandonment of the state to private interests and to "society"'.²⁰ Whether or not this was the same reasoning behind the amendment of the Russian constitution that raised the presidential term in 2008, is a different matter, what is certain is that by the end of 2024 Vladimir Putin iron-grip on the politics of Russia will more than a quarter century.

The reception of Schmitt in the conservative and intellectual circles in Russia was similarly to the rise of Schmitt in western academic literature, especially in the English speaking world, that is, to look beyond the ideology of Schmitt, and concentrate on his scholarly treatment of his political philosophy. Therefore, similarly to how Hegel (and Hobbes) was influential on the Bolsheviks prior and during the Russian Revolution, Schmitt too, rose in prominence, during the ideological renewal of the Russian state in the 2000s. Schmitt, like Hobbes, offered contemporary Russian intellectual revolutionaries a seventh passage away from the realms of capitalism, socialism, fascism, communism, liberalism, and Marxism, to that of sovereign democracy (Russian exceptionalism) – where *democracy* in Schmittian language – means direct representation of the people 'by the political leadership'.²¹ In Russia, it was the political leadership (sovereign authority) that endorsed the need for a new ideological path that was compatible with Russia's own development. Schmitt's

²⁰ Ibid, xv.

²¹ Benno Teschke, 'Fatal attraction: a critique of Carl Schmitt's international political and legal theory', (2011) 3 *International Theory* 179, 192.

works advances the legitimacy of authority and conservatism, a more appealing allure to Russia²² that has, according to Vladimir Putin, authoritarianism (super centralised state) planted in its very genetic code.²³ As such, there was an urgent need for an ideological solution and alternative to the forms of state management such as liberal democracy, but has an intellectual base built upon experience of the past. This was because all the other forms of state management and their liberal undertones were not compatible with the challenges Russia face in the contemporary world and how to forge its own ideological pathway.

3. The rise and fall of Sovereign democracy as a contemporary ideology in Russia

As an ideological concept to portray Russian exceptionalism, sovereign democracy had various layers and served as an ideological counter-narrative to western hegemony in Vladimir's Putin Russia and how Russia is viewed global affairs. The term itself is a bit of a paradox and even Russians were trying to come to grips with its literal pronunciation (Суверенная демократия/*Suverennaja Demokratija* or суверенитет демократии/*Suverenitet Demokratii*)²⁴ however, it was a coined term to reflect Russia as an autonomous political subject in the global arena. However, in the context of international legal relations, sovereign democracy was an identification of Russia's struggle for

²² See also Vladimir Gligorov, 'Benjamin Constant and Carl Schmitt Go to Russia', (1997) 8 *Constitutional Political Economy* 271, 277 (noting that Schmitt's approach can be found in the 1993 Russian Constitution).

²³ See Sean Cannady and Paul Kubicek, 'Nationalism and legitimation for authoritarianism: A comparison of Nicholas I and Vladimir Putin,' (2014) 5 *Journal of Eurasian Studies* 1, 6. Russian history in general has a tradition of blaming the Mongol invasion in medieval times for the introduction of autocracy in Russia, so, it is likely, Putin was referring to this in general.

²⁴ Valeria A. Lebedev and Valerii V. Kireev, 'Суверенная демократия или суверенитет демократии?' [*Suverennaja Demokratija ili Suverenitet Demokratii?*], (2008), the Research Center for Constitutional-Legal Problems, Cheblyanisk University.

recognition within the modern system of international law and the classic doctrine of sovereignty.²⁵

There are a few ironies in the term sovereign democracy itself. The first is that it literally conveys a form of democratic space, where parties and pluralists ideas thrives. However, because of changes to electoral laws in Russia a number of parties that once flourished in opposition disappeared because they failed to gain the minimum threshold to sit in the lower chamber (Duma). Thus, United Russia, the Kremlin controlled party dominated the political system under Putin mirroring communist one party rule. This was different from the number of political parties that emerged in the post-Soviet *democratic chaos* in Russia, where liberal, leftists, communists, nationalists, right wings and other parties reflecting a pluralistic²⁶ society competed for a voice among the nations of Russia.

Another irony in the term “sovereign democracy” is its conveyance of sovereign – destined to be ruler over subjects, and this latter description also fits into the Messianic mission that Russia often views itself: a divine duty to uphold the laws of god, conservatism and the natural order. Some of Russia’s liberal neighbours such as Sweden for instance has had instances where politics was dominated by a single political party. But not only Sweden, the same situation also happened in Japan for the first fifty years in their post 1945 make-up – a single party flourished in open democracy. Because Russia under Putin was not reviving the Communist party then there were hopes that the country would have go down the same route and democratically opened up at its own pace. Russia, perhaps, was genuinely building a political centre that was strong so that democracy could flourish at a later stage. Therefore, should the political centre be strong, then the country’s pride on the international stage ought to be fully restored. It can be argued that sovereign democracy from the

²⁵ See David Held, ‘The Changing Structure of International Law: Sovereignty Transformed?’ In David Held and Anthony McGrew (eds), *The Global Transformations Reader: An Introduction to the Globalization Debate* (Polity Press, 2003).

²⁶ See e.g., Vladimir Gellman, ‘From Feckless Pluralism’ to ‘Dominant Power Politics’: The Transformation of Russia’s Party System’ (2006) 13 *Democratisation* 545.

political party perspective was good for Russia and not compared to the haste and political humiliation after the collapse of the Soviet Union. But it was the ideological aspect of sovereign democracy that was more crucial and the impact of that ideological discourse on international law, in particular, when seen as an alternative approach to universal norms, human rights or democracy as understood in the west.

The chief intellectual architect of Russia's sovereign democracy ideology Vladislav Surkov saw sovereign democracy as a way of breaking away from the west and its imposition of western values on Russia. Russia has a strong history as a unitary state that goes back hundreds of years, and has a special place in the evolution of centres of power that controls and influences weaker or internal subjects of larger states within its realm. In Surkov's vision, sovereign democracy was Russia's post-Soviet answer in 'maintaining state sovereignty and the preservation of state control' and thereby 'insulate political power from international criticisms,'²⁷ by projecting Russia as the alternative to the west and or the east. Russia was finally embracing its destiny – and sovereign democracy was the answer. In embracing its destiny under the rubric of sovereign democracy meant that Russia was finally able to act without impunity as a sovereign state under the rules that makes up the international system and project its hegemon in both its near abroad and further afield. The Georgia conflict of 2008 and the Crimean crisis of 2014 were all examples of Russia's hegemon from a sovereign democracy point of view: international legal rules were only meant to supplement Russia's hegemon.

