

# To what extent, comparatively, might changes in international law constrain the use of the military instrument of power by Russia, China, and UK in the 2020s and 2030s?

James A. Green

Professor of Public International Law  
University of the West of England (UWE Bristol)

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Professor James A. Green

Bristol Law School, University of the West of England (UWE Bristol), Frenchay Campus, Coldharbour Lane, Bristol, BS16 1QY, United Kingdom  
+44 (0)117 328 1702 // [james14.green@uwe.ac.uk](mailto:james14.green@uwe.ac.uk) // ORCID: 0000-0001-6721-4490 // X: @james\_a\_green

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## Executive Summary

### Abstract

This article seeks to predict possible changes in international law over the period until 2040 relating to the exercise of military power, and then considers the potential constraining effect that any such changes may have on three states: China, Russia, and the UK. It argues that, in an increasingly multipolar global context, most legal 'change' will involve shifts in the interpretation of, and in the engagement with, legal rules, rather than the creation of new treaties. However, there will be clarification and development of legal rules in some key areas related to military power, such as artificial intelligence, outer space, cyberspace, private military security companies, and regional militarism. International law in these, and other, areas will influence the behaviour of each of China, Russia, and the UK in relation to their exercise of military power in the period to 2024, but to a limited extent, and in differing ways.

### Keywords

*international law*

*military power*

*change*

*future*

*constraint*

### Summary Conclusions

- With the end of US hegemony, we are witnessing a shift is towards a greater plurality of power and influence in international relations.
- In that context, there likely will be an increase in transactional, strategic, and contestation-driven approaches international legal relations.
- The creation of significant 'new' international law relating to military power is unlikely in the period to 2040.
- There will be legal developments in key areas, such as artificial intelligence, outer space, cyberspace, private military security companies, and regional militarism, but legal 'change' predominantly is likely to involve new interpretations of, or additions to, existing rules – and particularly how they apply to such areas – rather than the creation of entirely new forms of legal regulation.
- International law – existing and emerging – will continue to influence the actions of states, including China, Russia, and the UK (albeit to different extents and in different domains), but its constraining effect will only be as one of various factors, and rarely will it be the most important factor.

## Introduction

This article seeks to predict possible changes in international law over the period until 2040 relating to the exercise of military power. Section 1 discusses the context surrounding any such changes, ultimately arguing that significant legal change is unlikely. Section 2 then addresses some specific areas of potential change, before Section 3 considers the possible constraining effect of international law on the military instrument of power in the 2020s and 2030s for the three states under review: China, Russia, and the UK.

### 1. Contextual Factors and the Likely Nature of Legal ‘Change’

Predictions about the future of international relations and international law are necessarily speculative, but it seems reasonably clear that the world is beginning a period of ‘reordering’.<sup>1</sup> As is well-known, the (relative) global power of liberal democratic states – most notably the US – is lessening.<sup>2</sup> This trend is, of course, starkly demonstrated by the rise of China towards superpower status.<sup>3</sup> Global South states, too, are gaining a greater voice – more independent from western narratives – in international affairs and lawmaking.<sup>4</sup> The overall result is a shift towards a greater plurality of power and influence in international relations.<sup>5</sup>

One notable consequence of this ongoing shift involves the relative importance of ‘hard’ and ‘soft’ power, and their different deployment by the major players in the near and far abroad. For instance, writing in 2014, Richard Falk ruminated on the use of hard power (i.e., traditional military force) by the US and allies in what had until then been a post-Cold War age of US hegemony.<sup>6</sup> Falk contrasted failures of the western exercise of hard military power in Afghanistan and Iraq with the alternative use of soft power as an increasing feature of an emerging, more diverse, international political landscape.<sup>7</sup> It is undeniable that the growing power of the ‘BRICS’ states<sup>8</sup> *et al* has been built more on economic, rather than on military, development.<sup>9</sup>

In 2023, the importance of soft power is, indeed, increasingly evident and is likely to become ever more so in a global context.<sup>10</sup> One might note, say, China’s growing economic influence across Africa.<sup>11</sup> At the same time, Falk’s 2014 prediction of a move towards ‘a largely post-militarist global setting’<sup>12</sup> is only being partially realised, because we are now simultaneously witnessing a reorientation towards militarism and hard power deployment by certain powerful states specifically in their own geographic region (i.e., in their ‘near abroad’). There are some indications of a reversion amongst powerful states to the prioritisation of regionally ordered security through ‘spheres of influence’.<sup>13</sup> It seems likely that

this trend will continue in the future, in what will be a more inherently contested geopolitical environment.<sup>14</sup>

Given all of this, it has been credibly argued that a corresponding ‘change in direction is likely’<sup>15</sup> for international law, but the extent of that change is debated. It has been suggested that the international community is moving away from core tenets of globalisation, liberalism, and underpinning understandings of international law as – itself – being an ‘ideological’ endeavour, towards a more transactional, strategic, and contestation-driven basis for legal relations.<sup>16</sup> A shift back towards greater prioritisation of *state* security as opposed to *human* security is also said to be likely,<sup>17</sup> given the common priorities of authoritarian regimes and increased antagonism between the world’s most powerful states. Technology will surely be at the forefront of this landscape: there will thus be ‘new patterns of behavior marked by technological competition and coercion...’<sup>18</sup>

I would expect the various predicted shifts in state behaviour to occur without prejudice to the fundamental nature of the international legal system, however. Some writers have speculated that current trends and, particularly, current crises – such as the aggression against Ukraine or the situation in Israel/Gaza, which both are ongoing at the time of writing – can be expected to mark ‘the end of international law as we know it’.<sup>19</sup> Time will tell,<sup>20</sup> but I think this will prove to be hyperbole. Without minimising the gravity and human tragedy of the current situations in Ukraine, in Israel/Gaza (or in Sudan, Syria, Yemen, and numerous other parts of the world), it is worth noting that the death knell has been sounded for international law’s influence on military power multiple times throughout the UN era, and the post-WWII legal architecture has endured on every occasion.<sup>21</sup> I do not believe that we will see fundamental changes to international law or to its core processes due to current conflicts. Similarly, although China’s rise towards superpower status (and the emerging multipolar power dynamics between states in general) is significant in many respects,<sup>22</sup> in my view this ongoing realignment is not qualitatively different from any other major geopolitical shift of the UN era,<sup>23</sup> at least when it comes to its implications for international law.<sup>24</sup> Overall, the idea that there may soon be major *structural* changes to the international legal system in the security domain<sup>25</sup> is unlikely.<sup>26</sup>

Moreover, *substantive* change – i.e., in the sense of ‘new’ law – can also be expected to be limited. International lawmaking (or significant modification) can be difficult in a system that does not have a central/authoritative lawmaker,<sup>27</sup> particularly in areas that relate to state security.<sup>28</sup> This is an issue that is likely to become increasingly acute over the next two decades: again, because of the greater number of competing priorities on the international stage resulting from the end of US hegemony.<sup>29</sup> One might note that in a 2022 collection of essays by leading scholars on the laws of war about the future of the field,<sup>30</sup> there was a broad consensus amongst the contributors about the unlikelihood of much relevant new treaty law emerging in the period up to 2040.<sup>31</sup>

It nonetheless remains possible that some new international security law treaties will be adopted in the next 15 years, but, if so, they will be relatively few in number and the major powers will not be party to them (or, at least, not many of the major powers, and not to many of those treaties).<sup>32</sup> The core pillars of the system, such as the fundamental prohibition on the use of force in Article 2(4) of the UN Charter,<sup>33</sup> or the existing rules on the conduct of warfare under the Geneva Conventions *et al*,<sup>34</sup> will remain the legal baselines for the exercise of military power by states.

This is not to say that we will not see relevant ‘change’ in international law in the period to 2040, only that such change can be expected, predominantly, to involve shifts in the *interpretation of*, and of the *engagement with*, legal rules and processes, rather than the creation of new treaties.<sup>35</sup> It is worth keeping in mind, though, that the lack of a central lawmaker in the international system means ‘the borderline between legislation and interpretation is much more fluid than in domestic law’.<sup>36</sup> In some cases changes in interpretation can have direct legal effect in terms of the *manner* in which an existing treaty binds its parties<sup>37</sup> or through customary international law.<sup>38</sup> It can also be expected that in a number of security domains, more sophisticated ‘soft law’ – i.e., influential, but technically non-binding, ‘law like’ instruments<sup>39</sup> – will develop, in contrast to ‘true’ legal rules.

Overall, it seems likely that

[t]he future battle for the heart and soul of IL [international law] will ... not be framed around the embedding or disembedding of IL, but rather around how existing and politically unchangeable international legal texts – such as IL defending borders and sovereign choice – are to be understood.<sup>40</sup>

## 2. Some Specific Areas of Potential Legal Change

Having tried to clarify the relevant context as I see it, this section speculates on some areas of international security law where change may be forthcoming. For reasons of space and time, these points of focus are necessarily ‘cherry picked’. They were selected because they recur in the scholarship as key areas of likely change in the global security environment in the coming decades (albeit that *legal* change may not always track change in politics/technology/etc in these areas). Selection decisions were also informed by the fact that I believe that these areas are potentially some of the most pertinent for the three states herein under review in particular. The following list is thus both speculative and non-comprehensive.<sup>41</sup>

## 2.1. Artificial Intelligence (AI) / Lethal Autonomous Weapon Systems (LAWS)

It 'is hard to resist the idea that AI will play a crucial role in warfare in the coming decades'.<sup>42</sup> The deployment of 'fully' autonomous lethal systems is unlikely in the short term, albeit not impossible,<sup>43</sup> but major developments in AI-assisted warfare are inevitable.<sup>44</sup> In response, the use of LAWS is a rare area where at least some new treaty law looks quite possible in the next decade.

In the legal academy, discussion of LAWS is somewhat split between those who view the fact that the use of AI in warfare is currently lawful in certain circumstances as a positive (and in some cases also advocate developing the law further to facilitate greater use of AI in military contexts), and those who emphasise the importance of the applicability of the current law as an existing restriction (and in some cases also argue that more legal restriction is desirable).<sup>45</sup> Some commentators are focused, for example, on the extent to which AI can assist in collating and assessing data to support the identification of military targets and minimise risk of civilian harm.<sup>46</sup> Other scholars, though, are expressing concerns about whether AI decision-making has the nuance and accuracy to ensure appropriate humanitarian protections.<sup>47</sup>

To an extent, these debates are being replicated by states themselves, particularly within the ongoing work of the Group of Government Experts (GGE LAWS).<sup>48</sup> Some important 'soft law' has already emerged that provides guidance on the application of the laws of war to LAWS, most notably in the form of the 2019 GGE LAWS *Guiding Principles*.<sup>49</sup> Such work surely will be supplemented and developed in the next decade, quite possibly resulting in new treaty law.<sup>50</sup> However, there is some disagreement as to the form this should take. Some states – especially in the Global South – are advocating an outright LAWS *prohibition*,<sup>51</sup> or at least bespoke regulation,<sup>52</sup> but there is significant opposition to such measures from more powerful states.<sup>53</sup> It thus seems more likely that a new treaty will amount, in effect, to an expanded version of the GGE LAWS *Guiding Principles*: i.e., predominantly clarifying how the existing laws of war apply to LAWS.<sup>54</sup>

## 2.2. Outer Space

The securitisation of outer space is another domain where I can envisage the possibility of truly 'new' security law emerging in the period to 2040. However, if so, I believe it is more likely that this would be in the form of customary international law, not treaty law. There have been ongoing attempts since the mid-2000s to develop a treaty that better restricts the militarisation of outer space.<sup>55</sup> This has faced notable opposition from a number of key states,<sup>56</sup> though, to the point that the adoption of any new treaty law now seems improbable.<sup>57</sup> However, the issue of constraining a space arms race remains firmly on the agenda of the UN General Assembly,<sup>58</sup> and is the subject of opposing draft

resolutions developed by states in the First Committee as of late 2023.<sup>59</sup> Despite divisions amongst states, in my view, there is scope for customary international law to emerge in relation to space security in the period to 2040.<sup>60</sup>

There is a degree of coalescence, in particular, around the notion of a customary prohibition on Anti-Satellite (ASAT) weaponry (and especially its testing).<sup>61</sup> Wider calls for a (qualified) ASAT ban<sup>62</sup> were taken up by the UN General Assembly in December 2022, with resolution 77/41 urging states ‘not to conduct destructive direct-ascent anti-satellite missile tests’.<sup>63</sup> This is non-binding in itself, but the level of support for the resolution has been seen by some states as indicative of a trajectory towards a binding customary prohibition.<sup>64</sup> Some writers have even suggested that an ASAT test ban may have already emerged.<sup>65</sup> In my assessment this overstates the current legal position, but I would concur that practice would seem to be developing in that direction.<sup>66</sup> It is thus very possible that an ASAT test ban will emerge under customary international law in the next decade.

### 2.3. Cyberspace

Cyberspace is now ‘a central arena for inter-state conflict’,<sup>67</sup> with wide-ranging and instable security implications.<sup>68</sup> It is a domain that blurs the notions of hard and soft power, where established dynamics based on economic and/or military might can be inverted.<sup>69</sup> ‘Cyber-attacks’ of various sorts – including those perpetrated or sponsored by states – of course are no longer a new phenomenon,<sup>70</sup> but states have only recently begun formally setting out how they will interpret international law in the domain of cyber operations.<sup>71</sup> Thus the legal landscape remains uncertain. That said, it has become evident that states view the existing rules on the use of force and conduct of warfare as applicable and, at their core, sufficient.<sup>72</sup> Thus, legal ‘change’ here will again involve questions of interpretation and engagement (or lack thereof), rather than the creation of new binding provisions.<sup>73</sup>

Nonetheless, substantively, there is now a high degree of state agreement regarding the legal implications of large-scale cyber-attacks. The collective view is that a cyber-attack can constitute a ‘use of force’ in violation of Article 2(4) of the UN Charter.<sup>74</sup> There is now broad state support, too, for the idea that a cyber-attack can trigger a response in self-defence,<sup>75</sup> although its scope of application remains somewhat controversial.<sup>76</sup>

In relation to lesser-scale unfriendly cyber actions,<sup>77</sup> the last 2 years have also seen states starting to be explicit in articulating the view that such actions – if suitably coercive – are likely to violate the principle of non-intervention.<sup>78</sup> There remains a degree less clarity about whether cyber activity can also violate a state’s ‘sovereignty’ as a standalone legal rule.<sup>79</sup> That said, the ‘direction of travel’ now fairly evidently indicates that the law is indeed crystallising to the effect that an unfriendly cyber action



may amount to an unlawful violation of sovereignty, as a distinct substantive rule (irrespective of/additional to the prohibitions against the use of force and intervention). States are increasingly making this interpretation explicit,<sup>80</sup> and it is also the position taken in the influential (albeit non-binding) *Tallinn Manual*.<sup>81</sup> It seems highly likely that more detail will be developed – either in law or ‘soft law’ – as to how the sovereignty rule applies in cyberspace *in practice* over the next decade.<sup>82</sup>

#### 2.4. Private Military and Security Companies (PMSCs)

Another domain that could involve legal ‘change’ in some measure is the use of private military and security companies (PMSC) to project military power. The use of ‘mercenaries’ is hardly new, but the current scale and range of activity of PMSCs are.<sup>83</sup> Although general international law applies to the actions of PMSC,<sup>84</sup> there is no bespoke treaty on the matter, despite attempts to draft this.<sup>85</sup> There thus are still notable ‘gaps’ in the legal framework applicable to PMSC activity.<sup>86</sup>

Despite these gaps, it remains unlikely that a PMSC treaty will be adopted in the future, with opposition from some states continuing.<sup>87</sup> However, this is another area where increases in national self-regulation and the growing adoption of clearer non-binding international guidelines<sup>88</sup> are likely to, at a minimum, lead to the production of more detailed ‘soft law’ expectations in the future. Specifically, we might expect guidelines on state oversight of PMSCs,<sup>89</sup> establishing accountability,<sup>90</sup> and, perhaps, a wider range of due diligence obligations owed by states more generally.<sup>91</sup> With sufficient state buy-in these expectations potentially could translate into bespoke binding restrictions on PMSCs under customary international law, but ‘soft law’ is perhaps more realistic.<sup>92</sup>

#### 2.5. Regional Militarism and Collective Uses of Force

As noted in Section 1, a pattern seems to be emerging regarding the mixed use of soft power in the far abroad and (overtly militarized) hard power in the near abroad. It thus might be expected that the major state players will begin to speak *differently* about how international law applies to military power ‘on their doorstep’ vs. how it applies in global terms, with powerful states promulgating more permissive understandings for the former.<sup>93</sup>

There also will likely be more appeals to the right of collective self-defence, including abusively/pretextually, to ‘protect’ neighbouring states (i.e., maintain regional spheres of influence),<sup>94</sup> as well as more invocations of collective defence treaties and the creation of a few new ones (albeit bilaterally or, perhaps, on a subregional scale).<sup>95</sup> Indeed, whether within the framework of a defence treaty or not, it has been convincingly predicted that states will increasingly rely on ‘strategic coalitions’ in the context of the use of force over the next 15 years, especially in relation to regional security.<sup>96</sup> This may place greater strain on compliance with the laws of war, both because of the

'decoupling' of different global approaches to the application of the law as a result of more insular regionalism,<sup>97</sup> as well as because of the different approaches taken *within* a larger number of coalition operations.<sup>98</sup>

### 3. The Potential for Constraint of the Three States Under Review

This section attempts to predict the potential constraining effect, if any, that changes to international security law may have on the military instrument of power of the three states under scrutiny: China, Russia, and the UK.

#### 3.1. China

Western scholarship regarding recent (and potential future) Chinese engagement with international law paints a picture of valueless, cynical instrumentalism.<sup>99</sup> There is, admittedly, some truth in the narrative that modern China – at times – places quite limited stock in international law. China is resistant to external normative constraints on centralised Chinese Communist Party (CCP) power,<sup>100</sup> especially in the context of the more nationalistic and muscular approach now taken under President Xi Jinping.<sup>101</sup>

Equally, western characterisations of China's approach to international law tend to be narrowly ethnocentric, not least in failing to acknowledge that all states engage with international law instrumentally to an extent.<sup>102</sup> In this, China is no different. Some western characterisations also wrongly suggest an absence of 'value'. A more nuanced understanding is that the values that China sees as the most crucial underpinnings of international law (e.g., sovereign equality and autonomy, state security, and the facilitation of trade) are simply *different* from many of the supposed driving priorities for western states (e.g., human rights, rule of law, and democracy).<sup>103</sup>

In any event, as an emerging power,

China engages with the international order through a dialectic relationship by both defending the existing order to gain a reputation as a responsible great power and seeking to change those parts of the international order that do not align with its interests.<sup>104</sup>

This duality – conformity and contestation/disregard – means that international law's constraining effect on China in the period to 2040 should be expected to be qualified, and best understood in combination with other factors.<sup>105</sup> China has a longstanding preference for the exercise of soft power through global institutions and, especially, economic investment.<sup>106</sup> While President Xi's regime has

countenanced more overtly aggressive actions – notably China’s defiant and provocative stance on the South China Sea,<sup>107</sup> border clashes with India,<sup>108</sup> and increased sabre rattling over Taiwan<sup>109</sup> – the centrepiece of Chinese foreign policy for the last decade represents a continuation of its modern soft power tradition, in the form of the ‘Belt and Road Initiative’.<sup>110</sup> It also remains the case that China’s largest post-war extraterritorial military deployment has been in the context of UN peacekeeping.<sup>111</sup> There is reason to expect that military restraint will remain the predominant Chinese approach through to 2040.

While some commentators wisely caution that China’s threats to invade Taiwan must be treated seriously,<sup>112</sup> and, recently, others have argued that Russia’s aggression against Ukraine will embolden China further in that regard,<sup>113</sup> I would take the view that the current Ukraine crisis has made a Chinese attack on Taiwan less, not more, likely (albeit it remains a possibility).<sup>114</sup> The military quagmire that Russia now faces in Ukraine, the show of collective will demonstrated by NATO states, and the widespread (if qualified) international condemnation of Russia all reinforce China’s traditional soft power approach rather than its nascent hard power one. An important part of this dynamic – although only a part – is the role of international law, with international condemnation of Russia being framed in notably legal terms<sup>115</sup> and, most significantly, the resulting *economic sanctions* placed on Russia<sup>116</sup> being of a scale that will surely factor into strategic thinking in Beijing.<sup>117</sup>

The relative capacity of international law to constrain China’s instruments of military power in the 2020s and 2030s will still remain highly dependent on its strategic objectives,<sup>118</sup> especially in its near abroad. However, the importance of compliance with international law in facilitating the projection of the legitimacy of CCP control,<sup>119</sup> reinforcing China’s ‘responsible great power’ narrative,<sup>120</sup> and underpinning China’s crucial economic strategies,<sup>121</sup> should not be underestimated.<sup>122</sup> Admittedly, this will likely be filtered through a process of internalisation, given China regularly stresses the importance of state freedom to interpret and implement international legal norms as it sees fit.<sup>123</sup> It nonetheless remains the case that – in combination with other factors – the law can be expected to have some constraining effect on China’s use of military power in seeking to realise its more wide-ranging ambitions.<sup>124</sup> International law will also be used to *strengthen* China’s military reach, though. As noted in Subsection 2.5, powerful states are likely to build new collective defence alliances with other states over the coming decades to concretise regional security and influence, and China is already beginning this process (for example, in the South Pacific).<sup>125</sup>

Another of the specific areas where legal change was predicted in Section 2 – AI/LAWS – may be illustrative of the ‘mixed’ relationship China is likely to have with international legal development. This is because, on one hand, China has supported the idea of some form of international law restriction of autonomous weaponry at a broad level.<sup>126</sup> However, it has been equivocal when it comes to the

specifics of its stance. China has called for an outright ban on LAWS on more than one occasion.<sup>127</sup> However, it defines 'LAWS' extremely narrowly,<sup>128</sup> meaning that it has set an 'extremely high threshold in regard to the kinds of technologies that may be eligible for legal regulation'.<sup>129</sup> It also, more recently, seems to have abandoned stark references to a prohibition, instead emphasising a decentralised, domestic law approach.<sup>130</sup>

Some see China's 'shifting approach'<sup>131</sup> on LAWS as a symptom of an internal 'ambiguity' due to a genuine struggle to develop a consistent policy on the matter.<sup>132</sup> China has maintained the view externally that there should always be at least *some* degree of human control involved in the deployment of LAWS,<sup>133</sup> and it is likely that this stems, ultimately, from the need to centralise control as a fundamental feature of the one-party state.<sup>134</sup> It also is the case that since 2021 China has been developing its own AI governance rules at an accelerated rate,<sup>135</sup> and it has been predicted that the next few years will see the adoption of significant Chinese domestic law on this topic.<sup>136</sup>

At the same time, China is currently pursuing the development of AI-assisted weaponry at scale.<sup>137</sup> Indeed, it is shaping up to become an 'AI superpower',<sup>138</sup> including militarily, rivalled only by the US.<sup>139</sup> This, combined with China's narrow understanding of what it says needs to be regulated, has been argued to evidence a more deliberate policy of 'strategic ambiguity',<sup>140</sup> with the goal of China being able both to have and eat its LAWS cake. Certainly, there is a level of suspicion amongst some states as to the veracity of China's commitment to a possible new LAWS treaty.<sup>141</sup> Ultimately, therefore, I would see the potential of international law to constrain China's development of AI-assisted weaponry to be negligible over the coming decades. However, China is deeply engaged in the direction that the law is headed on AI, and it perhaps can thus be said that any resulting LAWS treaty is still likely to influence how and when China might be willing to *deploy* such weaponry, even if it will not slow down its development of it.

Similar uncertainty is evident in relation to China's approach to the militarisation of outer space. China has long been pushing for more bespoke treaty law on this issue,<sup>142</sup> while at the same time developing increased military space doctrines and capabilities.<sup>143</sup> Taking the possible customary ASAT test ban<sup>144</sup> more specifically, China has not tested any ASAT weaponry since 2007,<sup>145</sup> which perhaps could contribute to state practice strengthening a customary prohibition. That said, China continues to develop ASAT technology<sup>146</sup> and has now formally opposed a legal ban on those weapons – albeit perhaps ironically (and some may consider disingenuously), on the basis that proposals for such a prohibition do not *go far enough*.<sup>147</sup> If a customary ASAT ban does emerge, China may look to assert exempt status from it as a 'persistent objector' state,<sup>148</sup> or simply discredit the ban and argue it had not yet acquired binding status in customary international law. Either way, it seems unlikely a new ASAT test ban would meaningfully constrain China at least in the short to mid-term.

As for PMSCs, China has slowly been developing a significant private military industry, and now registers thousands of such companies, including many undertaking notable foreign operations.<sup>149</sup> However, the combination of the ‘soft power preference’ and inherent CCP centralisation already discussed means that China has been wary of what one might consider to be true ‘military projection’ through PMSCs,<sup>150</sup> viewing them more as ‘in house’ security for Chinese businesses rather than mercenaries to be used as an alternative to the People’s Liberation Army.<sup>151</sup>

That said, Chinese domestic regulation of PMSCs is extremely limited as compared to other nations with a large PMSC sector,<sup>152</sup> and while China was a strong supporter of the non-binding ‘Montreux Document’<sup>153</sup> internationally,<sup>154</sup> it again seems to prefer legal flexibility on the matter over meaningful binding regulation. China may, perhaps, support and adhere to (at least broadly) some further emerging ‘soft law’ restrictions on PMSCs.<sup>155</sup> However, one might question whether any such support for (non-binding) limitations on the hard power deployment of PMSCs could be a strategic cover for their increased soft power deployment, as part of what is a growth industry for China.<sup>156</sup>

Overall, it can be expected that China will continue to use international law very strategically, and the ability of international law – including new law – to constrain its military power is going to be inconsistent. That said, international law should be seen as one of a combination of factors that is likely to (continue to) direct China towards the predominant deployment of soft, rather than hard instruments of military power.

### 3.2. Russia

Unlike China, Russia has many of the features of a declining, rather than a rising, global power.<sup>157</sup> As a nuclear UN Security Council permanent member, Russia can nonetheless be expected to retain significant influence, especially regionally.<sup>158</sup> Despite their somewhat different trajectories, recent years have seen a degree of explicit alignment between China and Russia in regard to their understandings of, and approaches to, international law.<sup>159</sup> In certain respects Russia thus can be expected to engage with, and be influenced by, international law in a similar way to China in the near future. However, there also are likely to be differences.

The notion of ‘sovereignty’ is especially central to Russian approaches to international law, perhaps more so even than for other autocracies.<sup>160</sup> The concept was at the forefront of Soviet international law theory<sup>161</sup> and remains the key reference point for Russia and Russian scholars today.<sup>162</sup> Importantly, at least to an extent, the Russian understanding of sovereignty can be said to be a somewhat different cultural understanding than in the west,<sup>163</sup> one rooted more fundamentally in territory and security.<sup>164</sup>

Russia's prioritisation of this understanding of sovereignty is once again<sup>165</sup> manifesting in its exercise of hard power in the territories of states in its near abroad since the invasion of Georgia in 2008,<sup>166</sup> and of course then in Ukraine since 2014<sup>167</sup> and especially since 2022.<sup>168</sup> Relatedly, Russia is currently 'reinterpreting' its own understanding of the legal right of self-determination, giving it a decidedly controversial external dimension, as what appears to be a deliberate aspect of its security strategy.<sup>169</sup> Russia's proclaimed role in ensuring the 'self-determination' of ethnic Russians abroad (or, now more generally, those perceived to be part of a 'Greater Russia' in some form) was central to Russia's attempts to legitimise uses of force in both Georgia<sup>170</sup> and Ukraine.<sup>171</sup> This legal narrative in the near abroad is likely to continue as a means of trying to rebut other restraining rules of international law, such as the prohibition on the use of force.

One might also note Russia's increased military activity through the prism of the Collective Security Treaty Organisation (CSTO),<sup>172</sup> the regional defence apparatus that (in some respects)<sup>173</sup> succeeded the Warsaw Pact in the early 1990s. The CSTO had been largely dormant since then but unexpectedly became the basis for (legally dubious)<sup>174</sup> Russian troop deployment in Kazakhstan in 2022<sup>175</sup> as well as the legal grounds on which Armenia appealed for Russian military support later the same year.<sup>176</sup> It now seems likely that Russia and its allies will continue to 'activate' this treaty-based relationship to project Russian force in its near abroad.

However, future Russian military deployment in a traditional, hard power sense – whether under the auspices of the CSTO or not – can be expected to be more targeted, and of notably smaller scale, than has recently been seen in Ukraine. Irrespective of the outcome of the war in Ukraine, which at the time of writing is deadlocked and attritional,<sup>177</sup> the invasion has in various ways demonstrated the limitations of Russia's current hard military power, including to Russia itself.<sup>178</sup> It is unlikely that Russia is going to have the capability – or, indeed, the will – to mount an extra-territorial campaign on anything like the same scale in the next decade.

Of course, Russia's exercise of its military instruments of power under President Vladimir Putin has taken a more covert form too, especially in the realm of cyberspace.<sup>179</sup> Russia has stressed the need for new treaty law to limit aggressive cyber actions since the 1990s,<sup>180</sup> but its own offensive activities in that domain over the last 15 years have made this appear an increasingly disingenuous stance. Russia has become 'the source of the most dangerous coercive cyber operations',<sup>181</sup> and given the evident failures of its exercise of direct hard power in Ukraine, it is likely to, if anything, increase its aggressive cyber activity.<sup>182</sup> Existing international law (and new 'soft law' guidance)<sup>183</sup> is unlikely effectively to constrain this.<sup>184</sup> It is in this domain that Russia can be expected to seek further to exercise its military instrument of power more than in any other.

A degree of alignment to China is again evident when one considers the Russian position in relation to LAWS/AI-weaponry. Russia's stance is clearer and better delineated than China's,<sup>185</sup> but at its core is comparable. Russia strongly emphasised in both 2022<sup>186</sup> and 2023<sup>187</sup> that LAWS technology must be used in conformity with the existing laws of war, even implying that this expectation could be legally codified.<sup>188</sup> Beyond this, though, Russia prioritises the creation of non-binding best practice guidelines rather than new binding law.<sup>189</sup> Where there is difference between Russia and China on this issue is that Russia is more willing explicitly to advocate for the *benefits* of the use of LAWS technology than is China.<sup>190</sup> Russia also has tied the LAWS debate to regional security<sup>191</sup> – again indicating its current prioritisation of the near abroad in such contexts.

Ultimately, though, while Russia might utilise some AI-assisted weapons in its near abroad in the period to 2040, it seems somewhat less likely that Russia will deploy LAWS in the future than might China, at least on any scale. Russia has not been coy about the fact that it is producing LAWS and is seeking to develop more advanced LAWS,<sup>192</sup> but it has been noted by some commentators that Russian use of AI technology has been conspicuously absent in its war against Ukraine so far, and this is seen as a consequence of capability (or, rather, lack thereof).<sup>193</sup> As one commentator has argued:

Russia seems more focused on covert action in cyberspace than on weaponizing big data for its lethal potential, although it undoubtedly would adopt China's strategy if it had the resources to do so....<sup>194</sup>

The likelihood of Russia using AI weapons at scale may change,<sup>195</sup> but at present Russia's legal stance on LAWS aligns with the way the law seems to be heading – i.e., that developments predominantly will amount to further clarification of how existing laws of war apply.<sup>196</sup> This emphasis on the *restrictive* nature of the existing law arguably suits the realities of Russia's comparatively limited capacity in this domain.

Russia has long shown a preference for more robust international law restricting the weaponisation of outer space.<sup>197</sup> Indeed, at the time of writing, Russia is lead-sponsor of a draft UN General Assembly resolution once again pushing for such a treaty.<sup>198</sup> Yet, concurrently, Russia has explicitly rejected calls for an ASAT test ban,<sup>199</sup> and has pushed back against emerging state practice in this regard. Russia controversially undertook an ASAT test in November 2021,<sup>200</sup> i.e., considerably more recently than China's 2007 deployment.<sup>201</sup> The Russian test was met with widespread international condemnation.<sup>202</sup>

Moscow now sees 'satellite power' as a crucial element of warfare.<sup>203</sup> However, it seems to conceive of ASATs as predominantly *defensive* tools (i.e., what has been called part of Russia's 'counterspace portfolio'),<sup>204</sup> developed in response to longstanding fears of the use of long-range weaponry against

it,<sup>205</sup> and due to the strategic importance of maintaining its independent GLONASS satellite navigation system.<sup>206</sup> It is possible given Russia's current position that, were a customary international law ASAT test ban to emerge, Russia may, like China, attempt to claim 'persistent objector' status exempting it from that ban.<sup>207</sup> That said, despite recent rejections, Russia actually may be more open to a ban than it currently appears, not least because there are questions about the utility of its existing ASAT technology.<sup>208</sup> In the end, fears of other states using ASATs against Russian satellites<sup>209</sup> might outweigh any possible strategic gains from their deployment by Russia.

Turning to another domain discussed in this article, recent years have seen Russia increasingly utilising PMSCs, such as the infamous Wagner Group.<sup>210</sup> The strategic appeal of this is obvious, especially for a military power in decline like Russia. PMSCs can act as a significant force multiplier,<sup>211</sup> and can do so with the added benefits of comparative deniability, lower costs, and a degree of expandability.<sup>212</sup> As such, in 2022, one high-profile commentator predicted that over the coming years Russia will '*radically expand* its deployment of [private military] contractors around the globe.'<sup>213</sup> However, this was before the 'Wagner rebellion' of June 2023,<sup>214</sup> which may have somewhat lessened President Putin's appetite for utilising PMSCs. Indeed, even before the rebellion, there were alleged reports of some within the Russian government expressing unease with the degree of reliance placed on PMSCs in Ukraine.<sup>215</sup> It also is worth noting that the operational effectiveness of Russian PMSCs in the last few years has been very mixed,<sup>216</sup> which also will likely mean that Russia is less keen to expand its PMSC deployment than it would have been.

In any event, while Russia may not grow its PMSC deployment and is likely to exert more control over such groups in the future, the Wagner rebellion has not led to a fundamental change in Russian policy on PMSCs.<sup>217</sup> It is unlikely that any new international law (whether binding custom or non-binding 'soft law')<sup>218</sup> will act to constrain Russia's ongoing use of PMSCs on its own. It is worth noting that PMSCs are unlawful under Russian domestic law,<sup>219</sup> and yet Russia has been quite content to violate its own law in this regard (and to do so at scale),<sup>220</sup> which strongly suggests that it will not be curtailed in this regard by international law either. It is also well-established that Russian PMSCs have perpetrated egregious violations of both the laws of war and international human rights law,<sup>221</sup> suggesting little restraining effect stemming from the existing rules. If Russia does look to scale back on its PMSC reliance, it may align more closely with the efforts to regulate them in international law, but, in my view, this is a big 'if'. And, again, where this surely will not be the case is in the cyber domain, where I can only envisage Russia's use of private 'hacktivists' expanding in the next decade.

Overall, the constraining effect of international law on Russian military power will be limited, but – as with China – it will still be a factor that can contribute to restraint in some circumstances. Russia is now not quite as strategically dependant on being seen to be engaging with international law as is



China, but it is nonetheless notable<sup>222</sup> that its purported justifications for invading Ukraine in 2022 were steeped in legal claims, however spurious.<sup>223</sup> Especially in areas where the protections to be gained from international law restrictions may be of greater value than their strategic violation – such as in outer space – Russia is likely to engage with the law and may even seek to lead on it. A key area where this is extremely unlikely to be the case, however, is in regard to aggressive activity in cyberspace. In that domain, international law will have almost no impact on Russian activity.