Because Russia was never a part of the traditional development of international law in the Westphalian context, or, at least has a rocky relationship with western development of international law from the Westphalian conception of sovereignty to the modern application of international legal rules, sovereign democracy presented an opportunity to chart's Russia's relationship with international law in the post-Soviet global hegemonic sense. If the concept of sovereign democracy

²⁷ Antonov (n 7)1, 28.

began as a political public relations project in the halls of the Kremlin, intellectual scholars on all sides in Russia took on the concept from the discourse in the mass media and turned sovereign democracy into a “social science”. Books and dissertations offering various interpretation and conception of sovereign democracy began to emerge.²⁸ However, there are two foundational elements on the emergence of sovereign democracy in Russia that accurately explains its rise and eventual fall from the intellectual and academic circles. The first was its Hobbesian/Schmittian intellectual foundation as I sketched out above. In the Hobbesian/Schmittian foundations the sovereign authority (ruler) was able to implement statist policies and seek legitimation of enhanced ruling. The second element was political nationalism. By political nationalism I mean how ideologues in the state political leadership extolled the virtues of nationalism as a way of justifying sovereign democracy to the point that sovereign democracy eventually failed to subdue civil society.²⁹

However, most Russians embraced conservatism that manifest through religion (including Orthodox and Muslims) and those espoused through isolationism. Therefore, the inward turn that Russia took in the mid-noughties towards home-grown conservatism through sovereign democracy was a rejection of the liberal western order that did not fit Russia. Russian leadership under Vladimir Putin concentrated on two main projects: (a) restoring Russia as a great power in international politics and (b) to put an end to the economic and political turmoil that plagued Russia in its first decade as a post-Soviet State. In order to achieve those objectives the Russian people needed a (state)

²⁸ Eg., Дмитрий Орлов, Андраник Мигранян, Михаил Рогожников (eds.), Суверенная демократия: от идеи к доктрине. Сборник статей, (Европа, 2005/2010) (Dmitri Orlov, Andranik Migranyan and Mikhail Rogozhnikov (eds), *Sovereign Democracy: From Idea to Doctrine – Collected Essays*, Moscow: Европа 2005/2010); Матвиенко, Яна Юрьевна, Институционально-правовые модели легитимации суверенной демократии в современной России, (Jana Yurevna, *An Institutional-Legal Model of Legitimacy for Sovereign Democracy in Contemporary Russia*, Rostov on the Don, 2008) (a dissertation in Russian legal sciences on the concept of sovereign democracy), <http://law.edu.ru/book/book.asp?bookID=1292726>.

²⁹ Eg, David White, *The Russian Democratic Party Yabloko: Opposition in a Managed Democracy* (Ashgate, 2006) (discussing the peak of the liberal political party Yabloko in the first decade of post-Soviet Russia).

sanctioned ideology that conveys Russian exceptionalism. Furthermore, such (state) sanctioned ideology must emanate from a strong political leadership (sovereign authority) that extolled the virtues of Hobbesian and Schmittian enhanced ruling and legitimise by the rule of law. As such, democracy as a notion and practice would need new meaning and forms part of a new ideology that had the tacit blessing of the state. That ideology should moreover, in Schmittian term,³⁰ serves the president and statist policies.

As an ideology, sovereign democracy initiated genuine debate within Russian society – yet it became obvious that one of the hidden agenda for this ideology – was the smooth transfer of power from the president to the prime minister in 2008, where they both would swap position, until the effective amendment of the Russian constitution was in place, that would allow Putin to run for a second presidency in 2012. The main political party United Russia had already vanquished all major political parties and return to the mind-set of Russians the notion of “one-party” system. Sovereign democracy as an ideology was part of this one-party reformation in which, as the ruling party, the *ideology* of sovereign democracy ‘was vital to solving the problem of succession, the most dangerous source of instability in autocratic regimes.’³¹ Although, the then prime minister, Dmitri Medvedev, stood in as president from 2008-2012, the real succession was the return of the former president, Vladimir Putin to the Kremlin as President in 2012 with a new mandate and extended presidential term, that was, as a result of the ideology of sovereign democracy from his first presidential term.

However, by the time of Putin’s second presidency in 2012, sovereign democracy was an idea that no longer had any value in pure debating terms. It was time to shift sovereign democracy from moot to practice. Moreover, the Kremlin had new priorities. For one, the notion of sovereign democracy as an ideology during the first Putin presidency confirmed that its main purpose was to create a smooth return of Putin to the presidency via a constitutional amendment that the ruling party

³⁰ Weimar Constitution, Article 48.

³¹ Ivan Krastev, ‘Paradoxes of the New Authoritarianism’, (2011) 22 *Journal of Democracy* 5, 12.

successfully orchestrated in the lower legislature of the Russian parliament, the Duma. Secondly, a vast majority of the Russian “civil society” and even external Kremlinologists never bought the idea. Both Russians and the world were wary of ideologies and sovereign democracy as an ideology spectacularly failed in its launch-pad, as it never inspired the *narod* beyond the walls of the Kremlin (and a clique of the Moscow intelligentsia). Yet, during, its formative years, sovereign democracy successfully created a new legal landscape in Russia. The next section examines the fundamental legislative and constitutional shift that occurred during the formative years of the ideology of sovereign democracy in Russia – a period in which most western liberal democracies accused Russia of rebuilding authoritarianism by depriving civil liberty and other notions of western liberalism.

4. The legal foundations of sovereign democracy in Russia

There were two distinct legal developments in Russia that “entrenched” sovereign democracy as part of state ideology during its rise and the period of Russian renewal in the mid-noughties. The first was the amendment of the Russian constitution raising the presidential term from four years to six years. Furthermore, new electoral laws were an offshoot of the constitutional amendment. Another legal development that aided and abetted the ideology of sovereign democracy was the series of legislations on civil liberties that were enacted during the same period as Russia underwent this new ideological revolution. The impact of these developments is long-lasting, in particular the constitutional amendment on presidential terms, given that they originated in the sovereign democracy movement. It is these two developments that are examined in the rest of this section of the chapter to extrapolate the legal impact of sovereign democracy and how its ideological development influenced the legislative and statist agenda during second term (2004 – 2008) of Putin’s first presidency (2000 – 2008).

A. Sovereign democracy on the domestic legislative front

One of the concerns of Carl Schmitt regarding political rule was that politics was never a safe vehicular for driving effective policies of a state, as such; states fare better under enhanced ruling. The provisions of Article 48 of the Weimar Constitution was one aspect of enhanced ruling where presidential powers were substantially expanded. The argument goes that, in some situations, the state should not be abandoned to private interests.³² If there was ever a parallel that could be drawn with Russia, where, as a nation state, it was abandoned to private interests, was during the post-Soviet decade (1992 – 2002) in which capitalism ran wild and a new breed of private business barons effectively ruled Russia. This club of private concerns have been immortalised as oligarchs – super business barons of Russia. Upon Putin’s election to the presidency in 2000, it was clear that the oligarchy presented a problem between political governance and business. By 2003 in the famous gathering of business barons with Putin in the Kremlin, the president issued them with an ultimatum – pursue business and stay out of politics. Some heeded, and others did not. Those who did not heed Putin’s ultimatum saw their business empire gradually returned to the state and a sleuth of legislations that “renationalised” strategic industries began to take shape. These legislative efforts were further signals that sovereign democracy was coming to Russia, and, as per Carl Schmitt, the Russian state should not be abandoned to private interests. However, although, the legislative changes began with concerns of the Russian business barons, there were a number of legislative developments affecting every sphere of Russian society.