### 3.3. The United Kingdom

To an extent, in its transition to middle power the UK has been able to retain a disproportionate level of soft power influence in relation to its hard military capacity,<sup>224</sup> through a combination of factors such as its permanent membership of the UN Security Council, its position as the only major cyber power in Europe,<sup>225</sup> and of course the inherent deterrence of nuclear weapons.<sup>226</sup>

As a liberal democracy the UK is likely to be more ‘constrained’ by international law – for good or ill – than powerful autocracies such as China or Russia.<sup>227</sup> As discussed in Section 1,<sup>228</sup> western democracies tend to view concepts such as human rights, free speech, and – importantly – the *rule of law* as underpinnings to their foreign policy, and the UK is no different.<sup>229</sup> In practical terms, this can translate into a constraining influence for international law even in what we might think of as ‘acute’ cases.<sup>230</sup>

That said, it has been demonstrably the case throughout the UN era that the UK is willing to violate international law – including through large-scale extra-territorial troop deployment – in certain circumstances.<sup>231</sup> This has occurred under Conservative, Labour, and coalition governments. States such as China and Russia explicitly view these violations by western states as supreme acts of hypocrisy,<sup>232</sup> not entirely unreasonably, and then use them to seek to legitimate (at least politically) their own breaches.<sup>233</sup>

In any event, in the coming decades, I think there is likely to be a relatively high degree of compliance by the UK with a number of emerging rules/interpretations of international security law, not least because of alignment between UK policy and what I expect to be the substance of those emerging rules/interpretations. When such alignment is combined the UK’s genuine (if far from absolute) commitment to the international rule of law, there is a strong compliance pull towards conformity. For example, in relation to AI/LAWS, the UK is unsurprisingly investing significant amounts in technological development across its armed forces.<sup>234</sup> It also has one of the most detailed and sophisticated state strategies for AI-related security issues,<sup>235</sup> as well as a wider accompanying policy framework.<sup>236</sup> These documents have been explicit about the importance of compliance with the laws

of war in any LAWS deployment,<sup>237</sup> as have the multilateral statements to which the UK has been a co-author<sup>238</sup> or has endorsed.<sup>239</sup> Much more extensively, the UK's 2022 submission to the GGE LAWS process was an extremely detailed proposal for the *specific* application of these existing rules to LAWS as compared to most other states.<sup>240</sup> While there are some campaigners who have raised concerns about the UK developing 'killer robots' unrestrained,<sup>241</sup> this seems alarmist hyperbole given that the UK has shown clear disinclination to develop truly autonomous weaponry (at least, anytime soon).<sup>242</sup>

All of this aligns with the direction of travel for international law on LAWS. As discussed in Section 2.1, even if a new treaty emerges (which the UK currently opposes),<sup>243</sup> it is unlikely that this would involve more than increased granularity in how the *existing* laws of war are to be adapted/applied. It also is worth noting that the UK policy on LAWS is notably collaborative with its allies,<sup>244</sup> which is likely to lead to a degree of mutually reinforcing restraint. While the UK's position on LAWS may shift based on the findings of the Lords Select Committee on the matter,<sup>245</sup> or other future reviews (either domestically or, say, within NATO), I think that the UK is quite likely to seek to adhere closely to emerging international law developments on LAWS. While this may in part merely be due to that legal development aligning with UK policy preferences, there are various signs that the UK is taking international law quite seriously in this domain.<sup>246</sup>

In relation to outer space security, the UK has recently taken a leading role in terms of the development of new norms. Recent years have seen the UK at the forefront of work in the UN General Assembly First Committee to try to develop rules on 'responsible behaviours' to minimise space-based threats.<sup>247</sup> That work produced some detailed proposals to guide behaviour,<sup>248</sup> but it also has again highlighted significant divisions amongst the key players.<sup>249</sup> Most recently, the UK has led on a further draft resolution looking to extend this work on the matter into 2025-2026.<sup>250</sup>

The intent behind the UK-led approach is, at its heart, to add more 'meat' to the 'bones' of the 1967 Outer Space Treaty<sup>251</sup> and other existing international law applicable in space.<sup>252</sup> While this can be contrasted to the more 'legalised' proposals of Russia, China, *et al* for a new arms treaty in space,<sup>253</sup> there is certainly the possibility that it, too, could contribute to the emergence of binding law in future.<sup>254</sup> This is especially the case given the widespread support for the UK's approach.<sup>255</sup> The UK has indicated that it 'would not in principle be opposed to some form of legally binding agreement' on the matter,<sup>256</sup> only that it opposes the specific treaty proposals that have so far been advanced.<sup>257</sup> It thus likely would accept being bound by norms developed via a process that *it is leading on and shaping* (albeit that, in my view, it is more likely that these norms would bind in custom than by way of a new treaty).<sup>258</sup>

More specifically, the UK has been somewhat equivocal as to whether it supports a *binding* ASAT test ban,<sup>259</sup> which currently seems the most likely legal change in the outer space context.<sup>260</sup> However, like a number of other states,<sup>261</sup> in 2022 the UK unilaterally declared that it will not ‘destructively test direct ascent anti-satellite ... missiles...’.<sup>262</sup> Leaving aside the fact that, in the right circumstances, unilateral declarations can have binding force under international law in and of themselves,<sup>263</sup> the UK declaration may also be seen as contributing, cumulatively, to the emergence of a binding customary prohibition in future. Again, given that the rule would reflect the UK’s self-imposed moratorium, it seems unlikely that the UK would violate such a prohibition should it crystallise.

One domain where the UK is finding itself an outlier is cyberspace, specifically in relation to the question of whether lower-level cyber action can amount to an illegal violation of sovereignty as a standalone rule. The UK has repeatedly been explicit that, in its view, there is no ‘specific rule or additional prohibition for cyber activity’ stemming from sovereignty, beyond the prohibitions on the use of force and intervention.<sup>264</sup>

However, the UK is alone in adopting this position, at least to the extent of doing so unequivocally.<sup>265</sup> Moreover, there has been direct push back against its stance from other states, including – perhaps tellingly – NATO allies.<sup>266</sup> Indeed, as discussed in Subsection 2.3, the contrary view will likely crystallise as the position under customary international law soon, if it has not done so already. As more ‘meat’ is added to the bones of this concept in terms of establishing how and when cyber actions violate state sovereignty – as also surely will be the case over the coming years<sup>267</sup> – the UK is likely to find itself increasingly isolated.

The UK might feel the ‘operational flexibility in state-sponsored cyber operations’<sup>268</sup> that denying the sovereignty rule affords it, and the possible defence/security benefits of this, is worth continuing to maintain its position. If this was translated into practice, it would amount to the UK breaching international law. It is worth keeping in mind the strategic importance to the UK of maintaining its status as a (relative) cyber power, but it is also worth keeping in mind the trade-off that means that the UK’s stance potentially also ties its hands in terms of the legal arsenal it can deploy in relation to cyber-attacks *against* it.<sup>269</sup> Maintaining the stance that there is no standalone sovereignty rule applicable in cyberspace is going to strain credibility in the coming years, and the UK ultimately may feel that the game of sticking to what has been described as a ‘legally implausible position’<sup>270</sup> is no longer worth the candle.

Overall, it is likely that emerging international law will constrain the UK in some key areas in the 2020s and 2030s. This will, in part, be because the UK’s policies are in alignment with the ‘direction of travel’ of the law in a number of instances. It is possible that international law will also constrain the UK in

areas where it would view the law less favourably, though, for example in regard to peacetime cyber operations and the issue of 'sovereignty'. The UK's liberal democratic credentials mean that it is more likely to fall into alignment even with law it disagrees with than are autocratic states. Equally, as the UK's previous practice makes clear,<sup>271</sup> it is sometimes willing to advance untenable interpretations of international law that concern questions of military power, and to do so alone. Therefore, ultimately, like Russia and China, the restraining effect of international law on the UK is unlikely to be absolute.

## Conclusion

States make the rules of international law that apply to them,<sup>272</sup> and more powerful states inevitably have a greater influence on any legal change. This means that possible legal developments through to 2040 will not manifest independently of the will of the three states considered in this article. Where powerful states disagree, it becomes less likely that new law will form. Even if it does, the consent-based nature of the system means dissenters can avoid being bound by the resulting rule.<sup>273</sup> Whether legal change occurs, and, if so, the way in which it occurs, is thus inherently interlinked with the extent to which it may then constrain China, Russia, or the UK.

It would be a mistake to conclude that international law has, or will have, no effect on the behaviour of these states.<sup>274</sup> It demonstrably does constrain states, even the most powerful, due to a range of mutually reinforcing social and political pressures.<sup>275</sup> As noted previously, current/ongoing violations of key legal rules related to the use of military force (Russia/Ukraine, Israel/Gaza, etc) – however egregious – do not indicate the 'death' of international law's key security provisions, nor do they suggest that international law has no restraining effect.<sup>276</sup>

Equally, one must not overstate the ability of international law to 'constrain' military power, or to see it as an entirely extrinsic, restrictive force. Like all law it is wholly dependent on its creators and appliers, and so – especially in the consent-based international legal system – its constraining effect will always be qualified.<sup>277</sup> Current violations act again to highlight that there are limits to international law's ability to restrain states' military instrument of power, especially nuclear states/UN Security Council permanent members, and especially in instances where their national security is (or is perceived to be) implicated.<sup>278</sup> International law is bent and broken more often and more glaringly in the context of the exercise of military power than it is in other areas.

This is only likely to be exacerbated in the period through to 2040, where a downward trend in compliance with the laws of war is likely<sup>279</sup> as a consequence of a shift towards a more contested multipolar world.<sup>280</sup> Yet international law – existing and emerging – will continue to influence the

actions of each of China, Russia, and the UK. That influence will vary for each of them and be different in relation to different domains. However, for all three, international law's constraining effect will be as one of various factors that inform state decision-making, and it will rarely be the most important factor.

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## Glossary

<b>AI</b>	'Artificial intelligence'. Machine-learning from experience and through the ongoing synthesis of large data sets.
<b>ASAT</b>	'Anti-satellite'. Used herein to refer specifically to anti-satellite <i>weaponry</i> . ASATs, in this context at least, are thus space weapons designed to incapacitate or destroy satellites.
<b>CCP</b>	'Chinese Communist Party' (officially the Communist Party of China). The governmental authority in the (one-party) state of the People's Republic of China.
<b>Collective self-defence</b>	The use of military force by one or more states to aid another state that is an innocent victim of armed attack. Contrasted to individual self-defence – being the act of a state truly defending <i>itself</i> , whereas in the case of collective self-defence <i>other</i> states defend the victim. Can be actioned <i>ad hoc</i> or on the basis of a pre-existing collective defence treaty arrangement.
<b>Collective defence treaties</b>	Treaties of various sorts that set up defensive arrangements/alliances and sometimes create formal collective defence organisations (such as NATO or the CSTO). Such treaties often legally oblige their parties to act in collective self-defence if one of their number is attacked.
<b>CSTO</b>	'Collective Security Treaty Organisation'. A collective defence organisation comprised of states from Eastern Europe/former Soviet Bloc, including Russia. In a loose/inexact sense, a successor to the Warsaw Pact.
<b>Customary international law</b>	Created through widespread and consistent state practice amongst the international community of states, coupled with the belief amongst states that such practice is legally obligatory or permitted. One of the two most important formal sources of binding international law (along with treaties). Rules of customary international law are unwritten but are nonetheless legally binding.
<b>First Committee</b>	'The First Committee of the United Nations General Assembly'. One of six main committees of the UN General Assembly. The mandate of the First Committee is focused on disarmament and international security.
<b>GGE</b>	'Group of Governmental Experts'. These are groups of experts appointed – commonly by the UN Secretary General – to study particular issues/areas of concern and report findings. Of particular relevance to the present article are GGE LAWS and GGE International Law and Cyberspace.
<b>GLONASS</b>	'Globalnaya Navigazionnaya Sputnikovaya Sistema' (i.e., 'Global Navigation Satellite System'). A satellite navigation system: effectively Russia's equivalent to the US-developed Global Positioning System (GPS).

<b>LAWS</b>	'Lethal Autonomous Weapons Systems'. Can independently identify and engage targets based on programmed data. Can be AI driven or assisted, but this is not necessarily the case.
<b>NATO</b>	'North Atlantic Treaty Organisation'. A collective defence organisation comprised of states from the north Atlantic region, including the UK.
<b>Near abroad</b>	Umbrella term to refer to the territories of other states in any given state's geographical region. Often used in relation to powerful states and can be linked to the notion of regional 'spheres of influence'.
<b>Persistent objector rule, the</b>	Mechanism that allows states to gain exemption from the otherwise universal binding force of rules of customary international law. If a state persistently objects to a newly emerging rule of customary international law during the formation of that rule, then the objecting state is legally exempt from that rule, once it crystallises into law, for so long as it maintains its objection. This mechanism therefore protects the consent-based nature of international law. Another way of thinking about this is that treaties are 'opt in', whereas customary international law is 'opt out': persistent objection is the means by which states can opt out.
<b>PMSC</b>	'Private military and security companies'. A term that covers a wide variety of private actors that provide military and/or security services on a commercial basis, often in the context of armed conflicts. This includes what are traditionally thought of as 'mercenary groups' but also other forms of private security provided to states or their representatives.
<b>Rule of law, the</b>	A key principle holding, in its simplest form, that 'no-one is above the law'. The rule of law restricts the arbitrary use of power though the applicability of law to all actors and their good faith observance of it. At the international level (sometimes referred to as the 'international rule of law') this idea is extended to all actors in the international system, including states, and requires equality before (and equal respect for) international legal rules.
<b>Self-determination</b>	The legal right of any given 'people' to determine their own destiny. A core principle of international law, but one that is poorly defined in terms of the requirements of its application in practice. Generally, does not extend to a right of secession or independence from a 'parent' state.
<b>Soft law</b>	A term that refers to 'law like' or 'quasi-legal' instruments that are not legally binding. 'Soft law' instruments often are presented/set out in a similar way to binding 'hard law' rules, meaning the key distinction is one of legal force, not form. 'Soft law' instruments are commonly referred to as, for example, 'guidelines' or 'recommendations'. Although not legally binding, 'soft law' instruments can still have notable influence on state behaviour. They also can directly inform and/or inspire the creation of future treaties or customary international law rules, which of course are legally binding.
<b>Treaties</b>	A binding formal agreement that establishes obligations between two or more subjects of international law, most commonly states and/or international organisations. One of the two most important formal sources of binding international law (along with customary international law).
<b>Treaty law</b>	Herein used to refer to rules of international law that are found in/created by legally binding treaties. It may be worth noting, though, that the term 'treaty law' is also sometimes used to refer to the branch of law that regulates how treaties themselves operate and must be applied, rather than the rules stemming from those treaties.
<b>UN</b>	The United Nations.
<b>Wagner group</b>	Large PMSC, at least partially funded by the Russian state and regularly deployed on behalf of Russia since 2014.

## Author Biography

James A. Green is Professor of Public International Law at the University of the West of England (UWE Bristol). He previously worked at the University of Reading (2006–2021). Professor Green has been a visiting scholar at the University of Oxford

(2017–2018) and the University of Michigan (2005). He is the author of *Collective Self-Defence in International Law* (Cambridge University Press, 2024), *The Persistent Objector Rule in International Law* (Oxford University Press, 2016 – winner of the European Society of International Law Book Prize), and *The International Court of Justice and Self-Defence in International Law* (Hart Publishing, 2009 – winner of the Francis Lieber Prize awarded by the American Society of International Law). He has also edited three major book collections and authored numerous book chapters and articles published in leading peer reviewed journals around the world. Professor Green is currently co-rapporteur of the International Law Association’s ‘Use of Force: Military Assistance on Request’ Committee. He sits on the Advisory Board of the *Journal on the Use of Force and International Law* (Routledge) having previously served as its co-editor-in-chief (2014-2023).

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## Notes

<sup>1</sup> Douglas Guilfoyle, ‘The Future of International Law in an Authoritarian World’, *EJIL:Talk!* (3 June 2019) [www.ejiltalk.org/the-future-of-international-law-in-an-authoritarian-world](http://www.ejiltalk.org/the-future-of-international-law-in-an-authoritarian-world) ([t]he liberal cosmopolitan project of global governance through international law and multilateral institutions has, at the very least, hit a bump in the road’).

<sup>2</sup> See, generally, Yongnian Zheng and Yun-han Chu (eds.), *The Decline of the Western-Centric World and the Emerging New Global Order: Contending Views* (Abingdon, Routledge, 2021); Karen J. Alter, ‘The Future of Embedded International Law: Democratic and Authoritarian Trajectories’ (2022) 23 *Chicago Journal of International Law* 27, 30 (discussing global ‘democratic backsliding’). It is worth keeping in mind that more of the world’s population live in autocratic states than democratic ones. There are various ways in which one might measure the number of people globally living under different types of political regime, meaning that there will be some variation in reaching a figure depending on the data used, but a useful recent account (which acknowledges such deviation) is Bastian Herre, ‘The “Regimes of the World” Data: How Do Researchers Measure Democracy?’, *OurWorldInData.org* (2 December 2021) <https://ourworldindata.org/regimes-of-the-world-data>. Moreover, some commentators have started predicting that over the next decade a corresponding shift in economic power will also result in greater GDP being produced outside of democracies than by them, for the first time in generations. See Roberto Stefan Foa and Yascha Mounk, ‘When Democracy is No Longer the Only Path to Prosperity’, *The Wall Street Journal* (1 March 2019) [www.wsj.com/articles/when-democracy-is-no-longer-the-only-path-to-prosperity-11551457761](http://www.wsj.com/articles/when-democracy-is-no-longer-the-only-path-to-prosperity-11551457761); Tom Ginsburg, *Democracies and International Law* (Cambridge, Cambridge University Press, 2021) 187–188; Guilfoyle (n.1).

<sup>3</sup> See Samuel Brannen, ‘Four Scenarios for Geopolitical Order in 2025-2030: What Will Great Power Competition Look Like?’, *Center for Strategic and International Studies* (16 September 2020) [www.csis.org/analysis/four-scenarios-geopolitical-order-2025-2030-what-will-great-power-competition-look](http://www.csis.org/analysis/four-scenarios-geopolitical-order-2025-2030-what-will-great-power-competition-look) (convincingly arguing that ‘the relative influence of the United States and China and their interaction [can be expected to] play a preponderant role in defining the international landscape ... [in the period 2025-2030]’).

<sup>4</sup> See, e.g., Bruce Jones and Adrianna Pita, ‘UN Reform and the Global South at the 2023 General Assembly’, *Brookings* (29 September 2023) [www.brookings.edu/articles/un-reform-and-the-global-south-at-the-2023-general-assembly](http://www.brookings.edu/articles/un-reform-and-the-global-south-at-the-2023-general-assembly); Dena Freeman, ‘The Global South at the UN: Using International Politics to Re-Vision the Global’ (2017) 11 *The Global South* 71.

<sup>5</sup> See Terry D. Gill, ‘The *Jus ad Bellum* Anno 2040: An Essay on Possible Trends and Challenges’, in Matthew C. Waxman and Thomas W. Oakley (eds.), *The Future Law of Armed Conflict* (Lieber Institute for Law and Land Warfare, New York, Oxford

University Press, 2022) 26, 37 ('we are likely to be in a much more multipolar world in which no one State is a hegemonic power').

<sup>6</sup> Richard Falk, 'Nonviolent Geopolitics: Law, Politics, and 21<sup>st</sup> Century Security', in Jonas Ebbesson, Marie Jacobsson, Mark Klamburg, David Langlet and Pål Wrange (eds.), *International Law and Changing Perceptions of Security: Liber Amicorum Said Mahmoudi* (Leiden, Brill Nijhoff, 2014) 93, particularly 98–102.

<sup>7</sup> *Ibid.*

<sup>8</sup> The current BRICS states are Brazil, Russia, India, China, and South Africa. It is worth noting that six more states – Argentina, Egypt, Ethiopia, Iran, Saudi Arabia, and the United Arab Emirates – will formally join the group on 1 January 2024. See Carien du Plessis, Anait Miridzhanian and Bhargav Acharya, 'BRICS Welcomes New Members in Push to Reshuffle World Order', *Reuters* (25 August 2023) [www.reuters.com/world/brics-poised-invite-new-members-join-bloc-sources-2023-08-24](http://www.reuters.com/world/brics-poised-invite-new-members-join-bloc-sources-2023-08-24).

<sup>9</sup> Falk (n.6) 102. See also Joseph Nye, 'Soft Power: The Origins and Political Progress of a Concept' (2017) 3 *Palgrave Communications* 1; Lord Jim O'Neill, 'Does an Expanded BRICS Mean Anything?', *Chatham House* (23 August 2023) [www.chathamhouse.org/2023/08/does-expanded-brics-mean-anything](http://www.chathamhouse.org/2023/08/does-expanded-brics-mean-anything) (discussing the economic development of the BRICS states and also the implications of the imminent enlargement of the group by six more states).

<sup>10</sup> See Heather A. Conley, 'Introduction', in 'The Future of the International System: Messy Multilateralism, Networked Technology, and Pioneering Innovation', *Center for Strategic and International Studies* (August 2021) [www.csis.org/analysis/future-international-system](http://www.csis.org/analysis/future-international-system), 1, 1 (predicting the 'revitalization and modernisation of industrial policies' as a key future manifestation of power globally).

<sup>11</sup> See, generally, Eleanor Albert, 'China in Africa', *Council on Foreign Relations* (last updated 12 July 2017) [www.cfr.org/backgrounder/china-africa](http://www.cfr.org/backgrounder/china-africa).

<sup>12</sup> Falk (n.6) 103 (emphasis removed from original).

<sup>13</sup> Claus Kreß, 'The Ukraine War and the Prohibition of the Use of Force in International Law' (2022) *Torkel Opsahl Academic EPublisher*, Occasional Paper Series No. 13, 1, 9–11; Pía Riggirozzi and Diana Tussie, 'Post-Hegemonic Regionalism', in Nukhet Sandal (ed.), *Oxford Research Encyclopedia of International Studies* (Oxford, Oxford University Press, 2021) (considering this trend specifically from the Latin American perspective); Anne Peters and Christian Marxsen, 'The Crimea Crisis and Reterritorialization of International Conflicts', Research Report 2015 – MPI for Comparative Public Law and International Law, *Max Planck Society* (19 June 2015) [www.mpg.de/9285650/crimea-crisis-reterritorialization-international-conflicts](http://www.mpg.de/9285650/crimea-crisis-reterritorialization-international-conflicts).

<sup>14</sup> Gill (n.5) 38–39.

<sup>15</sup> Guilfoyle (n.1).

<sup>16</sup> See, e.g., Shirley V. Scott, 'The Decline of International Law as a Normative Ideal' (2018) 49 *Victoria University of Wellington Law Review* 627; Ginsburg (n.2) particularly 186–236; Brannen (n.3); James Crawford, 'The Current Political Discourse Concerning International Law' (2018) 81 *Modern Law Review* 1; James A. Lewis, 'The Role of Cyber and Emerging Technologies and its Impact on the International System', in 'The Future of the International System' (n.10) 10, 10.

<sup>17</sup> See Bastien Irondelle, 'The New Parameters of International Security: Conceptual Introduction', in Anne-Marie Le Gloannec, Bastien Irondelle, David Cadier (eds.), *New and Evolving Trends in International Security*, *HAL Open Science* (HAL ID hal-03460878) (1 December 2021) 4, 5; Jack L. Goldsmith and Eric A. Posner, 'The Limits of International Law Fifteen Years Later' (2021) 22 *Chicago Journal of International Law* 111, 125; Lewis (n.16) 11.

<sup>18</sup> Conley (n.10) 1. See also Gill (n.5) 39.

<sup>19</sup> See Rachael Lorna Johnstone, 'Is Ukraine the End of International Law as We Know It?', *Journal of the North Atlantic and Arctic* (April 2022) [www.jonaa.org/content/is-ukraine-the-end-of-international-law-as-we-know-it](http://www.jonaa.org/content/is-ukraine-the-end-of-international-law-as-we-know-it) (regarding Ukraine); Christopher Black, 'The Collapse of International Law', *New Eastern Outlook* (1 November 2023) <https://journal-neo.su/2023/11/01/the-collapse-of-international-law> (in relation to the 2023 crisis in Israel/Gaza).

<sup>20</sup> Marco Sassòli, 'How will International Humanitarian Law Develop in the Future?' (2022) 104 *International Review of the Red Cross* 2052, 2052–2053.

<sup>21</sup> See Christian Marxsen, 'How "New" Are the Current Challenges to International Law?', *Opinio Juris* (14 November 2018) <https://opiniojuris.org/2018/11/14/symposium-how-new-are-the-current-challenges-to-international-law>; Crawford (n.16) 21–22 (arguing that the 'base [of international law] is a solid set of principles, norms and institutions: the fundamentals of the post-War global legal structure. It would be difficult for any state to effect a wholesale withdrawal from this solid base. It has survived the worst of the Cold War and many other international crises. We can have faith in those foundational layers'). The most famous instance of this 'death knell' being sounded is Thomas Franck, 'Who Killed Article 2(4)? Or Changing Norms Governing the Use of Force by States' (1970) 64 *American Journal of International Law* 809. However, see the rebuttal by Louis Henkin, 'The Reports of the Death of Article 2(4) are Greatly Exaggerated' (1971) 65 *American Journal of International Law* 544. More recently (notably, post 9/11), see Michael J. Glennon, 'Why the Security Council Failed' (2003)



82 *Foreign Affairs* 16; Michael J. Glennon, 'How International Rules Die' (2005) 93 *The Georgetown Law Journal* 939, and the rebuttal by David Wippman, 'The Nine Lives of Article 2(4)' (2007) 16 *Minnesota Journal of International Law* 387.

<sup>22</sup> See, generally, Zheng and Chu (eds.) (n.2).

<sup>23</sup> For example, the Vietnam War, decolonisation, the Cold War (and its end), 9/11 and the 'war on terror', etc.

<sup>24</sup> *Contra* Scott (n.16) (taking a different view: that the period since the end of the Second World War has been the era of the United States, and the rise of China represents something very different for international law).

<sup>25</sup> As some have suggested will occur: see, e.g., Bertrand Ramcharan, 'A New International Law of Security and Protection', *UN Chronicle* (April 2015) [www.un.org/en/chronicle/article/new-international-law-security-and-protection](http://www.un.org/en/chronicle/article/new-international-law-security-and-protection).

<sup>26</sup> See Conley (n.10) 1 (arguing that, in the end, over the next decade we will see 'the international community continue[] to practice multilateral diplomacy and follow the post-1945 international patterns of cooperation'); Matthew C. Waxman, 'Introduction: The Future Law of Armed Conflict', in Waxman and Oakley (eds.) (n.5) 5 (arguing that '[n]ew challenges are unlikely to break the system, but they will bend parts of it in multiple directions at once'); Hans Corell, 'The Mandate of the United Nations Security Council in a Changing World', in Ebbesson *et al* (eds.) (n.6) 39 (discussing the difficulties inherent in longstanding proposals to reform the UN Security Council, as an example of possible structural change in this area).

<sup>27</sup> See, generally, Alan Boyle and Christine Chinkin, *The Making of International Law* (Oxford, Oxford University Press, 2007).

<sup>28</sup> See Hersch Lauterpacht, 'The Problem of the Revision of the Law of War' (1952) 29 *British Yearbook of International Law* 360 (arguing in the early 1950s that the law of war was an area where notable legal change would be highly unlikely in the future – a prediction that has proved to be at least broadly accurate in the 70 years since). See also Sassòli (n.20) 2055 (arguing, more recently, that the last large scale treaty-based development in this area of international law was the adoption of the Geneva Conventions Additional Protocols in the late 1970s: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) (1977) 1125 UNTS 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) (1977) 1125 UNTS 609).

<sup>29</sup> See Andreas Motzfeldt Kravik, 'An Analysis of Stagnation in Multilateral Law-Making – and why the Law of the Sea has Transcended the Stagnation Trend' (2021) 34 *Leiden Journal of International Law* 935 (noting, at 956, that a current trend towards a stagnation in law-making is 'related to deeper geopolitical shifts by which traditional great powers, notably the United States and its allies, have seen their relative influence decline', and suggesting that we could therefore, potentially, be 'seeing a trajectory towards a multilateral system in a more permanent state of crises...'). This is a trend that already can be identified: since the year 2000, the average annual number of multilateral treaties deposited with the UN has been less than two, while the number was in the 30s or higher in the second half of the 1990s. See *ibid*, 935 (documenting this data).

<sup>30</sup> Waxman and Oakley (eds.) (n.5). This volume uses the term 'laws of war' to refer broadly to two distinct but related areas of international law: the '*jus ad bellum*' (also known as 'the law on the use of force') and the '*jus in bello*' (also known as 'International Humanitarian Law (IHL)' or as the 'law of armed conflict').

<sup>31</sup> See Waxman (n.26) 4 (noting this trend throughout the volume). See also Sassòli (n.20) 2055 ('there is today a near consensus that the substantive rules are largely adequate and that what is missing is better implementation mechanisms...'); Admittedly, major changes in international law relating to security have tended to follow in the wake of large-scale armed conflict (see Waxman (n.26) 1). There is thus the possibility that the full-scale Russian invasion of Ukraine or the situation in Israel/Gaza could lead to a global political climate more amenable to genuine legal change. However, in my view the reverse trend is more likely, with – for example – the aggression against Ukraine and the response from NATO states *et al* being reflective of a wider (and growing) dealignment of the major 21<sup>st</sup> Century powers, both established and emerging. Such dealignment will, if anything, have a greater stagnating effect in a system that is dependent on cooperative lawmaking.

<sup>32</sup> New treaties in this field – if they emerge – will, I predict, mostly commonly be developed through the so-called 'Ottawa Process', whereby 'interested' states negotiate new security treaties in the absence of states that are likely to oppose them. Such resulting treaties rarely then become binding on many (if any) of the states whose conduct they seek to restrain. The most obvious recent example of this is the Treaty on the Prohibition of Nuclear Weapons (TPNW) (2017) UN Doc. A/CONF.229/2017/8, which, as of November 2023, is binding on 69 states (for the ongoing status of the TPNW, see United Nations Treaty Collection, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVI-9&chapter=26&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-9&chapter=26&clang=_en)), but to which none of the nuclear possessing states are party. This means that while it has political pertinence, the TPNW's legal effect is close to zero, and is likely to remain so for the foreseeable future. See, generally, Beatrice Fihn, 'The Logic of Banning Nuclear Weapons' (2017) 59 *Survival* 43, 45; Michael Rühle, 'The Nuclear Weapons Ban Treaty: Reasons for Scepticism', *NATO Review Magazine* (19 May 2017) [www.nato.int/docu/review/2017/Also-in-2017/nuclear-weapons-ban-treaty-scepticism-abolition/EN/index.htm](http://www.nato.int/docu/review/2017/Also-in-2017/nuclear-weapons-ban-treaty-scepticism-abolition/EN/index.htm); Christopher P. Evans, 'Questioning the Status of the Treaty on the Prohibition of Nuclear Weapons as a "Humanitarian Disarmament" Agreement' (2021) 36 *Utrecht Journal of International and European Law* 52; James A. Green, 'Planetary Defense: Near-Earth Objects, Nuclear Weapons, and International Law' (2019) 42 *Hastings International and Comparative Law Review* 1, 25–28.

<sup>33</sup> See Charter of the United Nations (1945) [www.un.org/en/about-us/un-charter/full-text](http://www.un.org/en/about-us/un-charter/full-text), 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, or in any other manner inconsistent with the Purposes of the United Nations').

<sup>34</sup> See, generally, 'Treaties and Customary Law', *International Committee of the Red Cross*, [www.icrc.org/en/war-and-law/treaties-customary-law](http://www.icrc.org/en/war-and-law/treaties-customary-law).

<sup>35</sup> See Gill (n.5) 38; Alter (n.2) 31. It is worth noting that 'engagement with' here should be read as also including 'disengagement with' in some instances, such as the possibility of states withdrawing from key security treaties. On treaty withdrawal generally, see Vienna Convention on the Law of Treaties (1969) 1155 UNTS 331 (VCLT), Article 54.

<sup>36</sup> Sassòli (n.20) 2058. See also Ove Bring, 'The Use of Force under the UN Charter: Modification and Reform through Practice or Consensus', in Ebbesson *et al* (eds.) (n.6) 1.

<sup>37</sup> VCLT (n.35) Article 31(3)(b); International Law Commission, 'Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties', Text of the Draft Conclusions adopted by the Drafting Committee on Second Reading, UN Doc. A/CN.4/L.907 (11 May 2018).

<sup>38</sup> See Panos Merkouris, 'Interpreting the Customary Rules on Interpretation' (2017) 19 *International Community Law Review* 126.

<sup>39</sup> See, generally, Mariolina Eliantonio, Emilia Korkea-aho and Ulrika Mörtz (eds.), *Research Handbook on Soft Law* (Cheltenham, Edward Elgar, 2023). See also the Glossary to this article.

<sup>40</sup> Alter (n.2) 31.

<sup>41</sup> See, e.g., Sir Adam Roberts, 'Future War, Future Law: A Historical Approach', in Waxman and Oakley (eds.) (n.5) 7, 20 (providing a similar 'list' to the one that I set out in this section but adding to it).

<sup>42</sup> Ashley Deeks, 'Coding the Law of Armed Conflict', in Waxman and Oakley (eds.) (n.5) 41, 44.

<sup>43</sup> Alexander Blanchard and Mariarosaria Taddeo, 'Autonomous Weapon Systems and *Jus ad Bellum*' (2022) *AI & Society: Knowledge, Culture and Communication*, advance online access, <https://doi.org/10.1007/s00146-022-01425-y>, 1; Gill (n.5) 34.

<sup>44</sup> Deeks (n.42) 43.

<sup>45</sup> See Gregory P. Noone and Diana C. Noone, 'The Debate Over Autonomous Weapons Systems' (2015) 47 *Case Western Reserve Journal of International Law* 25 (for an accessible overview of the core debate). See also Daniele Amoroso, '*Jus in Bello* and *Jus ad Bellum* Arguments against Autonomy in Weapons Systems: A Re-Appraisal' (2017) 43 *Questions of International Law* 5.

<sup>46</sup> See, e.g., Deeks (n.42); Christopher P. Toscano, 'Friend of Humans: An Argument for Developing Autonomous Weapons Systems' (2015) 8 *Journal of National Security Law and Policy* 189; Michael N. Schmitt, 'Autonomous Weapon Systems and International Humanitarian Law: A Reply to the Critics' (2013) 1 *Harvard National Security Journal* 1. See also Francis Grimal and Michael J. Pollard, 'Embodied Artificial Intelligence and *Jus ad Bellum* Necessity: Influence and Imminence in the Digital Age' (2022) 53 *Georgetown Journal of International Law* 209 (arguing that AI will soon be able to deliver such precision in predicting future security threats that there will be a 'unique recalibration' of exiting understandings of when defensive force may lawfully be deployed pre-emptively, because what constitutes an 'imminent' threat will become increasingly contextual rather than temporal).

<sup>47</sup> See, e.g., Peter Asaro, 'On Banning Autonomous Weapon Systems: Human Rights, Automation, and the Dehumanization of Lethal Decision-Making' (2012) 94 *International Review of the Red Cross* 687; Markus Gunneflo and Gregor Noll, 'Technologies of Decision Support and Proportionality in International Humanitarian Law' (2023) 92 *Nordic Journal of International Law* 93; Ashley Deeks, 'Predicting Enemies' (2018) 104 *Virginia Law Review* 1529; Blanchard and Taddeo (n.43) 1–2.

<sup>48</sup> For the most recent report of the GGE LAWS, see Report of the 2023 session of the Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems (advance version), Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2023/CRP.2 (6 May 2023).

<sup>49</sup> Report of the 2019 session of the Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems, Annex IV: *Guiding Principles*, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2019/3 (25 September 2019).

<sup>50</sup> This would be most likely to emerge as a new protocol to the Conventional Weapons Convention. See, e.g., Draft Protocol on Autonomous Weapon Systems (Protocol VI), submitted by Argentina, Ecuador, El Salvador, Colombia, Costa Rica, Guatemala, Kazakhstan, Nigeria, Palestine, Panama, Peru, Philippines, Sierra Leone and Uruguay, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2023/WP.6 (11 May 2023).

<sup>51</sup> See, e.g., *ibid*; Proposal for an International Legal Instrument on Lethal Autonomous Weapons Systems (LAWS), submitted by Pakistan, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2023/WP.3/Rev.1 (8 March 2023).

<sup>52</sup> Elements for a Legally Binding Instrument to Address the Challenges Posed by Autonomy in Weapon Systems, submitted by Chile and Mexico, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2022/WP.5 (8 August 2022).

<sup>53</sup> See “‘Killer Robots’: Russia, US Oppose Treaty Negotiations”, *Human Rights Watch* (19 August 2019) [www.hrw.org/news/2019/08/19/killer-robots-russia-us-oppose-treaty-negotiations](http://www.hrw.org/news/2019/08/19/killer-robots-russia-us-oppose-treaty-negotiations).