Between 2000 and 2008 President Putin signed into law dozens of legislations and hundreds of decrees. Most of those with the greatest impact on society and drew criticisms from outside had to do with civil liberties in Russia. Furthermore, direct democracy in the regions and other federal subjects were discarded in favour of appointment by the Kremlin (sovereign ruler) of governors and heads of federal subjects. The legislations that some believed crippled civil liberties included those

³² Above (n 20).

that changed the rules for holding a referendum by amending a legislation in 2004³³ to allow the direct appointment of governors as opposed through a popular vote. Furthermore, the law on the election of parliamentarians was also amended in 2004 raising the electoral threshold to seven percent up from five percent.³⁴ Thus, in relation to the rules on Federal Governors, the *internal sovereignty* of regions and provinces would no longer be in competition with the sovereignty of the Federation.³⁵ In a sense, these were the core actions that legitimised sovereign democracy and enhanced ruling by the Kremlin during Putin's first presidency. But, by addressing those laws, we can get some sense as to how the ideology of sovereign democracy matured in various legislative and other normative acts front before making a public debut. The legal legitimisation of sovereign democracy that began with the various legislative acts throughout Putin's first presidency (2000 – 2008) were seen as a rejection of the democratic legal order consistent with western democracies. The various legislative developments concerning electoral matters and civil liberties were generally seen as part of the "sovereign/managed democracy" mantra, but given the rapid switch from "managed democracy" to "sovereign democracy" during the period, as both terms were being debated, it is best, in my opinion, to group those legislative actions as part of the broader sovereign democracy ideology.

i. Freedom of assembly/civil liberties and the tide of sovereign democracy

The (alleged) legal assault on freedom of assembly, free speech, religion and other civil liberties during the period of sovereign democracy was a dual dance of conservatism and experimentation with western standards of human rights.³⁶ Three particular groups of legislations (on assembly,

³³ Federal Law No. 159 – FZ, 11 December 2004.

³⁴ Federal Law No. 175-FZ, 20 December 2002, as amended on 28 December 2004; Federal Law No. 51-FZ, 18 May 2005.

³⁵ Eg, Federal Law No 119 -FZ, on the Division of Power Between Federation and Federal Subjects, with amendments to 20 May 2002.

³⁶ A number of legislations were introduced or modified existing legislations that were seen as an assault on civil liberties, these include, but not limited to, public associations, Federal Law No.82-FZ on Public

religious beliefs, and NGOs³⁷) with constitutional significance became the target of criticisms from the west, yet, fully endorsed by some parts of Russian society and legislators. Naturally, the odd internal critiques were present in Russia regarding those legislations, however, those internal critiques were not a strong opposition to roll back the legislative developments on civil liberties in the Russian Federation.

On the religious front, Jehovah's Witnesses, Scientologists³⁸ and the odd evangelical,³⁹ were impacted from laws that were meant to curtail their activities in the Russian Federation, where Orthodoxy, is all but a state sanctioned religion. While, discussions on the curtailing of religious freedom was not new, a broad discussion is not possible in this chapter,⁴⁰ suffice to say that given Russia's pluralistic and multi-ethnic society, the freedom of religion and belief is widely tolerated or an ongoing experiment in which the wider world could look up to as a form of social cohesion and harmony. Naturally, there are challenges and given the role of the Orthodox Church in Russia's history – Russia must still navigate the many beliefs of its peoples. The *Rossiannis* (ethnic Russians)

Associations (1995, amended 2004); religious associations, Federal Law No.125-FZ-Law on Freedom of Conscience and on the Religious Associations; charitable activities, Federal Law No.135-FZ on Charitable Activities and Organisations (1995, amended 2004); use of the federal prosecutor, Federal Law on the Prosecutor's Office of the Russian Federation (1992, amended 2004), Also, Article 129 Russian Constitution; and freedom of assembly, Federal Law on Rallies, Meetings, Demonstrations, Marches and Picketing (2004, as amended 2010), also Article 31 CON. See also Code of Administrative Offences (2001, as amended 2012). Federal Law No 54-FZ- on Assemblies, Meetings, Demonstrations, Processions and Picketing, 19 June 2004. The cases at the ECtHR are rather voluminous, but see e.g. *Barankevich v Russia* (2007).

³⁷ In 2006 the 1996 Russian legislation regulating NGOs was amended requiring them to report all forms of external assistance, Federal Law of the Russian Federation on Amendments to Certain Legislative Acts of the Russian Federation, 10 January 2006, Russian Gazette. See also, *Makhmudov v Russia*, Appl. No. 35082/04, 26 July 2007.

³⁸ See *Church of Scientology Moscow v Russia*, Appl. No. 18147/02, 5 April 2007, ECtHR.

³⁹ *Barankevich v Russia*, Appl. No. 10519/03, 27 July 2007.

⁴⁰ But see, Rimstad, in this volume; and, Mikhail Antonov and Ekaterina Samokhina, 'The Realist and Rhetorical Dimensions of the Protection of Religious Feelings in Russia' (2015) 40 *Review of Central and East European Law* 229 – 284.

tends to subscribe to Orthodoxy as a unifying element, but not necessary believers in a strict sense and *Russkiies* (the many peoples of Russia) have many deities from Judaism, Muslims, and Buddhism among others. The law on Freedom of Religion or Belief⁴¹ recognised the multi-ethnic beliefs of Russians and guarantees their 'legal relationships in the field of human rights and the rights of every citizen to the freedom of conscience and faith as well as the legal status of religious associations.'⁴² Yet, the law on freedom of religion and belief had been a *victim* of sovereign democracy in Russia – at least for some *foreign* religious organisations such as Jehovah's Witnesses,⁴³ the Church of Scientology⁴⁴ and the Unification Church.⁴⁵ For instance, the Church of Scientology Surgut City had been refused registration and complained to the ECtHR. The ECtHR, is significant because it is the first transnational court that dispense *justice* based on western standards regarding civil liberties in the Russian Federation. Furthermore, the case load from Russia grew gradually over the years, and the ECtHR found that Russia violated some form of civil liberties from 2002 through to 2007. Thus, where the ECtHR was hearing around two percent of cases from Russia in 2002 that figure would change dramatically by 2007 to twenty-two percent. Not only was Russia found to be violating its international obligations in the ECHR (and by extension other international law instruments such as the ICCPR and the UCHR, Russia was also creating a *blockade* against future notion of rights that were not endemic to the Russian society. Thus, for example, rights that could be claimed for personal sensual reasons among same sex, or, rights that were seen within the framework of extremism could be deterred by law: "propaganda" of same sex contact and extremism would have

⁴¹ Federal Law No. 125-FZ of 26 September 1997 on the Freedom of Conscience and Religious Associations (1997, as amended 2008). Also re Articles 14, 19 and 28 of the Constitution. Noticeable, ECtHR Case law include ECtHR (Application Nos. 76836/01 and 32782/03) *Kimlya and Others v Russia*, 3 December 2009; ECtHR (Application No. 2512/04) *Nolan and K. v Russia*, 12 February 2009; ECtHR (Application No. 302/02) *Jehovah's Witnesses of Moscow and Others v Russia*, 10 June 2010.

⁴² *Ibid*, Article 1.

⁴³ Jehovah's Witnesses (n 41).

⁴⁴ Kimlya (Scientology) (n 41).

⁴⁵ Nolan (n 41).

its limits.⁴⁶ Any promotion of extremist activities whether by individuals or organisations (even in the form of a right to assembly) were now subjected to the laws needed to construct Russia's new form of conservatism.