<sup>54</sup> See, e.g., Draft Articles on Autonomous Weapon Systems – Prohibitions and Other Regulatory Measures on the Basis of International Humanitarian Law (‘IHL’), submitted by Australia, Canada, Japan, Poland, the Republic of Korea, the United Kingdom, and the United States, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2023/WP.4/Rev.2 (15 May 2023); Draft Resolution on Lethal Autonomous Weapons Systems approved by the UN General Assembly First Committee, UN Doc. A/C.1/78/L.56 (12 October 2023).

<sup>55</sup> See United Nations Office for Disarmament Affairs, Conference on Disarmament ‘Documents Related to Prevention of an Arms Race in Outer Space’, <https://disarmament.unoda.org/documents-on-core-issues>. The core treaty in this area remains the enduring (but in some respects limited) Cold War era Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967) 610 UNTS 205 (Outer Space Treaty, OST). The most notable example of an attempt to develop treaty law beyond the OST is the Draft Treaty on Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force against Outer Space Objects (PPWT 2014) 2014, annexed to Letter dated 10 June 2014 from the Permanent Representative of the Russian Federation and the Permanent Representative of China to the Conference on Disarmament addressed to the acting Secretary-General of the Conference transmitting the updated Russian and Chinese texts of the draft treaty on prevention of the placement of weapons in outer space and of the threat or use of force against outer space objects (PPWT) introduced by the Russian Federation and China, CD/1985 (12 June 2014). The PPWT 2014 draft was updated from a previous version from 2008. See Draft Treaty on Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force against Outer Space Objects (PPWT 2008) 2008, annexed to Letter dated 12 February 2008 from the Permanent Representative of the Russian Federation and the Permanent Representative of China to the Conference on Disarmament addressed to the Secretary-General of the Conference transmitting the Russian and Chinese texts of the draft treaty on prevention of the placement of weapons in outer space and of the threat or use of force against outer space objects (PPWT) introduced by the Russian Federation and China, CD/1839 (29 February 2008).

<sup>56</sup> See, e.g., ‘Consensus Scuttled in First Committee over Two Competing Draft Resolutions on Space Security, Creating Parallel Processes, Polarization, Say Speakers’, UNGA, First Committee, Press Release, 78<sup>th</sup> session, 27<sup>th</sup> meeting, UN Doc. GA/DIS/3730 (31 October 2023) <https://press.un.org/en/2023/gadis3730.doc.htm>; ‘Debate on Disarmament Aspects of Outer Space Exposes First Committee Rift over Ways to Sustain Space Security, Prevent Domain’s Weaponization’, UNGA, First Committee, Press Release, 78<sup>th</sup> session, 17<sup>th</sup> meeting, UN Doc. GA/DIS/3723 (20 October 2023) <https://press.un.org/en/2023/gadis3723.doc.htm>; ‘Amid Commemoration of Landmark Treaty’s Fiftieth Anniversary, Joint Meeting of First, Fourth Committees Discusses Keeping Weapons Away from Outer Space’, UNGA, Fourth Committee, Press Release, 72<sup>nd</sup> session, 11<sup>th</sup> meeting, UN Doc. GA/SPD/640 (12 October 2017) [www.un.org/press/en/2017/gaspd640.doc.htm](http://www.un.org/press/en/2017/gaspd640.doc.htm) (Jessica West, noting that there exist ‘sharp divisions’ amongst states over the PPWT). The United States in particular has consistently favoured non-binding commitments and ‘guidance’ manuals in this domain. See, e.g., ‘International Code of Conduct for Outer Space Activities’, Press Statement (Hillary Rodham Clinton, Secretary of State), Washington, DC (17 January 2012) <https://2009-2017.state.gov/secretary/20092013clinton/rm/2012/01/180969.htm>; ‘Remarks at the 73<sup>rd</sup> UNGA First Committee Thematic Discussion on Outer Space’: Yleem D.S. Poblete, Assistant Secretary, Bureau of Arms Control, Verification and Compliance, Remarks and Releases – Bureau of Arms Control, Verification and Compliance, US Department of State (23 October 2018) <https://2017-2021.state.gov/remarks-at-the-73rd-unga-first-committee-thematic-discussion-on-outer-space>.

<sup>57</sup> See Matthew T. King and Laurie R. Blank, ‘International Law and Security in Outer Space: Now and Tomorrow’ (2019) 113 *American Journal of International Law Unbound* 125, 125 (arguing that any new treaty law in this area is highly unlikely).

Note that I previously expressed, in 2019, that there may still be a chance that an amended version of the PPWT could be adopted (Green (n.32)), but this was in a less entrenched political context and now, in my view as of 2023, seems unlikely.

<sup>58</sup> See UNGA Res. 77/40, UN Doc. A/RES/77/40 (12 December 2022).

<sup>59</sup> See UN Doc. GA/DIS/3723 (n.56).

<sup>60</sup> See Christopher J. Borgen, 'The Second Space Age: The Regulation of Military Space Operations and the Role of Private Actors', in Waxman and Oakley (eds.) (n.5) 155, 177–179; King and Blank (n.57) 129. *Contra* Brian Wessel, 'The Rule of Law in Outer Space: The Effects of Treaties and Nonbinding Agreements on International Space Law' (2012) 35 *Hastings International and Comparative Law Review* 289, 297–299.

<sup>61</sup> See, generally, 'Working paper by the Takshashila Institution for the Third Session of the OEWG on Reducing Space Threats', UNGA, UN Doc. A/AC.294/2023/NGO/4 (3 February 2023) 5, 8–10.

<sup>62</sup> See, e.g., 'International Open Letter on Kinetic Anti-Satellite (ASAT) Testing', *Outer Space Institute* (2 September 2021) [https://outerspaceinstitute.ca/docs/OSI\\_International\\_Open\\_Letter\\_ASATs\\_PUBLIC.pdf](https://outerspaceinstitute.ca/docs/OSI_International_Open_Letter_ASATs_PUBLIC.pdf).

<sup>63</sup> UNGA Res. 77/41, UN Doc. A/RES/77/41 (12 December 2022).

<sup>64</sup> See, e.g., Vice President Kamala Harris (@VP) *Twitter* (X) (7 December 2022) <https://twitter.com/VP/status/1600581411437654016> ('...Today, 155 countries voted in favor of a UN resolution, *helping establish* this [an ASAT test ban] as an international norm for space', emphasis added).

<sup>65</sup> See, e.g., Michael Byers and Aaron Boley, *Who Owns Outer Space? International Law, Astrophysics, and the Sustainable Development of Space* (Cambridge, Cambridge University Press, 2023) particularly 337–342 (making this point, albeit tentatively).

<sup>66</sup> There is clearly growing support amongst states for a ban. As of late October 2023, 37 states (including all EU member states) have now unilaterally declared that they will not undertake ASAT testing. See 'Space Industry Statement in Support of International Commitments to Not Conduct ASAT Tests' (Space Industry Statement in Support of International Commitments Not to Conduct Destructive Anti-Satellite Testing), *Secure World Foundation* (20 October 2023) <https://swfound.org/IndustryASATStatement>.

<sup>67</sup> Lewis (n.16) 11.

<sup>68</sup> See, generally, Aaron F. Brantly, 'Risk and Uncertainty Can be Analyzed in Cyberspace' (2021) 7 *Journal of Cybersecurity* 1 (albeit arguing that some aspects of this uncertainty can be better mapped and mitigated).

<sup>69</sup> James A. Green, 'Introduction', in James A. Green (ed.), *Cyber Warfare: A Multidisciplinary Analysis* (Abingdon, Routledge, 2015) 1, 2; Marc Olivier, 'Cyber Warfare: The Frontline of 21st Century Conflict' (2012) 20 *LBJ Journal of Public Affairs* 23, 24–25.

<sup>70</sup> In the international law context, discussion on cyber-attacks began as far back as the 1990s. See, e.g., Sean P. Kanuk, 'Information Warfare: New Challenges for Public International Law' (1996) 37 *Harvard International Law Journal* 272; Todd A. Morth, 'Considering our Position: Viewing Information Warfare as a Use of Force Prohibited by Article 2(4) of the U.N. Charter' (1998) 30 *Case Western Reserve Journal of International Law* 567; Michael N. Schmitt, 'Computer Network Attack and the Use of Force in International Law: Thoughts on a Normative Framework' (1999) 37 *Columbia Journal of Transnational Law* 885; Walter Gary Sharp, *Cyberspace and the Use of Force* (Falls Church, Aegis Research Corp., 1999).

<sup>71</sup> This has most notably been in the context of the work of the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security. See Report of the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security, UN Doc. A/76/135 (14 July 2021); Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States submitted by participating governmental experts in the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security established pursuant to General Assembly resolution 73/266, UN Doc. A/76/136 (13 July 2021). For a detailed (and regularly updated) list of state positions on the topic, see *International Cyber Law in Practice: Interactive Toolkit*, [https://cyberlaw.ccdcoe.org/wiki/List\\_of\\_articles#National\\_positions](https://cyberlaw.ccdcoe.org/wiki/List_of_articles#National_positions).

<sup>72</sup> See, e.g., the collated voluntary statements made by 15 different states in this regard in 2021: 'Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States submitted by participating governmental experts in the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security established pursuant to General Assembly resolution 73/266', UN Doc. A/76/136 (13 July 2021). Even Russia, which has long argued for the need for new and bespoke law governing cyberspace (see, e.g., 'Role of science and technology in the context of security, disarmament and other related fields', UNGA, Report of the First Committee, UN Doc. A/53/576 (18 November 1998)), now 'assumes that, for the present, the international community has reached consensus on the applicability of the universally accepted principles and norms of international law ... to information space', UN Doc. A/76/136 (n.71) 79.

<sup>73</sup> It is widely agreed that it is extremely unlikely that there will be any new treaty law specifically governing cyber-attacks any time soon. See, e.g., Michael N. Schmitt, 'The Law of Cyber Conflict: Quo Vadis 2.0?', in Waxman and Oakley (eds.) (n.5) 103, 105, 121; James A. Green, 'Disasters Caused in Cyberspace', in Susan C. Breau and Katja L.H. Samuel (eds.), *Research Handbook on Disasters and International Law* (Cheltenham, Edward Elgar, 2016) 406, 408–409; Reese Nguyen, 'Navigating *Jus ad Bellum* in the Age of Cyber Warfare' (2013) 101 *California Law Review* 1079, 1111.

<sup>74</sup> See, e.g., UN Doc. A/76/136 (n.71) 11 (Australia); *ibid*, 19 (Brazil); *ibid*, 30 (Estonia); *ibid*, 49 (Japan); 57–58 (The Netherlands); *ibid*, 69–70 (Norway); *ibid*, 77 (Romania); *ibid*, 116 (UK); *ibid*, 136–137 (USA); 'Droit international appliqué aux opérations dans le cyberspace', France, Ministère des Armées (2019) 7 (France); Position Paper on the Application of International Law in Cyberspace, Irish Department of Foreign Affairs, 'International Law and Cyberspace' (2023) paras. 16–18 (Ireland).

<sup>75</sup> See, e.g., 'Denmark's Position Paper on the Application of International Law in Cyberspace' (4 July 2023) reproduced in (2023) 92 *Nordic Journal of International Law* 446, 451–452 (Denmark); 'Droit international appliqué aux opérations dans le cyberspace' (n.74) 8 (France: '[u]ne cyberattaque provoquant des dommages d'une ampleur et d'une gravité significatives peut constituer une agression armée ouvrant le droit de faire usage de la légitime défense'); Position Paper on the Application of International Law in Cyberspace (n.74) paras. 27–28 (Ireland); UN Doc. A/76/136 (n.71) 5–6, 12 (Australia); *ibid*, 20 (Brazil); *ibid*, 28, 30 (Estonia); *ibid*, 43 (Germany); *ibid*, 64 (The Netherlands); *ibid*, 73 (Norway); *ibid*, 84 (Singapore); *ibid*, 88 (Switzerland).

<sup>76</sup> See Thomas Eaton, 'Self-Defense to Cyber Force: Combatting the Notion of "Scale and Effect"' (2021) 36 *American University International Law Review* 697 (for a useful recent discussion – albeit reaching a conclusion that I personally do not support). See also Carlo Focarelli, 'Self-Defence in Cyberspace', in Nicholas Tsagouris and Russell Buchan (eds.), *Research Handbook on International Law and Cyberspace* (Cheltnam, Edward Elgar, 2015) 255.

<sup>77</sup> For discussion, see Harriet Moynihan, 'The Application of International Law to State Cyberattacks: Sovereignty and Non-Intervention', *Chatham House* (December 2019).

<sup>78</sup> See, e.g., 'China's Views on the Application of the Principle of Sovereignty in Cyberspace', Position Paper (2021) <https://documents.unoda.org/wp-content/uploads/2021/12/Chinese-Position-Paper-on-the-Application-of-the-Principle-of-Sovereignty-ENG.pdf>, 2; Position Paper on the Application of International Law in Cyberspace (n.74) paras. 8–10 (Ireland); 'Droit international appliqué aux opérations dans le cyberspace' (n.74) 7 (France); UN Doc. A/76/136 (n.71) 5, 15 (Australia); *ibid*, 18 (Brazil); *ibid*, 46 (Japan); *ibid*, 57 (The Netherlands); 'International Law in Future Frontiers', speech by the Attorney General, the Rt Hon Suella Braverman QC MP, Attorney General's Office and The Rt Hon Suella Braverman KC MP (19 May 2022) [www.gov.uk/government/speeches/international-law-in-future-frontiers](http://www.gov.uk/government/speeches/international-law-in-future-frontiers) (UK). On the principle of non-intervention in international law and its relevance to the cyber context, see Russell Buchan, 'Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions' (2012) 17 *Journal of Conflict and Security Law* 212; James A. Green, 'The Regulation of Cyber Warfare under the *Jus ad Bellum*', in Green (ed.) (n.69) 96, 107–110.

<sup>79</sup> The UK has notably argued against this idea (see Subsection 3.3 and sources cited therein). While other states have not gone as far as the UK in this regard, the US has taken an inconsistent position (see sources cited in Moynihan (n.77) 9); and New Zealand has been equivocal (see 'The Application of International Law to State Activity in Cyberspace', New Zealand (2020) para. 12 ('[i]n the cyber realm, the principle of sovereignty is given effect through the prohibition on the use of force and the rule of non-intervention. New Zealand considers that the standalone rule of territorial sovereignty also applies in the cyber context but acknowledges that further state practice is required for the precise boundaries of its application to crystallise').

<sup>80</sup> See, e.g., UN Doc. A/76/136 (n.71) 46 (Japan); *ibid*, 55 (The Netherlands); 'International Law Applicable in Cyberspace', Government of Canada (2022) [www.international.gc.ca/world-monde/issues\\_development-enjeux\\_developpement/peace\\_security-paix\\_securite/cyberspace\\_law-cyberspace\\_droit.aspx?lang=eng](http://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/peace_security-paix_securite/cyberspace_law-cyberspace_droit.aspx?lang=eng), paras. 10–21 (Canada); 'Costa Rica's Position on the Application of International Law in Cyberspace', Ministry of Foreign Affairs of Costa Rica (21 July 2023) [https://docs-library.unoda.org/Opened\\_Working\\_Group\\_on\\_Information\\_and\\_Communication\\_Technologies\\_-\\_2021/Costa\\_Rica\\_-\\_Position\\_Paper\\_-\\_International\\_Law\\_in\\_Cyberspace.pdf](https://docs-library.unoda.org/Opened_Working_Group_on_Information_and_Communication_Technologies_-_2021/Costa_Rica_-_Position_Paper_-_International_Law_in_Cyberspace.pdf), 5–7 (Costa Rica); 'Droit international appliqué aux opérations dans le cyberspace' (n.74) 6 (France: '[l]es cyberattaques peuvent être constitutives d'une violation de souveraineté'); Position Paper on the Application of International Law in Cyberspace (n.74) para. 5 (Ireland: 'Ireland considers that respect for sovereignty is an obligation in its own right'); 'China's Views' (n.78) 3 (China: 'State sovereignty in cyberspace is a legally binding principle under international law').

<sup>81</sup> Michel N. Schmitt (ed.), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (prepared by the International Group of Experts at the Invitation of the NATO Cooperative Cyber Defence Centre of Excellence) (Cambridge, Cambridge University Press, 2017) Rule 4 (and commentary) 17–27. This understanding also largely aligns with the international legal notion of sovereignty (as a primary rule) as commonly understood in other domains. See Schmitt (n.73) 110–112.

<sup>82</sup> See Moynihan (n.77) 8–25.

<sup>83</sup> Laura A. Dickinson, 'The Future of Military and Security Privatization: Protecting the Values Underlying the Law of Armed Conflict', in Waxman and Oakley (eds.) (n.5) 239, 240, 244; Iain Cameron, 'Regulating Private Military and Security Companies', in Ebbesson *et al* (eds.) (n.6) 14, 15; Alex Moorehead, 'Who Gets to Make International Humanitarian Law in the Future: A Pluralist Vision', in Waxman and Oakley (eds.) (n.5) 217, 224.

<sup>84</sup> Cameron (n.83) particularly 17–18. It is worth noting that while *state* responsibility in international law for the actions of PMSCs can be more difficult to establish (both legally and factually) than is the case for the actions of the state's regular armed force, there is no question that acts by PMSCs can give rise to legal responsibility on the part of states in the right circumstances. For discussion, see Carsten Hoppe, 'Passing the Buck: State Responsibility for Private Military Companies' (2008) 19 *European Journal of International Law* 989; Charlotte Beaucillon, Julian Fernandez and Hélène Raspail, 'State Responsibility for Conduct of Private Military and Security Companies Violating *Ius ad Bellum*', in Francesco Francioni and Natalino Ronzitti (eds.), *War by Contract: Human Rights, Humanitarian Law, and Private Contractors* (Oxford, Oxford University Press, 2011) 396 (specifically in relation to the *jus ad bellum*).

<sup>85</sup> See, e.g., Human Rights Council, 'Submission by the Working Group on the Use of Mercenaries as a Means of Impeding the Exercise of the Right of Peoples to Self-Determination', UN Doc. A/HRC/WG.10/2/CRP.1 (6 August 2012).

<sup>86</sup> See Benjamin Perrin, 'Mind the Gap: Lacunae in the International Legal Framework Governing Private Military and Security Companies' (2012) 31 *Criminal Justice Ethics* 213 (identifying 6 gaps of particular note).

<sup>87</sup> Cameron (n.83) 16–21, 38.