Naturally, there was a genuine concern in Russia to curb criminalistics activities that posed a threat to law enforcement. Elements of extremism in that context was at the forefront given the vacuum created during the dark years of liberalism (1992 – 2002) in Russia. It was that same opportunity – the threat of criminalistics extremism that allowed for the enactment of rules that responded to those threats; and also to curtail organisations that expressed their views on *extremist* activities that threatened the Russian state. Such organisations fell into the domain of social, religious, nationalist, cultural, and many others. Yet, ironically, the Extremism Law of 2002, for example, declared that its purpose was to protect 'the rights and freedoms of persons and citizens, the principles of the constitutional system, and the integrity and security of the Russian Federation.'⁴⁷ The latter clause of this part of the preamble alluded to the early beginnings of sovereign democracy because, part of the argument advanced for sovereign democracy was to protect *Russianness*; that is, the integrity, moral fibre and security of the Russian state. The enactment of the Extremism Law in 2002 for example, was not so much about the genuine concern of criminalistics extremism, rather, its enactment was part of the broader vision of enhanced ruling that the Kremlin began to quietly consolidate. This is because, had there been a Commission for example that examined the legislative proposal for the 2002 law on extremism and the content of other laws including the Russian constitution, then arguably, the 2002 law on extremism would have been unnecessary. But having said that, one should not ignore the fact that the law defined extremism⁴⁸ that was lacking in other legislations. However, given that, as posited, that the 2002 law on extremism, was the foundation

⁴⁶ Eg, On Counteracting Extremist Activity, Fed. Law. No.114-FZ (25 July 2002); Code of Administrative Violations, Article 6.13, 26 June 2013;

⁴⁷ Fed. Law.No.114-FZ, 2002, *ibid*, preamble.

⁴⁸ *Ibid*, article 1.

for what was to come regarding a crack-down on civil liberties in other areas and expanding sovereign democracy, it was no surprise that laws banning religious organisations or laws *de-democratising* the federal electoral process would follow in the ensuing years.

ii. Constitutional amendment and electoral laws

In a series of unprecedented protests as a result of the 2011 parliamentary elections in Russia that caught the Kremlin off-guard, the people rose up against what they saw were rigged election results and the dictatorship of Putin. However, the 2011 protests were already sewn in the sovereign democracy/*vertikalnaya vlast* paradigm from 2002 – 2008. For one, the sovereign democracy/*vertikalnaya vlast* paradigm had only one strategic aim in mind, but was not obvious at the time: the amendment of the Russian constitution (and subsequent presidential election in 2012 – and the second Putin presidency), especially in relation to presidential terms moving from four years to six years. Moreover, the various reforms in the electoral laws was a further aim of the sovereign democracy/*vertikalnaya vlast* paradigm, and, in 2011, the peoples protest was a rejection of sovereign democracy/*vertikalnaya vlast*. In other words, the sovereign democracy/*vertikalnaya vlast* paradigm on the domestic legislative front in Russia was designed and executed with a particular result in mind through policies and legal changes that bolstered enhanced ruling. Yet, for an effective explanation of this, the narrative must shape in the sequence of events from 1991 – through to 2008.

The Russian Constitution of 1993⁴⁹ emerged after a trial by error process in the 1991 constitution when it became clear that the Soviet Union was on a course towards being disbanded. That process began in 1990 when the Congress of People's Deputies of Soviet Russia⁵⁰ was elected and a constitutional commission was set up by Boris Yeltsin who forced Soviet leader Mikal Gorbachev to

⁴⁹ Constitution of the Russian Federation, 12 December 1993, Oxford Constitutions of the World, OCW CD 1023. In this chapter, I refer to this as the “Yeltsin Constitution”.

⁵⁰ By this I mean Russia as constituent republic of the USSR.

sign the disbandment of the Soviet Union on live television. When the first draft of the Russian constitution was produced in 1990 one of its core appeal was the system of popular vote to elect a president of Soviet Russia.⁵¹ But as different forms of internal strife rocked Soviet Russia and the Soviet Union on a whole in 1991, Yeltsin comfortably won the presidency of Soviet Russia in the summer of 1991 – six months shy of the disbandment of the Soviet Union in December 1991. However, as Yeltsin turned his attention to more pressing economic matters, members of the Congress of Deputies in 1992 began to demand a more active role in economic reform. This led to tension between Yeltsin and the Congress of Deputies that culminated in Yeltsin shelling the Parliament building in Moscow, and shortly after new parliamentary elections alongside a constitutional plebiscite. A new Russian constitution was adopted on 12 December 1993 and its only significant amendment was in 2008 to largely prolong the presidential term.⁵² The 1993 constitution in the rest of this chapter is generally referred to as the Yeltsin Constitution, so as to make distinctions later, when discussing the Putin amendments of 2008.

The Yeltsin constitution in some ways opened with a Schmittian overtone as it proclaims in the preamble that the Russian people revived ‘the sovereign statehood of Russia and asserting the strength of its democratic foundations.’ And from there, with two sections and 137 articles, the Yeltsin Constitution addressed civil liberties, the constituent parts that make up the Federation, legislative institutions, the governance structures, the judiciary, local government, procedure for amendments and the presidency. The presidency is covered in Chapter Four (Articles 80 – 93) where Article 81(1) sets the presidential term limit to four years and in Article 81(3) that the presidential term shall be no more than two consecutive terms and other presidential powers. Another important article worth mentioning for the purposes of this chapter is Article 13(2) which states that

⁵¹ This paragraph and the next is based largely on Timothy Colton and Cindy Skach, ‘The Russian Predicament’, (2005) 16 *Journal of Democracy* 113, 115. See also, Jane Henderson, *The Constitution of the Russian Federation: A Contextual Analysis* (Hart, 2011) chapter three.

⁵² Russian Constitution, amended to 2008.

‘no ideology shall be proclaimed as State or compulsory ideology.’ The attempts at fostering sovereign democracy as an ideology in Russia in the mid-noughties were not legally state sanctioned as that would have been unconstitutional, however, those attempts were widely supported by the executive (government and presidency) and were technically, short of being state sanctioned.

But let me briefly return to Chapter four of the Russian Constitution in this section to then compare it with Article 48 of the Weimar Constitution. According to Article 80(1) of the Yeltsin Constitution, the president is the ‘guardian of the constitution’. What this means is not so clear cut. Clearly, that provision appears to elevate the presidency into some form of “Tsar Emperor” or “Sovereign” and therefore above domestic political entrapments.⁵³ In any event, Article 80, in general, gives a summary on the role of the president. Furthermore, according to external Russian constitutionalist scholars such as Jane Henderson, ‘the provisions of Article 80 on the role of the President have been used to justify the extension of presidential powers by implication.’⁵⁴ A noticeable thing about the Yeltsin Constitution was the absence of a Vice President. The President exercise powers to nominate a Prime Minister and other key functionaries to institutions such as the central bank, but the Yeltsin Constitution excluded the position of a Vice President. However, it was past experience where Vice Presidents tend to attempt to seize power that made the Yeltsin Constitution excluded the role of a Vice President. But Article 92 provides for the Prime Minister to becoming acting president in the event the President is unable to fulfil his duties. One of the key role of the president under the Yeltsin Constitution was that the president was ‘to protect the sovereignty of the Russian Federation, its independence and State Integrity, and shall ensure the coordinated functioning and interaction of the organs of State power.’⁵⁵ Furthermore, Article 87(1) provides that the president can implement martial law if there is a threat or aggression against the Russian Federation.

⁵³ See also, Henderson (n 51) 110.

⁵⁴ Ibid, 129.

⁵⁵ Russian Constitution (1993), Article 80(2).

Upon reading these provisions of the Yeltsin Constitution, then one can begin to see the Schmittian call for enhanced ruling by the sovereign. Under Article 87(3), the president's power to implement martial law should be in conjunction with a federal constitutional law: 'the regime of martial law shall be defined by federal constitutional law.' However, prior to 2002, there was no federal constitutional law that helped to define or implement martial law. That law was only implemented in January 2002⁵⁶ heralding another legislative development in sovereign democracy (then branded as managed democracy or vertical power). According to Schmitt, via, Article 48 of the Weimar Constitution, the president can introduce a state of emergency as part of enhanced ruling. And in Article 88 of the Yeltsin Constitution, the president in conjunction with federal constitutional law⁵⁷ can 'introduce a state of emergency' in Russia providing that the legislature is informed. Although these characteristic traits are not unique to Russia only, and can be found in other constitutions, what is interesting is that, the provision sets in motion a pathway in which sovereign democracy as an ideology aligns with the political concept of Schmitt.