<sup>88</sup> See, e.g., 'The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict', *International Committee of the Red Cross* (August 2009) (Montreux Document). On 21 September 2023, Romania became the fifty-ninth and most recent state formally to endorse the (non-binding) Montreux Document: 'Romania Joins the Montreux Document Forum!', *Montreux Document Forum* (29 September 2023) [www.montreuxdocument.org/news/romania\\_mdf.html](http://www.montreuxdocument.org/news/romania_mdf.html).

<sup>89</sup> Dickinson (n.83) 257–260.

<sup>90</sup> *Ibid.*

<sup>91</sup> See UN Doc. A/HRC/WG.10/2/CRP.1 (n.85) 6–10.

<sup>92</sup> That said, there is more scope for the emergence of a new binding instrument to regulate the activities of transnational corporations and other business enterprises generally, in relation to human rights standards. For the creation of the open-ended intergovernmental working group explicitly mandated to develop such a treaty, see Human Rights Council, Resolution adopted by the Human Rights Council 26/9, Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, Twenty-sixth session, UN Doc. A/HRC/RES/26/9 (14 July 2014). For the most recent draft treaty text, see Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (Draft) OEWG Chairmanship, Third Revised Draft (17 August 2021). If it were adopted, such a treaty of course would not be bespoke to PMSCs, but it would apply to them as transnational 'businesses', and thus has the potential to have legal effect on their activity.

<sup>93</sup> Kreß (n.13) 9–11.

<sup>94</sup> See James A. Green, *Collective Self-Defence in International Law* (Cambridge, Cambridge University Press, forthcoming 2024) 4–6. Recent years have already seen an unprecedented increase in the number of collective self-defence actions (or, at least, *purported* collective self-defence actions) undertaken by states. One might note, for example, Turkey alluding to the concept in relation to the military support it provided to Azerbaijan in the context of the Nagorno-Karabakh conflict in 2020 (see Statement of the Spokesperson of the Ministry of Foreign Affairs, Mr. Hami Aksoy, in Response to a Question Regarding the Armenian Attacks on Azerbaijan Which Started This Morning, Republic of Türkiye, Ministry of Foreign Affairs, QA-94 (27 September 2020) [www.mfa.gov.tr/sc\\_-94\\_-ermenistan-in-azerbaycan-a-karsi-baslattigi-saldiri-hk-sc.en.mfa](http://www.mfa.gov.tr/sc_-94_-ermenistan-in-azerbaycan-a-karsi-baslattigi-saldiri-hk-sc.en.mfa)); the explicit invocation of the right by both the Collective Security Treaty Organisation (CSTO) (see 'Session of CSTO Collective Security Council', Office of the President of the Russian Federation (10 January 2022) <http://en.kremlin.ru/events/president/news/67568>) and Kazakhstan (UNSC Verbatim Record, UN Doc. S/PV.8967 (16 February 2022) 20–21) in relation to the dispatch of troops by the former into the territory of the latter in January 2022; the appeal to collective self-defence made by Armenia in September 2022 (see 'Armenia Asked CSTO for Military Support to Restore Territorial Integrity Amid Azeri Attack – PM', *Armen Press* (14 September 2022) <https://armenpress.am/eng/news/1092504>); and Russia's claims that the full-scale invasion of Ukraine in February 2022 was an act of collective self-defence (see 'Address by the President of the Russian Federation', Office of the President of the Russian Federation (24 February 2022) <http://en.kremlin.ru/events/president/transcripts/67843> (official English translation, as published by the Kremlin); Обращение Президента Российской Федерации, Президент России (24 февраля 2022 года) <http://kremlin.ru/events/president/news/67843> (original Russian text, as published by the Kremlin). This address was also annexed (in a somewhat different English translation) to Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UN Doc. S/2022/154 (24 February 2022)).

<sup>95</sup> Such treaties are still being created relatively regularly. See, e.g., Agreement between the Government of the Hellenic Republic and the Government of the French Republic establishing a strategic partnership for cooperation in defence and security (2021), titled in the authoritative French as ‘un partenariat stratégique pour la coopération en matière de défense et de sécurité’, text available at [www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=50f9990e-73f6-4015-b706-adb4013e7514](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=50f9990e-73f6-4015-b706-adb4013e7514) (Greek and French texts only: the treaty has not been authoritatively translated into English).

<sup>96</sup> Blaise Cathcart, ‘Coalition Warfare and the Future Law of Armed Conflict’, in Waxman and Oakley (eds.) (n.5) 181.

<sup>97</sup> See Steven Hill, ‘Transatlantic Legal Cooperation and the Future Law of Armed Conflict’, in Waxman and Oakley (eds.) (n.5) 199.

<sup>98</sup> Cathcart (n.96).

<sup>99</sup> See, e.g., E. John Gregory, ‘A Discursive Analysis of the Chinese Party-State’s Potential Impact of LOAC’, in Waxman and Oakley (eds.) (n.5) 265; Elsa B. Kania, ‘The PLA’s Latest Strategic Thinking on the Three Warfares’ (2016) 16 *China Brief: A Journal of Analysis and Information* 10, 10; Raul ‘Pete’ Pedrozo, ‘China’s Continued Disdain for the International Legal Order’, *Lawfare* (10 August 2021) [www.lawfaremedia.org/article/chinas-continued-disdain-international-legal-order](http://www.lawfaremedia.org/article/chinas-continued-disdain-international-legal-order); Tanner Larkin, ‘China’s Normfare and the Threat to Human Rights’ (2022) 122 *Columbia Law Review* 228.

<sup>100</sup> Björn Ahl, ‘Chinese Positions on Global Constitutionalism, Community of Common Destiny for Mankind, and the Future of International Law’ (2021) 9 *The Chinese Journal of Comparative Law* 304, 325.

<sup>101</sup> See Gregory (n.99) 272–273; Goldsmith and Posner (n.17) 123–124.

<sup>102</sup> See, generally, Brian Z. Tamanaha, ‘The Tension Between Legal Instrumentalism and the Rule of Law’ (2005) 33 *Syracuse Journal of International Law and Commerce* 131.

<sup>103</sup> See Ahl (n.100); Karen J. Alter and Ji Li, ‘Chinese and Western Perspectives on the Rule of Law and their International Implications’, in Ignacio de la Rasilla and Cai Congyan (eds.), *Cambridge Handbook on China and International Law* (Cambridge, Cambridge University Press, forthcoming 2024) (pre-publication version, March 2022, available on SSRN, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4068502](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4068502)).

<sup>104</sup> Ahl (n.100) 306. See also Chieh Huang, ‘China’s Take on National Security and Its Implications for the Evolution of International Economic Law’ (2021) 48 *Legal Issues of Economic Integration* 119; Lina Benabdallah, ‘Contesting the International Order by Integrating It: The Case of China’s Belt and Road Initiative’ (2019) 40 *Third World Quarterly* 92, 96–97; Max Lesch and Dylan M.H. Loh, ‘Field Overlaps, Normativity, and the Contestation of Practices in China’s Belt and Road Initiative’ (2022) 2 *Global Studies Quarterly* 1.

<sup>105</sup> As is often the case for autocratic states, law is viewed by China as but one governance instrument amongst many. See Ahl (n.100) 306.

<sup>106</sup> See, generally, Joseph S. Nye, *Soft Power and Great-Power Competition: Shifting Sands in the Balance of Power Between the United States and China* (Singapore, Springer, 2023) particularly 97–107. See also, Lewis (n.16) 11.

<sup>107</sup> See, e.g., *In the Matter of the South China Sea Arbitration (Philippines v. China)* (award), Arbitral Tribunal Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea, PCA Case N° 2013-19 (12 July 2016); Statement of the Ministry of Foreign Affairs of the People’s Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines, Ministry of Foreign Affairs of the People’s Republic of China (12 July 2016) [www.fmprc.gov.cn/eng/wjdt\\_665385/2649\\_665393/201607/t20160712\\_679470.html](http://www.fmprc.gov.cn/eng/wjdt_665385/2649_665393/201607/t20160712_679470.html) (reiterating that China took the view that ‘the award is null and void and has no binding force’). More recently, see Simon Leplâtre, ‘Beijing Continues to Militarize South China Sea Islands’, *Le Monde* (24 August 2023) [www.lemonde.fr/en/international/article/2023/08/24/beijing-continues-to-militarize-south-china-sea-islands\\_6105761\\_4.html](http://www.lemonde.fr/en/international/article/2023/08/24/beijing-continues-to-militarize-south-china-sea-islands_6105761_4.html).

<sup>108</sup> See Vikram Mittal, ‘The Lesser-Known Border Dispute: China and India’, *Forbes* (21 February 2021) [www.forbes.com/sites/vikrammittal/2022/02/21/the--lesser-known-border-disputechina-and-india/?sh=104d1c5d192d](http://www.forbes.com/sites/vikrammittal/2022/02/21/the--lesser-known-border-disputechina-and-india/?sh=104d1c5d192d).

<sup>109</sup> Zhang Yangfei and Zhang Zhihao, ‘New White Paper sets Stance on Taiwan in Clear Focus’, *China Daily* (25 July 2019) [www.chinadaily.com.cn/a/201907/25/WS5d38eafba310d83056400d99.html](http://www.chinadaily.com.cn/a/201907/25/WS5d38eafba310d83056400d99.html); Military and Security Developments Involving the People’s Republic of China 2023, Annual Report to Congress, US Department of Defense, <https://media.defense.gov/2023/Oct/19/2003323409/-1/-1/1/2023-MILITARY-AND-SECURITY-DEVELOPMENTS-INVOLVING-THE-PEOPLES-REPUBLIC-OF-CHINA.PDF>, 136–138; ‘Xi Jinping says Taiwan “Must and Will Be” Reunited with China’, *BBC News* (2 January 2019) [www.bbc.co.uk/news/world-asia-china-46733174](http://www.bbc.co.uk/news/world-asia-china-46733174).

<sup>110</sup> See, generally Lesch and Loh (n.104).

<sup>111</sup> Andrew Scobell and Lucy Stevenson-Yang, ‘China Is Not Russia. Taiwan Is Not Ukraine’, *United States Institute of Peace* (4 March 2022) [www.usip.org/publications/2022/03/china-not-russia-taiwan-not-ukraine](http://www.usip.org/publications/2022/03/china-not-russia-taiwan-not-ukraine). Indeed, China’s contribution to UN peacekeeping has been significant, and it is now the greatest contributor amongst the permanent UN Security Council

member states. See Benabdallah (n.104) 95–96; Richard Gowan, ‘China’s Pragmatic Approach to UN Peacekeeping’, *Brookings* (14 September 2020) [www.brookings.edu/articles/chinas-pragmatic-approach-to-un-peacekeeping](http://www.brookings.edu/articles/chinas-pragmatic-approach-to-un-peacekeeping).

<sup>112</sup> See, e.g., Christian Richter, ‘China and International Law: Bellicose Rhetoric’, *International Law Blog* (27 November 2019) <https://internationallaw.blog/2019/11/27/china-and-international-law-bellicose-rhetoric>.

<sup>113</sup> See, e.g., Jonathan Saxty, ‘If US Blinks on Ukraine it Will Embolden China Plan for Global Domination’, *The Express* (6 October 2023) [www.express.co.uk/comment/expresscomment/1819954/China-war-with-taiwan-usa-arms-to-ukraine](http://www.express.co.uk/comment/expresscomment/1819954/China-war-with-taiwan-usa-arms-to-ukraine).

<sup>114</sup> See Scobell and Stevenson-Yang (n.111). See also Joseph S. Nye, ‘China and America are Not Destined for War’, *The Strategist* (3 October 2023) [www.aspistrategist.org.au/china-and-america-are-not-destined-for-war](http://www.aspistrategist.org.au/china-and-america-are-not-destined-for-war). This said, I do think that the Ukraine crisis will – and already is – embolden(ing) China to exert greater authority in its relationship with Russia (albeit that this is highly unlikely to take the form of direct military confrontation). See Frédéric Lemaître, ‘China is Redefining its Borders with its Neighbors, Including Russia’, *Le Monde* (4 September 2023) [www.lemonde.fr/en/international/article/2023/09/04/china-is-redefining-its-borders-with-its-neighbors-including-russia\\_6122600\\_4.html](http://www.lemonde.fr/en/international/article/2023/09/04/china-is-redefining-its-borders-with-its-neighbors-including-russia_6122600_4.html).

<sup>115</sup> See, e.g., UNGA Res ES-11/1, UN Doc. A/RES/ES-11/1 (2 March 2022). This resolution of the UN General Assembly was sponsored by 96 states and passed with a whopping 141 states voting in favour, with only 5 against (Belarus, North Korea, Eritrea, Russia, and Syria) and 35 abstentions.

<sup>116</sup> See, generally, ‘What are the Sanctions on Russia and are They Hurting its Economy?’, *BBC News* (25 May 2023) [www.bbc.co.uk/news/world-europe-60125659](http://www.bbc.co.uk/news/world-europe-60125659).

<sup>117</sup> Scobell and Stevenson-Yang (n.111).

<sup>118</sup> One might note, for example, China’s ongoing actions in, and stance in relation to, the South China Sea. See sources cited at n.107.

<sup>119</sup> For an example of the way in which China references the international rule of law as a reflection of its own legitimacy, see CPC Central Committee, Decision Concerning Several Major Issues in Comprehensively Advancing Governance According to Law (23 October 2014) (English translation at *China Copyright and Media*, <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward>).

<sup>120</sup> Beverley Loke, ‘Unpacking the Politics of Great Power Responsibility: Nationalist and Maoist China in International Order-Building’ (2016) 22 *European Journal of International Relations* 847, 848–849, 859.

<sup>121</sup> Alter and Li (n.103) 7.

<sup>122</sup> Alter (n.2) 30; Scott (n.16) 640.

<sup>123</sup> Ahl (n.100) 319, 325.

<sup>124</sup> See, generally, Ji Li, ‘The Evolving Rule of Law with Chinese Characteristics and Its Impacts on the International Legal Order’ (2023) 8 *UC Irvine Journal of International, Transnational, and Comparative Law* 151 (considering the facilitating, but also the *constraining*, effect of the international rule of law for China).

<sup>125</sup> See, e.g., Joint Statement on Establishing a Comprehensive Strategic Partnership Featuring Mutual Respect and Common Development for a New Era Between the People’s Republic of China and Solomon Islands, Ministry of Foreign Affairs of the People’s Republic of China (11 July 2023) [www.fmprc.gov.cn/eng/wjdt\\_665385/2649\\_665393/202307/t20230711\\_11111191.html](http://www.fmprc.gov.cn/eng/wjdt_665385/2649_665393/202307/t20230711_11111191.html); Frédéric Lemaître, ‘China Protects the Security of the Solomon Islands and Establishes Itself in the Pacific’, *Le Monde* (21 April 2022) [www.lemonde.fr/en/international/article/2022/04/21/china-protects-the-security-of-the-solomon-islands-and-establishes-itself-in-the-pacific\\_5981223\\_4.html](http://www.lemonde.fr/en/international/article/2022/04/21/china-protects-the-security-of-the-solomon-islands-and-establishes-itself-in-the-pacific_5981223_4.html).

<sup>126</sup> See, e.g., Position Paper of the People’s Republic of China on Regulating Military Applications of Artificial Intelligence (AI), Permanent Mission of the People’s Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland (12 December 2021) [http://geneva.china-mission.gov.cn/eng/dbdt/202112/t20211213\\_10467517.htm](http://geneva.china-mission.gov.cn/eng/dbdt/202112/t20211213_10467517.htm); Working Paper on Lethal Autonomous Weapons Systems, submitted by the People’s Republic of China, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2022/WP.6 (9 August 2022).

<sup>127</sup> See, e.g., Report on Activities Convention on Conventional Weapons Annual Meeting of High Contracting Parties United Nations Geneva 12–13 November 2015, *Campaign to Stop Killer Robots* (16 December 2015) [www.stopkillerrobots.org/wp-content/uploads/2013/03/KRC\\_ReportCCWannual16Dec2015\\_uploaded-1.pdf](http://www.stopkillerrobots.org/wp-content/uploads/2013/03/KRC_ReportCCWannual16Dec2015_uploaded-1.pdf), 12. See also Guangyu Qiao-Franco and



Ingvild Bode, 'Weaponised Artificial Intelligence and Chinese Practices of Human–Machine Interaction' (2023) 16 *The Chinese Journal of International Politics* 106, 109, 115–116 (providing other examples).

<sup>128</sup> See, e.g., Position Paper, submitted by China, Group of Governmental Experts of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2018/WP.7 (11 April 2018).

<sup>129</sup> Qiao-Franco and Bode (n.127) 116.

<sup>130</sup> See n.123 and accompanying text (highlighting this as an aspect of China's approach more generally). As a more specific example, see Doc. CCW/GGE.1/2022/WP.6 (n.126) para. 14 (China: '[c]ountries should decide on their own specific measures and implementation mechanism [for LAWS] based on their own national situation').

<sup>131</sup> Elsa B. Kania, 'China's Strategic Ambiguity and Shifting Approach to Lethal Autonomous Weapons Systems', *Lawfare* (17 April 2017) [www.lawfaremedia.org/article/chinas-strategic-ambiguity-and-shifting-approach-lethal-autonomous-weapons-systems](http://www.lawfaremedia.org/article/chinas-strategic-ambiguity-and-shifting-approach-lethal-autonomous-weapons-systems).

<sup>132</sup> Qiao-Franco and Bode (n.127) 115–122.

<sup>133</sup> See, e.g., Position Paper of the People's Republic of China on Regulating Military Applications of Artificial Intelligence (AI) (n.126); Doc. CCW/GGE.1/2022/WP.6 (n.126) para. 13.

<sup>134</sup> Elsa B. Kania, 'Battlefield Singularity: Artificial Intelligence, Military Revolution, and China's Future Military Power', *Center for a New American Security* (November 2017) [https://s3.us-east-1.amazonaws.com/files.cnas.org/documents/Battlefield-Singularity-Kania\\_November-2017.pdf](https://s3.us-east-1.amazonaws.com/files.cnas.org/documents/Battlefield-Singularity-Kania_November-2017.pdf), 18 ('it seems unlikely that the PLA will progress imminently toward "full" autonomy, given the organizational tendencies to centralize control...').

<sup>135</sup> Matt Sheehan, 'China's AI Regulations and How They Get Made', *Carnegie Endowment for International Peace* (10 July 2023) <https://carnegieendowment.org/2023/07/10/china-s-ai-regulations-and-how-they-get-made-pub-90117>.