In fact, a proper reading of the Yeltsin Constitution can reveal its Schmittian characteristics that provides for enhanced ruling by authoritative sovereign⁵⁸ prompting one commentator to observe that the Yeltsin Constitution was 'at least one-third more powerful than was the president of the Weimar Republic.'⁵⁹ Thus, to concur, in a similar vein on how Schmitt view the sovereign as 'he who decides on the state of exception', the presidential powers under the Russian Constitution evokes a

⁵⁶ Federal Constitutional Law of 30 January 2002.

⁵⁷ Federal Constitutional Law of 30 May 2001. See also Article 90(1) noting that the president can 'issue edicts and regulations.'

⁵⁸ See also, Henderson (n 51) 130 expressing similar thoughts: 'the President's powers are impressive, and when the 1993 Constitution was first examined by Western scholars there was serious disquiet that it set up the possibility of a presidential dictatorship.' See similar views in Colton and Skach (n 51).

⁵⁹ Colton and Skach, *ibid*, 119. See also, Alexander Dormin, *The Limits of Russian Democratisation: Emergency Powers and States of Emergency* (Routledge, 2006); Peter Bernholz, 'The Constitution of Totalitarianism', (1991) 147 *Journal of Institutional and Theoretical Economics* 425.

similar sentiment. It is against this backdrop that in 2008 President Dmitri Medvedev signed into law amendments to the Russian constitution primarily extending the presidential term from four to six years and the also the lower legislature the Duma to five years up from four years.⁶⁰ The amendments saw changes to Articles 81.1 and 96.1 of the Yeltsin constitution respectively. Although the 2008 amendments to the Yeltsin constitution was carried out rather quickly, those amendments were not carried out by Putin himself, but by his successor who had just been in the job less than a year.

The electoral process itself was also a casualty of sovereign democracy in that electoral laws were fine-tuned to fit the narrative of political authority from the Kremlin.⁶¹ The electoral laws that came into effect during the first Putin presidency broadly fall into three categories: (a) that of strictly political parties,⁶² (b) on the election of the president,⁶³ governors⁶⁴ and parliamentarians⁶⁵ and other regional representatives,⁶⁶ and (c) legislation on referendum.⁶⁷ Of these three categories, the

⁶⁰ Federal Constitutional Laws No. 6-7 of 30 December 2008, Constitution of the Russian Federation of 25 December 1993, with Amendments to 30 December 2008.

⁶¹ See Cameron Ross, 'Regional Elections and Electoral Authoritarianism in Russia' (2011) 63 *Euro Asian Studies* 641.

⁶² Federal Law No. 95-FZ- on Political Parties, 2001, 11 July 2001, amended 2011).

⁶³ Federal Law on the Election of the President of the Russian Federation, 10 January 2003.

⁶⁴ Federal Law on Modifications and Additions to the Federal Law on General Principles of the Organizations of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation, 29 July 2000.

⁶⁵ Federal Law No. 175 FZ- on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation, 20 December 2002.

⁶⁶ Federal Law No. 131-FZ- on General Principles of Organization of Local-Self Government in the Russian Federation, 6 October 2003, transferring powers to federal organs.

⁶⁷ Federal Law No. 67-FZ-On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum, 12 June 2002. The amendments to this legislation over the years covers among other things a severe restriction on the use of media (propaganda material) during an election campaign.

most contentious has been the 2001 legislation on political parties⁶⁸ requiring political parties to be fully established in all regions of the Federation and setting a minimum membership threshold. These and other requirements in the original legislation were seen as “draconian” in comparison to western standards. However, in general these requirements were not novel as similar legislations in Europe has parallel provisions. Since 2001 the law on political parties has been amended several times and some amendments were in light of criticisms and other amendments were mostly on harmonising procedural requirements.

But there have been numerous cases on Russia before the ECtHR that challenged the various legislative developments; one notable case *Artyomov v Russia*⁶⁹ questioned the constitutionality of the laws on political party. In *Artyomov v Russia* the issue was whether a political party that sought registration could be associated only with a certain ethnic group. When the ECtHR was called upon to decide on the matter its ruling was not surprising. For the ECtHR, Russia violated the applicant’s right to freedom of association. Yet, prior to the ECtHR’s decision, the Constitutional Court of the Russian Federation was extolling the pluralistic and religious makeup of the Russian Federation when it decided similar cases in the 1990s. One of the interesting and often overlooked point of the decision in the Russian Constitutional Court, was the fact that its ruling came out during the early public discourse on the meaning, concept, and context of “civil society” (a discourse that later ran parallel to sovereign democracy) in Russia that begun in early 2003. Thus, for the Russian Constitutional Court: ‘contemporary Russian society, including political parties and religious associations, has not yet acquired substantial experience of democratic coexistence.’⁷⁰ The Russian Constitutional Court engaged the language of civil society in the form of democratic coexistence to

⁶⁸ Federal Law No. 95-FZ- on Political Parties, 11 July 2001, amended 2011. For a non-legal discussion see generally Laura Petrone, ‘Institutionalizing Pluralism in Russia: A New Authoritarianism?’ (2011) 27 *Journal of Communist Studies and Transition Politics* 166, (discussing electoral competition and unique Russian peculiarities such as electoral authoritarianism and competitive authoritarianism).

⁶⁹ *Artyomov v Russia*, Appl 17582/05, 7 December 2006.

⁷⁰ *ibid*, p. 3.

justify the denial of a political party that was only promoting a certain ethnic group. This was a minor coup for liberalism, yet, when the language and debate in Russia changed dramatically in 2004 – 2005 to that of sovereign democracy – the Russian Constitutional Court also aligned itself with that language and debate to justify the denial of justice in several cases.

B. The failure of international law and the legitimization of sovereign democracy

Global conflicts beyond the borders of Russia and President Putin's tacit support for conservatism in Russia coupled with a renewed pride in the Russian people encouraged the population to embrace the Kremlin's enhanced ruling. Moreover, Russia began to see international law as a diluted organism with various elements of decay and that could no longer speak of universalism. The decay of international law from a Russian perspective began with the 2003 invasion of Iraq, and since then, international law represents a hegemonic tool for western nations to use as disguise to justify their interventions in conflicts or to create conflicts. The Iraq war and the Kosovo conflicts made Russia wary of how international law was being used only as a language to represent the unilateral actions of the United States. Thus, from the perspective of Putin's sovereign democracy, international law was finally a spaghetti bowl in which different rolls of spaghetti could be removed from the bowl. In other words, international law was now a system to justify only what suits a political agenda of the hegemon. The participation of Russia in the diplomatic and international legal process to prevent a war in Iraq was a valuable lesson that strengthened the Kremlin's position to restore Russia as a great power. Moscow, had realised that it can also use or circumnavigate international law to defend the territorial integrity of Russia and to defend Russians abroad. For Moscow, it had a sovereign right to contain external forces that threatens Russia and international law was a convenient tool to defend or legitimise its actions.

i. The Iraq war: seen but not heard

The most significant moment in the post-cold war era that relegated Russia to the edges of international legal relations was the illusive war on terror in Iraq (2003 – 2011). Russia, had quietly conceded that it was not in a position to deter the US bombings of Belgrade in 1999 and Russo-American relations were not severely damaged. However, the Iraq war changed the dynamics of how international law fit in to the post-cold war world of Russo-American relationships and the plurality of the world order. Thus, while Russia was quietly nurturing sovereign democracy at home it was not in a position to demonstrate the fruits of this intellectual and (policy) revolution that affected all spheres of Russian society and on the international plane.