<sup>136</sup> *Ibid.*

<sup>137</sup> Kania (n.134).

<sup>138</sup> Paul B. Stephen, 'Big Data and the Future Law of Armed Conflict', in Waxman and Oakley (eds.) (n.5) 61, 66.

<sup>139</sup> *Ibid.*, 65 (making this point regarding AI and the use of 'big data' generally); Deeks (n.42) 44 (making this point specifically re LAWS)

<sup>140</sup> Kania (n.131).

<sup>141</sup> Qiao-Franco and Bode (n.127) 107.

<sup>142</sup> See, e.g., PPWT 2014 (n.55). More recently, see Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development, hosted on the President of the Russian Federation website (4 February 2022) <http://en.kremlin.ru/supplement/5770?msclid=1f70a776b10a11ec9ae83acd30edff88>.

<sup>143</sup> See King and Blank (n.57) 126. See also China's Military Strategy, The State Council Information Office of the People's Republic of China (27 May 2015) [https://english.www.gov.cn/archive/white\\_paper/2015/05/27/content\\_281475115610833.htm](https://english.www.gov.cn/archive/white_paper/2015/05/27/content_281475115610833.htm) (making various references to the importance of outer space to China's military strategy).

<sup>144</sup> See Subsection 2.2.

<sup>145</sup> See Carin Zissis, 'China's Anti-Satellite Test', *Center for Foreign Relations* (22 February 2007) [www.cfr.org/background/chinas-anti-satellite-test](http://www.cfr.org/background/chinas-anti-satellite-test).

<sup>146</sup> See Military and Security Developments Involving the People's Republic of China 2023 (n.109) 93–103.

<sup>147</sup> See 'Joint Statement on the Initiative on Undertaking Political Commitment Not to Conduct Destructive Direct-Ascent Anti-Satellite Missile Tests', submitted by Belarus, China, Democratic People's Republic of Korea, Nicaragua, Syrian Arab Republic, Venezuela, Russian Federation, hosted by Ministry of Foreign Affairs of the Russia Federation (26 October 2022) [https://mid.ru/en/foreign\\_policy/news/1835220](https://mid.ru/en/foreign_policy/news/1835220).

<sup>148</sup> See James A. Green, *The Persistent Objector Rule in International Law* (Oxford, Oxford University Press, 2016). See also the Glossary to this article.

<sup>149</sup> Max Markusen, 'A Stealth Industry: The Quiet Expansion of Chinese Private Security Companies', *Center for Strategic and International Studies* (12 January 2022) [www.csis.org/analysis/stealth-industry-quiet-expansion-chinese-private-security-companies](http://www.csis.org/analysis/stealth-industry-quiet-expansion-chinese-private-security-companies).

<sup>150</sup> Helena Legarda and Meia Nouwens, 'Guardians of the Belt and Road: The Internationalization of China's Private Security Companies', *MERICs* (16 August 2018) <https://merics.org/en/report/guardians-belt-and-road>.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

<sup>153</sup> Montreux Document (n.88).

<sup>154</sup> Markusen (n.149).

<sup>155</sup> It is perhaps telling that in the Military and Security Developments Involving the People's Republic of China 2023 (n.109) there is almost no mention of PMSCs, which indicates that for the US, at least, the use of PMSCs by China as a projection of state force, in the hard power sense, is not a concern in the near future. See Markusen (n.149).

<sup>156</sup> Legarda and Nouwens (n.150).

<sup>157</sup> See Timothy Garton Ash, 'Putin, Pushkin, and the Decline of the Russian Empire', *European Council on Foreign Relations* (23 August 2023) <https://ecfr.eu/article/putin-pushkin-and-the-decline-of-the-russian-empire>; Austin Wright, 'Nuclear Blackmail Is a Sign of Russia's Declining Power', *Foreign Policy* (4 April 2023) <https://foreignpolicy.com/2023/04/04/nuclear-blackmail-russia-declining-power>; Gill (n.5) 37. While the decline of Russia's military power is difficult to dispute, there are indications that in some domains Russia is actually 'on the rise', to the extent that some contest the narrative of Russia's declining power overall. See, e.g., Lev M. Sokolshchik, 'Year One of the Biden Administration: U.S. Foreign Policy Towards Russia' (2023) *Journal of Eurasian Studies*, advanced access/online version, <https://journals.sagepub.com/doi/full/10.1177/18793665231170639>; Simon Saradzhyan, 'Is Russia Declining?' (2016) 24 *Demokratizatsiya* 399.

<sup>158</sup> Gill (n.5) 37.

<sup>159</sup> See, e.g., Declaration of the People's Republic of China and the Russian Federation on the Promotion of International Law, hosted by the Ministry of Foreign Affairs of the People's Republic of China (26 June 2016) [www.fmprc.gov.cn/eng/wjdt\\_665385/2649\\_665393/201608/t20160801\\_679466.html](http://www.fmprc.gov.cn/eng/wjdt_665385/2649_665393/201608/t20160801_679466.html). This declaration set out a Sino-Russian 'common interpretation on the big picture of international law' (see Lauri Mälksoo, 'Russia and China Challenge the Western Hegemony in the Interpretation of International Law', *EJIL: Talk!* (15 July 2016) [www.ejiltalk.org/russia-and-china-challenge-the-western-hegemony-in-the-interpretation-of-international-law](http://www.ejiltalk.org/russia-and-china-challenge-the-western-hegemony-in-the-interpretation-of-international-law)). More recently, in early 2022, China and Russia issued a more detailed joint statement that – while focused on international relations and global development and not international law *per se* – again indicated various shared legal positions. See Joint Statement on the International Relations Entering a New Era (n.142).

<sup>160</sup> To an extent this preoccupation is shared with others. In their joint statements on international law China and Russia have together – perhaps unsurprisingly, as authoritarian states – been emphasising a strict notion of 'sovereignty' as perhaps the fundamental principle of international law. See Sino-Russian Declaration 2016 (n.159). See also Schmitt (n.73) 111.

<sup>161</sup> See, e.g., Vladislav Tolstykh and Aleksey Kudinov, 'Russia and International Law in 2000–2020: 100 Theses about Facts and Trends' (2021) 9 *Russian Law Journal* 4, 25; Grigory I. Tunkin, 'The Problem of Sovereignty and Organisation of European Security' (1974) 10 *Revue belge de droit international* 1 (emphasising the inviolability of state sovereignty – read particularly as territorial sovereignty – albeit while advocating for the benefits of security integration in Europe for protecting that sovereignty); Eric F. Green, 'Socialist Internationalism: Theoria and Praxis in Soviet International Law' (1988) 13 *Yale Journal of International Law* 306 (examining various Soviet theorists' approaches to international law, and concluding that sovereignty was a central, albeit in some cases subordinate to the promotion of global socialism).

<sup>162</sup> See Lousie Kazemi Shariat Panahi, 'Historical Comparison of Sovereignty in International Law' (2021) 9 *Russian Law Journal* 128.

<sup>163</sup> See *ibid.*, particularly 152.

<sup>164</sup> *Ibid.*, particularly 147.

<sup>165</sup> One can see evident parallels between Russia's extra-territorial uses of force over the last 15 years and some of the legally dubious Soviet uses of force during the Cold War. See discussion in Green (n.94) 154–155, 187–189, 225, 229 (regarding Soviet force used in Hungary 1956); *ibid.*, 32, 102, 124, 156, 189–191 (regarding Soviet force used in Czechoslovakia in 1968); *ibid.*, 157, 225 (regarding Soviet force used in Afghanistan in 1979).

<sup>166</sup> For discussion of Russia's legal claims in this regard, see, generally, James A. Green and Christopher P.M. Waters (eds.), *Conflict in the Caucasus: Implications for International Legal Order* (Basingstoke, Palgrave Macmillan, 2010).

<sup>167</sup> See Peters and Marxsen (n.13).

<sup>168</sup> For a discussion of Russia's legal claims in this regard, see James A. Green, Christian Henderson and Tom Ruys, 'Russia's Attack on Ukraine and the *Jus ad Bellum*' (2022) 9 *Journal on the Use of Force and International Law* 4.

<sup>169</sup> See Erika Leonaitė and Dainius Žalimas, 'The Annexation of Crimea and Attempts to Justify It in the Context of International Law' (2015-2016) 14 *Lithuanian Annual Strategic Review* 11.

<sup>170</sup> See, e.g., Statement by President of Russia Dmitry Medvedev, President of Russia (English version hosted by *Organization for Security and Cooperation in Europe*, SEC.DEL/213/08) (26 August 2008) [www.osce.org/files/f/documents/d/6/33163.pdf](http://www.osce.org/files/f/documents/d/6/33163.pdf). For discussion, see Robert McCorquodale and Kristin Hausler, 'Caucuses in the Caucasus: The Application of the Right of Self-Determination', in Green and Waters (eds.) (n.166) 26; Roy Allison, 'The Russian Case for Military Intervention in Georgia: International Law, Norms and Political Calculation' (2009) 18 *European Security* 173.

<sup>171</sup> See, e.g., 'Address by the President of the Russian Federation' (n.94) (in relation to the full-scale invasion of Ukraine in 2022). For a discussion of Russia's similar approach in this regard in relation to the annexation of Crimea in 2014, see Leonaitė and Žalimas (n.169).

<sup>172</sup> Collective Security Treaty (1992), *Collective Security Treaty Organisation* (23 April 2012) [https://en.odkb-csto.org/documents/documents/dogovor\\_o\\_kollektivnoy\\_bezopasnosti/#loaded](https://en.odkb-csto.org/documents/documents/dogovor_o_kollektivnoy_bezopasnosti/#loaded).

<sup>173</sup> See Dmitry Gorenburg, 'Russia and Collective Security: Why CSTO Is No Match for Warsaw Pact', *Russia Matters* (27 May 2020) [www.russiamatters.org/analysis/russia-and-collective-security-why-csto-no-match-warsaw-pact](http://www.russiamatters.org/analysis/russia-and-collective-security-why-csto-no-match-warsaw-pact).

<sup>174</sup> See *Hansard*, HC Deb (6 January 2022) vol. 706, cols. 178, 206–207, 236, 245–246; Seyfullah Hasar, 'Kazakhstan: Another Intervention by Invitation that Played Out as Expected', *Opinio Juris* (7 February 2022) <http://opiniojuris.org/2022/02/07/kazakhstan-another-intervention-by-invitation-that-played-out-as-expected>.

<sup>175</sup> See Fyodor A. Lukyanov, 'Kazakhstan Intervention Sees Russia Set a New Precedent', *Russia in Global Affairs* (7 January 2022) <https://eng.globalaffairs.ru/articles/kazakhstan-new-precedent>.

<sup>176</sup> See 'Armenia Asked CSTO for Military Support' (n.94).

<sup>177</sup> See, e.g., Andrew E. Kramer, "'I Am Dreaming It Will Stop': A Deadlocked War Tests Ukrainian Morale', *The New York Times* (5 November 2023) [www.nytimes.com/2023/11/05/world/europe/ukraine-war-morale.html](http://www.nytimes.com/2023/11/05/world/europe/ukraine-war-morale.html).

<sup>178</sup> See, e.g., Lawrence Freedman, 'Why War Fails: Russia's Invasion of Ukraine and the Limits of Military Power' (2022) 101 *Foreign Affairs* 10.

<sup>179</sup> See 'Russia's Strategy in Cyberspace', *NATO Strategic Communications Centre of Excellence* (Janne Hakala and Jazlyn Melnychuk) (June 2021); Goldsmith and Posner (n.17) 124.

<sup>180</sup> See, e.g., Role of Science and Technology in the Context of Security, Disarmament and Other Related Fields, UNGA, Report of the First Committee, UN Doc. A/53/576 (18 November 1998) particularly at 2. Indeed, in 2011, Russia drew up a full draft treaty on the subject. See Draft Convention on International Information Security (Concept), Russian Federation (24 September 2011).

<sup>181</sup> Lewis (n.16) 11.

<sup>182</sup> Stephen (n.138) 78.

<sup>183</sup> See, e.g., *Tallinn Manual 2.0* (n.81).

<sup>184</sup> For a broadly contrary view, arguing that international law will remain an important 'normative firewall', see Schmitt (n.73) in general, but particularly 108, 121.

<sup>185</sup> See Application of International Law to Lethal Autonomous Weapons Systems (LAWS), submitted by Russian Federation, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2022/WP.9 (9 August 2022); Concept of Activities of the Armed Forces of the Russian Federation in the Development and Use of Weapons Systems with Artificial Intelligence Technologies, submitted by Russian Federation, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2023/WP.5 (7 March 2023).

<sup>186</sup> Doc. CCW/GGE.1/2022/WP.9 (n.185) II, IV, VI.

<sup>187</sup> Doc. CCW/GGE.1/2023/WP.5 (n.185) para. 3 and conclusion.

<sup>188</sup> *Ibid*, conclusion.

<sup>189</sup> See *ibid*, conclusion; Doc. CCW/GGE.1/2022/WP.9 (n.185) VI, para. 21.

<sup>190</sup> See, e.g., Doc. CCW/GGE.1/2022/WP.9 (n.185) III.

<sup>191</sup> See, e.g., *ibid*, VI, para. 19.

<sup>192</sup> See, e.g., Алексей Рамм, 'У России есть своя линейка беспилотников-камикадзе', *Известия* (19 February 2021) <https://iz.ru/1126653/aleksei-ramm/u-rossii-est-svoia-lineika-bespilotnikov-kamikadze>.

<sup>193</sup> See Gregory C. Allen, 'Russia Probably Has Not Used AI-Enabled Weapons in Ukraine, but That Could Change', *Center for Strategic and International Studies* (26 May 2022) [www.csis.org/analysis/russia-probably-has-not-used-ai-enabled-weapons-ukraine-could-change](http://www.csis.org/analysis/russia-probably-has-not-used-ai-enabled-weapons-ukraine-could-change).

<sup>194</sup> Stephen (n.138) 78.

<sup>195</sup> Allen (n.193).

<sup>196</sup> See Subsection 2.1.

<sup>197</sup> This position has also been shared with, and supported by, China. See, e.g., PPWT 2014 (n.55). More recently, see Joint Statement on the International Relations Entering a New Era (n.142).

<sup>198</sup> Further Practical Measures for the Prevention of an Arms Race in Outer Space (Draft Resolution), Prevention of an Arms Race in Outer Space: Further Practical Measures for the Prevention of an Arms Race in Outer Space, UN General Assembly, First Committee, 78th session, UN Doc. A/C.1/78/L.55 (12 October 2023). China is also a sponsor of the Russian draft resolution, along with Belarus, Cuba, Djibouti, Equatorial Guinea, Iran, Syria, and Zimbabwe.

<sup>199</sup> See 'Joint Statement Anti-Satellite Missile Tests' (n.147).

<sup>200</sup> See 'Russian Defence Minister General of the Army Sergei Shoigu Confirms Successful Test of Anti-Satellite System', *Ministry of Defence of the Russian Federation* (16 November 2021) [https://eng.mil.ru/en/news\\_page/country/more.htm?id=12394066@egNews](https://eng.mil.ru/en/news_page/country/more.htm?id=12394066@egNews).

<sup>201</sup> See n.145 and accompanying text.

<sup>202</sup> See, e.g., 'Statement by the North Atlantic Council on the Recent Anti-Satellite Missile Test Conducted by the Russian Federation', *North Atlantic Treaty Organization* (19 November 2021) [www.nato.int/cps/en/natohq/news\\_188780.htm](http://www.nato.int/cps/en/natohq/news_188780.htm). 'An Anti-Satellite Test Conducted by the Government of Russia', *Ministry of Foreign Affairs of Japan* (statement by press secretary Yoshida Tomoyuki) (18 November 2021) [www.mofa.go.jp/press/release/press3e\\_000270.html](http://www.mofa.go.jp/press/release/press3e_000270.html). For discussion (and numerous other examples of such condemnation), see Byers and Boley (n.65) 325–332.

<sup>203</sup> See Jaganath Sankaran, 'Russia's Anti-Satellite Weapons: An Asymmetric Response to U.S. Aerospace Superiority', *Arms Control Today* (Arms Control Association) (March 2022) [www.armscontrol.org/act/2022-03/features/russias-anti-satellite-weapons-asymmetric-response-us-aerospace-superiority](http://www.armscontrol.org/act/2022-03/features/russias-anti-satellite-weapons-asymmetric-response-us-aerospace-superiority).

<sup>204</sup> Mike Wall, 'Don't Panic About Russia's Recent Anti-Satellite Test, Experts Say', *Space.com* (10 August 2022) [www.space.com/russia-anti-satellite-weapon-fears-overblown.html](http://www.space.com/russia-anti-satellite-weapon-fears-overblown.html). See also Jaganath Sankaran, 'Russia's Anti-Satellite Weapons: A Hedging and Offsetting Strategy to Deter Western Aerospace Forces' (2022) 43 *Contemporary Security Policy* 436, 436–439, 445.

<sup>205</sup> See, e.g., Vladimir Putin Meets with Members of the Valdai Discussion Club, Transcript of the Final Plenary Session of the 12<sup>th</sup> Annual Meeting (Sochi), *Valdai Discussion Club* (23 October 2015) <https://valdaiclub.com/events/posts/articles/vladimir-putin-meets-with-members-of-the-valdai-discussion-club-transcript-of-the-final-plenary-sess> ('[w]e have already seen the appearance of the concept of the so-called disarming first strike, including one with the use of high-precision long-range non-nuclear weapons comparable in their effect to nuclear weapons').

<sup>206</sup> Hitoshi Nasu, 'The Laws of Neutrality in the Interconnected World', in Waxman and Oakley (eds.) (n.5) 123, 131.

<sup>207</sup> See n.148 and accompanying text.

<sup>208</sup> See, e.g., Wall (n.204).

<sup>209</sup> See Sankaran (n.203); Sankaran (n.204) 450.

<sup>210</sup> Catrina Dooze, 'Putin's Proxies: Examining Russia's Use of Private Military Companies', Congressional Testimony (USA), *Center for Strategic and International Studies* (15 September 2022) [www.csis.org/analysis/putins-proxies-examining-russias-use-private-military-companies](http://www.csis.org/analysis/putins-proxies-examining-russias-use-private-military-companies).