Thus, as the US and her partners of coalition of the willing embarked on a campaign in Iraq, and in the process, dismantled the system of international law, and ushered in a new doctrine of pre-emptive strike,⁷¹ Russia actively voiced its opposition. Yet, for the first time, Russia felt that it no longer mattered on the world stage. For Russia was unable to contain the US via the supremacy of the UN Security Council which embraces the principles and virtues of international law and normative authority of the UN Charter necessary for world peace. Russia found allies in unlikely places such as France and Germany in its opposition to the war. Russia's alliance with France and Germany to oppose the Iraq war was part of an effort to rebuild brand Russia in international relations, where a multipolar world exercise and upholds international law and avoids destabilization.

But Russia also had a domestic situation that was a replica of the international scene. Russia, as a multi ethnic country with various religious groups and counting over twenty-million Muslims, fear the breakup of its own Federation, and other threats posed by *civil* groups, and regional political instability. To counter such a threat, required the concentration of power in Moscow and the containment of groups through various legislative efforts. Only the full containment of the domestic

⁷¹ National Security Strategy of the United States (The White House, 2002).

situation could then allow Russia to act on the international stage with confidence in its own interests. But, for Russia to be successful in defending or pursuing strategic interests through the use of force, then, international law would need to be portrayed as irrelevant. The seeds on the irrelevancy of international law from the Kremlin's point of view were already sewn in the Iraq war.

A key line of opposition to the war that Russia constantly deployed was that the stability the UN Charter created in the post-World War two era was being eroded. For Russia, the UN Charter and the realm of international law were being turned into weak columns for the political rhetoric of a single hegemonic power and it was dangerous. For one, Russia, had already conceded, a number of strategic treaty law pillars to the US in the post- 11 September 2001 world, such as the US withdrawal from the ABM treaty⁷² and the enlargement of NATO. The UN Charter for its part outlaws the unilateral use of force except in self-defence,⁷³ unless authorised by the UN Security Council or the self-defence provisions of Article 51. The proposed UN Resolution for the Use of Force in Iraq in March 2003 was vehemently opposed by the France, Russia and Germany. Thus, on that basis, the US invasion of Iraq had been on shaky legal grounds from the beginning. The weak legal premise for the Iraq war helped to shape the domestic context of the legal and policy developments in Russia in earnest. For one, entities that were suspected to be a threat to the Russian state through external influences were now the subject of various restrictive rules, and secondly, Russia, as a sovereign nation (in the Westphalian context) should be able to project that sovereignty externally as a unified and strong nation, with little or no internal challenges.

As such, the Iraq war propelled Russia to examine its national sovereignty and what were the factors that posed a threat to the nation-state of Russia. Furthermore, by determining the *internal threats* to the sovereignty of the Russian state, it would, therefore, be in a position to align the changing

⁷² See eg, Emily Penney, 'Is that Legal? The United States' Unilateral Withdrawal from the Anti-Ballistic Missile Treaty' (2002) 51 *Catholic University Law Review* 1287.

⁷³ UN Charter, Article 2(4): 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state ...'.

nature of international law in the hegemonic world of the Iraq war. Because the new system of international law was also being shaped by how other international actors such as international organisations (e.g., the COE) or NGOs have on the domestic state,⁷⁴ diluting those positions, was, then a policy goal. In other words, for Russia to coexist with the elements that threatens its civilization, such as external NGO's, unruly ethnic minorities, and the new norms of international law (pre-emptive strikes), there must be a degree of control. It was against this background, that Russia made the *pre-emptive* strike shortly after the commencement of the Iraq war with referendums and legislative changes that embarked on the road to sovereign democracy. By the time the theatre of war commenced in Iraq in 2003, Putin in an address to the nation, reiterated the relevance of international law, but at the same time, indicated that as a 'political mistake' the war would open the door to global instability.⁷⁵ Putin saw the Anglo-American venture in Iraq as futile and warned that: 'Perhaps for the first time since the end of the Cold War, the world community has encountered such a grave crisis. In essence, the danger of an undermining of the foundations of global stability and international law.'⁷⁶ In that same address, Putin, for the first time, introduced a concept that went almost unrecognisable: 'immutable sovereignty.'⁷⁷ This was Putin echoing the notion of sovereign democracy, a term, he purposefully avoid, but referred to in various form as part of his vision of vertical power. Whether or not Putin had in mind, a religious undertone to his 2003 proclamation, what was clear, in the ensuing years, as the notion of sovereign democracy occupied the intellectual and policy debates in Russia – Russia was to be seen as also having a *messianic* duty in the world.

⁷⁴ See also, Bertjan Verbeek, 'Does Might Still Make Right? International Relations Theory and the Use of International Law Regarding the 2003 Iraq War' (2012) 42 *Netherlands Yearbook of International Law* 193 – 214; Símona Tutuianu, *Towards Global Justice: Sovereignty in an Interdependent World* (Springer, 2012) 43 – 94.

⁷⁵ Kremlin, President Vladimir Putin, Statement on Iraq at a Kremlin Meeting, 20 March 2003.

⁷⁶ Kremlin, 28 March 2003, also cited in Golan, *ibid*.

⁷⁷ *Ibid*.

The Iraq war presented Putin with an unexpected gift – that was orchestrated by the people. There was a strong opposition to the Iraq war in Russia, and even though, the opposition to the war from the official government sources were well known domestically and internationally; Russian *civil society* and peoples were more angry than the diplomatic side the government conveyed. Hospitable sentiments that were extended to the American people after 11 September 2001 were suddenly rescinded by ordinary Russians. The powerful corpus of the mass media rallied the Russian people in their opposition to the Iraq war, and further actions by the US such as pulling out of the ABM treaty, the eastward expansion of NATO and the prolonging of the Jackson-Vanik Agreement forced the Russian people in a cold-chill of their attitudes to the “western agenda”. It was this mini-revolution by the people during the Iraq war that Putin tapped into for a number of legislative and policy goals under the rubric of sovereign democracy (Putin called it *immutable sovereignty*) that began life as various forms of “vertikalnaya vlast” or “managed democracy”. It should be noted that Putin, in his first two and half years as president was moving westward into the family of nations of civilised states, but was stopped in his track, not by the Russian people or angry army generals, but by the Iraq war. It was during the vociferous opposition to the Iraq war in Russia that a series of pattern began to play out (democratically) that started to embolden Putin’s sovereign democracy mantra and how those domestic situations would affect legal changes.

But even though Russia saw the dangers from the Iraq war, he also knew, that domestically, rules were also necessary to *defend* the Russian state from its own *extremist* elements, and, in 2004, as the debate turned to sovereign democracy, Russia adopted a law curtailing assembly and demonstrations.⁷⁸ The events for the 2004 law on extremism was a product of the Iraq war. During the second week of the Iraq war, a demonstration by the Central Islamic Board of Muslims broke out in the Southern Russian republic of Bashkortostan capital city Ufa. The demands of the

⁷⁸ Federal Law, No. 54-FZ-, 19 June 2004.

demonstrators were simply: jihad against the United States.⁷⁹ The regional prosecutor later intervened and cautioned the demonstration organisers that their declaration amounted to a criminal act and was subjected to prosecution. Because the Iraq war galvanised all sections of Russian society, the very nature of the Russian state was also vulnerable to demonstrations by various ethnic and religious groups. But the most important lesson for Russia during the Iraq war was that its voice was ignored on the international stage as it pleaded from the principles of international law to be respected, and, having its voice ignored, it found itself in a position where it was seen but not heard. It was a lesson that Russia would later turn to its advantage, as it too, similar to how the United States justified the Iraq war as part of the elusive war on terror, and therefore, constituted self-defence; Russia's first use of force in an international conflict since 1992 began in Georgia in 2008, and, was now legally justified as self-defence.

ii. Seen and heard: Russia and the use of force in armed conflict with Georgia (2008)

The Russo-Georgian conflict in 2008 where Russia used force in an armed conflict beyond its territorial borders since the break-up of the Soviet Union was the crowning moment of how sovereign democracy as a political ideology had permeated and solidified the leadership in Russia. Russia was confident that the Iraqi war (2003) was a prime example of how nations can take pre-emptive strike against external threats. The Iraq war has been a very dark spot in international law and created loopholes for other states to pursue their national interest without fear of legal accountability. Because the Soviet Union was a complex pluralistic constellation held together by a communist ideology – the problem of identity and ethno-nationalism that plagued the Soviet Republics and also the micro-republics within the larger Soviet Republics were not given full attention by the political powers in Moscow. Thus, when the Soviet Union, disappeared in December

⁷⁹ See also, Galia Golan, 'Russia and the Iraq War: was Putin's Policy a Failure?' (2004) 37 *Communist and Post-Communist Studies* 429 – 459, 447.

1991, not only were the larger Republics such as Ukraine, Georgia, Kazakhstan, and minor ones such as Armenia and Moldova among the others that gained independence; but constituent micro *ethno-republic* within those republics were also seeking their independence. Thus, micro ethno-republics such as Abkhazia and South Ossetia in Georgia claimed their own independence. Other micro ethno-republics such as Transnistria in Moldova and Chechnya also attempted to separate from their larger siblings, but those attempts were put down largely based on military interventions from their larger siblings.

The quest for independence by these micro ethno-republics never disappeared and they enjoyed relative autonomy as “independent states” as their larger quest for self-determination remained frozen in international law. By 2008 as sovereign democracy was no longer an academic moot among the Russian elite and concerned members of the civil society the thaw of the early 1990s regarding the self-determination of micro ethnic-republics such as Abkhazia and South Ossetia flared up and pitted Russia against Georgia in five day conflict in the summer of 2008. Russia subsequently recognised the independence of South Ossetia and Abkhazia whilst the rest of the international community still views them as part of Georgia. For Russia, if Kosovo and East Timor, aided and abetted by the international community can unilaterally declare independence from sovereign states, then South Ossetia and Abkhazia, with the help of Russia (and the use of force)⁸⁰ can also become independent states.

For Russia, South Ossetia’s and Abkhazians were facing Georgian ‘oppression’⁸¹ and that was good enough cause to support their quest for independence. However, Russia had armed forces stationed

⁸⁰ In a strict legal sense, because Russia invaded the territory of Georgia, then by all accounts, such use of force in international law was illegal given that the UN Charter prohibits the use of force, UN Charter Article 2(4). However, Article 51 of the UN Charter permits the use of force for self-defence and with the consent of the Security Council (Chapter VII).

⁸¹ In fact, this argument was used a year later by Russia before the ICJ during submissions of the Kosovo case that self-determination is legal ‘only in extreme circumstances, when the people concerned is continuously

in South Ossetia (and other breakaway republics in the region) that were part of various agreements reached in the early 1990s during major conflicts in the region. But Russia claimed that in 2008 its forces in South Ossetia came under attack from Georgian forces. As a result its response amounted to self-defence and therefore was not violating Article 51 of the UN Charter. The situation regarding Georgia was different however, and could not be amounted to self-defence, given that Abkhazia had Russian “peace-keeping” forces and Georgia sustained continued aerial bombardment from Russian forces. But, thinking was that, when Russia took five days to oust Georgian troops from the break-away Georgian provinces of South Ossetia and Abkhazia in the summer of 2008, Russia was using the doctrine of pre-emptive strike as developed during the Iraq war to justify its self-defence in the region. The implication of that action saw a resurgent Russia where it reasserted itself in the international arena as a state that was exercising its sovereign statehood. For the first time since the collapse of the Soviet Union, Russia was directly taking part in an armed conflict with another sovereign state. This, was despite, at the expense of a state in Russia’s orbit of influence – the near abroad. Although Russia had supported the economic and cultural identity of the Abkhazia, South Ossetia and other former soviet regions that were part of a Soviet republic such as Nagorno-Karabakh in Armenia, Russia stayed away from any direct military intervention in those states, until 2008.

Russia’s intervention into the conflict was, in part, because, as part of the discourse on sovereign democracy in Russia, the country should also be seen as militarily strong and to be able to reassert great power status. Although, the build up to the conflict was initially seen as insignificant in the hegemonic order of the day, the impact it had on international law would amount to a farce in the ICJ as Georgia would later complained that Russia violated an international agreement on racial discrimination during the armed conflict. Moreover, the Georgian conflict of 2008, again, similar, to

subjected to most severe forms of oppression that endangers the very existence of the people.’ ICJ. Russia’s written statement (16 April 2009) pp. 39 – 40.

how, domestic opposition to the Iraq war in Russia, was a peoples revolution that the Kremlin exploited to pursue sovereign democracy as an ideology, the Georgian conflict also was a gift to the Kremlin, without Russia making the first move. Russia, by 2008, was wary of American hegemonic ambitions in the South Caucasus, and also the fact that the United States was never receptive of Russia's proposal for an alliance to combat international terrorism.

One of the proclamation for the intervention in Georgia that Russia invoked was to protect 'the lives and dignity' of Russians regardless of their place of abode.⁸² That argument, and by also justifying Russia's intervention in the Georgian conflict as part of "privileged interest"; Russia, was able to project onto the world, the international version of sovereign democracy. The debate on sovereign democracy during Putin's first presidency had also been largely cloaked in Russian ethno-nationalism, however, it would have been difficult to disturb the entity of the Russian Federation by singling out a particular ethnic group. Moreover, given that various forms of coloured revolutions had swept in places such as Ukraine and Georgia, sovereign democracy as a form of Russian ethno-nationalism was also meant to stop coloured revolutions in their tracks in Russia. The chaos, from the Russians point of the view, in the new hegemonic world order, where the new Russia was helpless during the bombing of Belgrade in 1999 and various coloured revolutions in the former Soviet Republics illustrated the need for Russia to rise to its once great power status.

Thus, it was no surprise that at the Munich Security Conference in 2007, one of Putin's last act during the second term of the first presidency, he declared that in light of the failure of a unipolar world, and a world dominated by one central authority with a sovereign, can destroy itself from within.⁸³ Although Putin was speaking in the context of American hegemony, his comments were also closely tied to the general debate on sovereign democracy or vertical power that was taking place in Russia, leading up to his speech in Munich. Sovereign democracy in the domestic context

⁸² Vladimir Putin, Speech, Valdai Club, 12 September 2008.

⁸³ Vladimir Putin, Prepared Remarks at the 43rd Munich Conference on Security Policy (12 February 2007).

had already gained the support of the Russian population due to the fact that the high price of oil was injecting foreign currency in the Russian economy and ordinary Russians saw a marked improvement in their lives during the first term of Putin's first presidency. But for sovereign democracy to make a mark externally it would require a strong sense of Russian ethno-nationalism and brute military force to correct mistakes in the international order. Thus, for Russia, an intervention into the frozen conflicts of the South Caucasus was to re-establish Russia's hegemony in the near abroad,⁸⁴ and, also to demonstrate the notion that sovereign democracy was ideologically driven as a geographic containment of western expansion.⁸⁵

South Ossetia, *de jure*, part of Georgia, has proclaimed, *de facto*, independence since 21 December 1991 and a brief war from 1991 – 1992 ended in with the signing of the Sochi Agreement in 1992.⁸⁶ In similar vein, after a brief war with Georgia, Abkhazia reached a similar truce with Georgia brokered by Russia.⁸⁷ Russia, for its part, supplied both self-proclaimed states with Russian passports, largely in part, as successor to the USSR, to fulfil pension and other social obligations. As, *de facto* independent states, arguably, they enjoy a right to self-defence in international law. Although not a part of the UN system, and hence, the UN Charter, both states relied on the argument that collective self-defence is exempted from the use of force principle in international law.⁸⁸ Russia, in part, relied on this argument, that according to Article 51 of the UN Charter, members may engage in a form of collective self-defence to justify its participation in the Georgian conflict. Although that argument never convinced the judges of the ICJ in the case of the US

⁸⁴ See also, Emmanuel Karagiannis, 'The 2008 Russian-Georgian War via the lens of Offensive Realism' (2013) 22 *European Security* 74 – 93.

⁸⁵ Eg, Thornike Gordadze, 'Georgian-Russia Relations in the 1990s', in Svante Cornell and Frederick Starr (eds), *The Guns of August 2008* (ME Sharpe Publishers: New York, 2009) 46.

⁸⁶ The Agreement on Principles of Settlement on the Georgian-Ossetian Conflict (Sochi Agreement, 24 June 1992).

⁸⁷ Agreement on a Ceasefire and Separation of Forces, 14 May 1994.

⁸⁸ Article 51, UN Charter. The Charter also forms part of customary international law.

intervention in Panama,⁸⁹ a reliance on such an argument would also meet severe opposition at the ICJ in *Russia v Georgia*.⁹⁰ At the ICJ, Judge Trinidad, in a dissent, managed to make a connection of what really took place in Georgia, an armed conflict in international law.⁹¹

In the Georgian conflict, Russia reasserted itself into the international community of great powers, and effectively use two weapons for such accomplishments. The first was transforming the nature of sovereign democracy into the language of privileged interests and then deployed that language for part of its legal justification for the intervention in the South Caucasus. The second weapon was the nature and state of international law itself. Russia had seen how international law responds to the hegemony of military might in Iraq and would use the Georgian conflict as a laboratory for its own alignment of international law to hegemonic military might. In this context, international law provided Russia with a form of offensive realism that could not be achieved by diplomacy and also the opportunity to take advantage of the chaotic nature of international law during the Belgrade/Kosovo crisis of 1999 and the Iraqi war of 2003. Yet, one unmistakably outcome of the Georgian conflict was that Russia, as a historic guarantor of the security of the nations and people in the South Caucasus, has actually brought peace to the region and remains only one of few countries that recognises the states that were at the centre of the conflict.⁹²

5. Conclusion

The rise of sovereign democracy in Russia in the first Putin presidency was a natural inclination on the leadership of the Russian *narod* to portray Russia as the *other* – a beacon of conservatism,

⁸⁹ Case Concerning Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v US*) (Merits), Judgment, ICJ Reports 1986, p. 14.

⁹⁰ But see, Natalia Lucak, 'Georgia v. Russian Federation: A Question of the Jurisdiction of the International Court of Justice' (2012) 27 *Maryland Journal of International Law* 323 – 354.

⁹¹ *Georgia v Russia* (n 1), Dissenting Opinion of Judge Trinidad, paras. 146, 147, 150, 158, 160.

⁹² See also, Susanna Badasaryan and Svetlana Petrova, 'The Republic of Abkhazia as an Unrecognised State' (2017) 5 *Russian Law Journal* 98 – 118.

laboratory for ideologies and great power status. Although a number of scholars have assessed the ideology of sovereign democracy in negative terms as part of the backwardness of Russia, those assessments lacked contextual rigidity based on normative developments in the nature of Russian civilizational discourse. Naturally, like most major ideological discourses there are certain loopholes that warrant fair criticism. But having said that, my only problem with how the discourse on sovereign democracy developed in Russia was its lack of plurality. Russia is a diverse entity with various ethnicities and peoples, and, during the great debate on sovereign democracy, it was purely one sided – a discourse among *Russians for Russians*. That great divide in the discourse was perhaps one reason for sovereign democracy failure to had appeal beyond the European *metropolis* of Russia. Thus sovereign democracy became the credo of *Russianness*, that is, the umbrella under which a single political, religious, and normative take on the external legal system is construed with a Russian identity for the purposes of a new dominion of legal norms beyond the worn out Westphalian system. Yet, as this chapter demonstrated, the ideology of sovereign democracy did not enjoy continuity, at least in the general discourse, rather, it was abruptly abandoned. Sovereign democracy was abandoned in part, due to the temporary changing of the guard in the Kremlin, where Dmitri Medvedev, stood as president from 2008 – 2012, and during which time, purges of ideologues and other powerful forces took place. However, upon Putin's resumption of the presidency in 2012 sovereign democracy returned in a guise. Because of the limited success in getting laws passed during Putin's second term in the first presidency, the situation changed in 2012, when laws were crafted under the protectorate of the ideology of sovereign democracy began to emerge including those on banning foreign NGOs. Nevertheless, Russia's experiment with the ideology of sovereign democracy was part of a carefully orchestrated effort to use the political process and legitimise constitutional amendment and secure the return of Putin to Kremlin with an extended presidential term in 2012. At the same time, the ideology of sovereign democracy was also in part to carve Russia's own alternative to Western liberal democracy and passage to a return of great power status

with a unique identity⁹³ in the post-Soviet world. As an ideology, sovereign democracy was an elitist project without *narodniki* mobilisation and was meant to be a cohesive consciousness to legitimise the legal structures of power that Putin created. The ultimate goal was to distinguish Russia from the west with a unique identity in modernism of the future. The advent of sovereign democracy in Russia was designed to ensure that enhanced ruling by the Kremlin achieved the desired legal changes in the domestic constitutional setting. Furthermore, sovereign democracy was effective in bolstering strategic changes in the Russian political system as a form of rhetoric for illusive aims of civil governance. The ultimate side effect of sovereign democracy through the centralization of power in Kremlin was the decimation of the very democratic process that began in the Yeltsin constitution and the premise of Russian federalism.⁹⁴

Word count: 15,665

⁹³ On a similar point see Andrey Makarychev, 'Russia's Search for International Identity Through the Sovereign Democracy Concept', (2008) 43 *International Spectator* 49; Andrei Medushevsky, 'Law and Justice in Post-Soviet Russia: Strategies of Constitutional Modernization' (2012) 3 *Journal of Eurasian Studies* 116 – 125; Alfred Evans, 'Putin's Legacy and Russia's Identity' (2008) 60 *Europe-Asia Studies* 899; and generally, Iver Neumann, *Russia and the Idea of Europe: A Study of Identity and International Relations* (2nd edition, Routledge, 2017).

⁹⁴ See also Ross (n 61).