<sup>211</sup> *Russian Private Military Companies: Their Use and How to Consider Them in Operations, Competition, and Conflict* (Fort Meade, MD: US Army, Asymmetric Warfare Group, Johns Hopkins Applied Physics Laboratory, 2020) (unclassified) 12–13, 56.

<sup>212</sup> Dooze (n.210). See also Dickinson (n.83) 249.

<sup>213</sup> Dickinson (n.83) 249 (emphasis added).

<sup>214</sup> See, generally, Joshua Yaffa, 'Inside the Wagner Group's Armed Uprising', *The New Yorker* (31 July 2023).

<sup>215</sup> *Ibid.*

<sup>216</sup> Doxsee (n.210).

<sup>217</sup> See Shamsher S. Bhangal, 'The Wagner Rebellion and the Stability of the Russian State', *The Russia File, Kennan Institute* (21 September 2023) [www.wilsoncenter.org/blog-post/wagner-rebellion-and-stability-russian-state](http://www.wilsoncenter.org/blog-post/wagner-rebellion-and-stability-russian-state).

<sup>218</sup> See Subsection 2.4.

<sup>219</sup> The use of PMSCs breaches the Russian Criminal Code. See The Criminal Code of the Russian Federation, No. 63-FZ of 13 June 1996 (with Amendments and Addenda), Article 359 (prohibiting the '[r]ecruitment, training, financing, or any other material provision of a mercenary, and also the use of him in an armed conflict or hostilities...'). See also *ibid*, Article 208 (prohibiting the '[c]reation of an armed formation (unit, squad, or any other group) that is not envisaged by a federal law, and likewise operating of such a formation, or the financing thereof...'). It is arguably the case that using PMSCs could violate the Russian Constitution too. See The Constitution of the Russian Federation, adopted by popular vote on 12 December 1993 (with amendments approved by all-Russian vote on 1 July 2020), Article 13(5) ('[t]he establishment and activities of public associations whose goals and activities are aimed at the forcible changing of the basis of the constitutional order and at violating the integrity of the Russian Federation, at undermining its security, at creating armed units, and at instigating social, racial, national and religious strife shall be prohibited', emphasis added).

<sup>220</sup> Nils Dahlqvist, 'Russia's (Not So) Private Military Companies' Swedish Defence Research Agency, Report to Swedish Ministry of Defence, FOI Memo 6653 RUFs Briefing No. 44, Project No: A19101 (January 2019); Doxsee (n.210).

<sup>221</sup> For example, in the Central African Republic. See, e.g., Final Report of the Panel of Experts on the Central African Republic extended pursuant to Security Council resolution 2536 (2020), annexed to Letter dated 25 June 2021 from the Panel of Experts on the Central African Republic extended pursuant to resolution 2536 (2020) addressed to the President of the Security Council, UN Doc. S/2021/569 (25 June 2021).

<sup>222</sup> Schmitt (n.73) 108.

<sup>223</sup> See 'Address by the President of the Russian Federation' (n.94). For a detailed discussion of these claims, see Green, Henderson and Ruys (n.168).

<sup>224</sup> Gill (n.5) 37.

<sup>225</sup> Lewis (n.16) 12.

<sup>226</sup> See, generally, 'The UK's Nuclear Deterrent: What You Need to Know', Defence Nuclear Organisation / Ministry of Defence (last updated 16 March 2023) [www.gov.uk/government/publications/uk-nuclear-deterrence-factsheet/uk-nuclear-deterrence-what-you-need-to-know](http://www.gov.uk/government/publications/uk-nuclear-deterrence-factsheet/uk-nuclear-deterrence-what-you-need-to-know).

<sup>227</sup> See, e.g., Massimo Tommasoli, 'Rule of Law and Democracy: Addressing the Gap Between Policies and Practices' (2012) No. 4, Vol. XLIX *UN Chronicle*, United Nations, 'Delivering Justice' ('...constitutional limits on power, a key feature of democracy, require adherence to the rule of law'); Alter (n.2) 44.

<sup>228</sup> See n.103 and accompanying text.

<sup>229</sup> See, e.g., 'Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy', Cabinet Office, Policy Paper (2 July 2021) [www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy](http://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy).

<sup>230</sup> One might note, as a good example, the coalition government's planned use of force in Syria in 2013. See 'Chemical Weapon Use by Syrian Regime: UK Government Legal Position', Prime Minister's Office, 10 Downing Street, Policy Paper (29 August 2013) [www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version](http://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version). For discussion, see Christian Henderson, 'The UK Government's Legal Opinion on Forcible Measures in Response to the Use of Chemical Weapons by the Syrian Government' (2015) 64 *International and Comparative Law Quarterly* 17. The UK ultimately did not use force because of opposition within Parliament. See James Strong, 'Interpreting the Syria Vote: Parliament and British Foreign Policy' (2015) 91 *International Affairs* 1123. See, more generally, Claire Mills, 'Parliamentary Approval for Military Action', House of Commons Library, Briefing Paper (8 May 2018). A key reason for that opposition was that some members of the House – rightly, in my assessment – considered that the action would have been a violation of international law. See *Hansard*, Commons Debates, Daily Hansard – Debate (29 August 2013) cols. 1427, 1440, 1441, 1442, 1447, 1458, 1459, 1462.

<sup>231</sup> The 2003 invasion of Iraq is perhaps the most striking example in modern times. See, e.g., Dominic McGoldrick, *From '9-11' to the Iraq War 2003* (Oxford, Hart, 2004) 47–86; Lindsay Moir, *Reappraising the Resort to Force: International Law, Jus ad Bellum and the War on Terror* (Oxford, Hart, 2010) 73–106; Marc Weller, *Iraq and the Use of Force in International Law* (Oxford, Oxford University Press, 2010) particularly 132–188; James A. Green and Stephen Samuel, 'The Chilcot Report: Some Thoughts on International Law and Legal Advice' (2017) 22 *Journal of Conflict and Security Law* 333, 338–339. However, it is far from the only such instance since 1945. One might note, for example, the unlawful British troop deployment in Jordan in

1958 (for discussion, see Green (n.94) 34, 113–114, 119–120, 155, 225, 305–306); the UK’s participation in the unlawful NATO action in Kosovo in 1999 (see, e.g., the Ministerial Declaration of the twenty-third Annual Meeting of Ministers of Foreign Affairs of the Group of 77, UN Doc. A/54/432 (24 September 1999) para. 69); and recent deployment as part of coalition action in Syria since 2015 (the legality of which remains contested, see Patrick Terry, ‘Germany Joins the Campaign against ISIS in Syria: A Case of Collective Self-Defence or Rather the Unlawful Use of Force?’ (2016) 4 *Russian Law Journal* 26).

<sup>232</sup> See, e.g., Sino-Russian Declaration 2016 (n.159) (taking this position implicitly, but not very subtly).

<sup>233</sup> See, e.g., ‘Address by the President of the Russian Federation’ (n.94).

<sup>234</sup> See, e.g., *Defence in a Competitive Age*, presented to Parliament by the Secretary of State for Defence by Command of Her Majesty, Ministry of Defence, CP 411 (March 2021) 42.

<sup>235</sup> *Defence Artificial Intelligence Strategy*, Ministry of Defence (June 2022) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1082416/Defence\\_Artificial\\_Intelligence\\_Strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1082416/Defence_Artificial_Intelligence_Strategy.pdf).

<sup>236</sup> *Ambitious, Safe, Responsible: Our Approach to the Delivery of AI-Enabled Capability in Defence*, Ministry of Defence (15 June 2022) [www.gov.uk/government/publications/ambitious-safe-responsible-our-approach-to-the-delivery-of-ai-enabled-capability-in-defence/ambitious-safe-responsible-our-approach-to-the-delivery-of-ai-enabled-capability-in-defence](http://www.gov.uk/government/publications/ambitious-safe-responsible-our-approach-to-the-delivery-of-ai-enabled-capability-in-defence/ambitious-safe-responsible-our-approach-to-the-delivery-of-ai-enabled-capability-in-defence).

<sup>237</sup> *Defence Artificial Intelligence Strategy* (n.235) 13; *Ambitious, Safe, Responsible* (n.236) throughout, but especially at 6.

<sup>238</sup> See, e.g., Doc. CCW/GGE.1/2023/WP.4/Rev.2 (n.54).

<sup>239</sup> See, e.g., *Political Declaration on Responsible Military Use of Artificial Intelligence and Autonomy* (2023) [www.state.gov/wp-content/uploads/2023/10/Latest-Version-Political-Declaration-on-Responsible-Military-Use-of-AI-and-Autonomy.pdf](http://www.state.gov/wp-content/uploads/2023/10/Latest-Version-Political-Declaration-on-Responsible-Military-Use-of-AI-and-Autonomy.pdf).

<sup>240</sup> Group of Governmental Experts (GGE) document on the application of International Humanitarian Law to Emerging Technologies in the Area of Lethal Autonomous Weapons Systems (LAWS), submitted by the United Kingdom, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Doc. CCW/GGE.1/2022/WP.1 (8 August 2022).

<sup>241</sup> See, e.g., Richard Norton-Taylor, ‘AI Weapons and ‘Killer Robots’ – The MOD’s New Plans to Spend the Public’s Money’, *Declassified UK* (12 September 2023) [www.declassifieduk.org/ai-weapons-and-killer-robots-the-mods-new-plans-to-spend-the-publics-money](http://www.declassifieduk.org/ai-weapons-and-killer-robots-the-mods-new-plans-to-spend-the-publics-money).

<sup>242</sup> See, e.g., *Ambitious, Safe, Responsible* (n.236) 13.

<sup>243</sup> See, e.g., Letter from the Counter Proliferation and Arms Control Centre, Ministry of Defence, Ref: TO2020/13099 (4 January 2021) <https://article36.org/wp-content/uploads/2021/01/UK-govt-reply-2020-LAWS.pdf> (‘[a] legally binding instrument which hampers the legitimate development and use of such technologies would be counterproductive’); *Defence Artificial Intelligence Strategy* (n.235) 53.

<sup>244</sup> See, e.g., *Defence Artificial Intelligence Strategy* (n.235) 39; Doc. CCW/GGE.1/2023/WP.4/Rev.2 (n.54).

<sup>245</sup> See Artificial Intelligence in Weapon Systems Committee, Lords Select Committee, UK Parliament, Committees, <https://committees.parliament.uk/committee/646/ai-in-weapon-systems-committee>.

<sup>246</sup> One might note, for example, the inclusion of Professor Dapo Akande – a prominent international lawyer, and not an ‘ethicist’, as such – as a member of the Ministry of Defence’s AI Ethics Advisory Panel. See *Ambitious, Safe, Responsible* (n.236) 12.

<sup>247</sup> For example, the UK was the lead sponsor of Reducing Space Threats Through Norms, Rules and Principles of Responsible Behaviours (Draft Resolution), Prevention of an Arms Race in Outer Space: Prevention of an Arms Race in Outer Space, UN General Assembly, First Committee, 75<sup>th</sup> session, UN Doc. A/C.1/75/L.45/Rev.1 (23 October 2020). That draft resolution was passed by the General Assembly as UNGA Res. 75/36, UN Doc. A/RES/75/36 (16 December 2020). The UK has continued to lead on the ‘responsible behaviours’ approach since: see, most recently, Reducing Space Threats Through Norms, Rules and Principles of Responsible Behaviours (Draft Resolution), Prevention of an Arms Race in Outer Space: Reducing Space Threats Through Norms, Rules and Principles of Responsible Behaviours, UN General Assembly, First Committee, 78<sup>th</sup> session, UN Doc. A/C.1/78/L.15/Rev.1 (25 October 2023).

<sup>248</sup> See, e.g., Reducing Space Threats through Norms, Rules and Principles of Responsible Behaviours, Report of the Secretary-General, UN Doc. A/76/77 (13 July 2021).

<sup>249</sup> See UN Doc. GA/DIS/3730 (n.56); UN Doc. GA/DIS/3723 (n.56).

<sup>250</sup> UN Doc. A/C.1/78/L.15/Rev.1 (n.247).

<sup>251</sup> OST (n.55).

<sup>252</sup> See Theresa Hitchens, 'UK Pushes New UN Accord on Military Space Norms', *Breaking Defense* (13 September 2021) <https://breakingdefense.com/2021/09/exclusive-uk-pushes-new-un-accord-on-military-space-norms>.

<sup>253</sup> *Ibid.*

<sup>254</sup> See Subsection 2.2.

<sup>255</sup> One might note, for example, that the most recent draft resolution developed by the UK (UN Doc. A/C.1/78/L.15/Rev.1 (n.247)) was then co-sponsored by a further 45 states (Albania, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malawi, Malta, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Republic of Korea, Moldova, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United States of America), and was adopted within the First Committee by a vote of 166 in favour to 9 against.

<sup>256</sup> United Kingdom, National Submission on Space Threats to respond to the call from UN Secretary General under the UN GA Resolution A/RES/75/36 on 'Reducing Space Threats through Norms, Rules and Principles of Responsible Behaviour' (30 April 2021) [https://front.un-arm.org/wp-content/uploads/2021/05/national-submission-of-the-United-Kingdom-in-connection-with-resolution-75\\_36.pdf](https://front.un-arm.org/wp-content/uploads/2021/05/national-submission-of-the-United-Kingdom-in-connection-with-resolution-75_36.pdf), iii.

<sup>257</sup> *Ibid.*

<sup>258</sup> See Subsection 2.2.

<sup>259</sup> For example, the UK has said that ASAT testing is 'unacceptable' when the test causes debris. See UK National Submission (n.256) iv. Leaving aside that this only relates to testing and only then if space debris results, it is unclear whether 'unacceptable' is to be read as either 'illegal' or 'should be illegal'.

<sup>260</sup> See Subsection 2.2.

<sup>261</sup> See n.66.

<sup>262</sup> 'Responsible Space Behaviours: The UK Commits Not to Destructively Test Direct Ascent Anti-Satellite Missiles', Foreign, Commonwealth & Development Office and UK Space Agency, Press Release (3 October 2022) [www.gov.uk/government/news/responsible-space-behaviours-the-uk-commits-not-to-destructively-test-direct-ascent-anti-satellite-missiles](http://www.gov.uk/government/news/responsible-space-behaviours-the-uk-commits-not-to-destructively-test-direct-ascent-anti-satellite-missiles).

<sup>263</sup> The International Court of Justice (ICJ) famously stated in 1974 that such a declaration by a state 'if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding' on that state under international law. *Nuclear Tests (Australia v. France)*, (judgment) [1974] ICJ Rep. 253, para. 43; *Nuclear Tests (New Zealand v. France)*, (judgment) [1974] ICJ Rep. 457, para. 46. See also International Law Commission, Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto, UN Doc. A/61/10, *ILC Yearbook* (2006) Vol. II, Part Two, 177. However, the concept of the self-binding unilateral declaration in international law has not been entirely without controversy: see Alfred P. Rubin, 'The International Legal Effects of Unilateral Declarations' (1977) 71 *American Journal of International Law* 1.

<sup>264</sup> 'Cyber and International Law in the 21st Century', speech by the Attorney General Jeremy Wright QC MP, Attorney General's Office and The Rt Hon Sir Jeremy Wright KC MP (23 May 2018) [www.gov.uk/government/speeches/cyber-and-international-law-in-the-21st-century](http://www.gov.uk/government/speeches/cyber-and-international-law-in-the-21st-century). See also 'Application of International Law to States' Conduct in Cyberspace: UK Statement', Foreign, Commonwealth & Development Office, Policy Paper (3 June 2021) [www.gov.uk/government/publications/application-of-international-law-to-states-conduct-in-cyberspace-uk-statement/application-of-international-law-to-states-conduct-in-cyberspace-uk-statement](http://www.gov.uk/government/publications/application-of-international-law-to-states-conduct-in-cyberspace-uk-statement/application-of-international-law-to-states-conduct-in-cyberspace-uk-statement), para. 10; Braverman (n.78).

<sup>265</sup> See n.79.

<sup>266</sup> See Schmitt (n.73) 110–111 (discussing specifically the positions taken – seemingly in direct response to the UK – by The Netherlands and France).

<sup>267</sup> See n.82 and accompanying text.

<sup>268</sup> Mark Visger, 'The International Law Sovereignty Debate and Development of International Norms on Peacetime Cyber Operations', *Lawfare* (12 July 2022) [www.lawfaremedia.org/article/international-law-sovereignty-debate-and-development-international-norms-peacetime-cyber-operations](http://www.lawfaremedia.org/article/international-law-sovereignty-debate-and-development-international-norms-peacetime-cyber-operations).

<sup>269</sup> *Ibid.*

<sup>270</sup> Schmitt (n.73) 111.

<sup>271</sup> The most obvious example of this is the UK's longstanding position that so-called 'humanitarian intervention' (i.e., the extra-territorial use of force – which has not been authorised by the UN Security Council – in response to large-scale human rights violations) is lawful. For general discussion of the concept of 'humanitarian intervention' under international law, see

International Law Association, Use of Force Committee (2010-2018), *Final Report on Aggression and the Use of Force*, Sydney Conference (2018) [www.ila-hq.org/en\\_GB/documents/conference-report-sydney-2018-7](http://www.ila-hq.org/en_GB/documents/conference-report-sydney-2018-7), 20–24. For discussion of the UK position in particular, see Edward Newman, 'Exploring the UK's Doctrine of Humanitarian Intervention' (2021) 28 *International Peacekeeping* 632.

<sup>272</sup> See n.27 and accompanying text.

<sup>273</sup> For example, this could be by not becoming parties to treaties in the first place (see VCLT (n.35) Article 34); lodging reservations to particular parts of treaties (see *ibid*, Articles 19–23); withdrawing from treaties (see *ibid*, Article 54); or persistently objecting to emerging customary international law (see Green (n.148)).

<sup>274</sup> The most famous articulation of this (in my view, incorrect) argument is Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (Oxford, Oxford University Press, 2006).

<sup>275</sup> The most famous articulation of this is Louis Henkin, *How Nations Behave* (New York, Columbia University Press, 1979) 47 ('almost all nations observe almost all principles of international law and almost all of their obligations almost all the time'). See also Laura A. Dickinson, 'National Security Policymaking in the Shadow of International Law' (2021) 3 *Utah Law Review* 629; Thomas M. Franck, *The Power of Legitimacy among Nations* (Oxford, Oxford University Press, 1990); Green (n.148) 254 ('State power is patently curtailed by international law in many instances').

<sup>276</sup> See n.21 – n.24 and accompanying text.

<sup>277</sup> See, generally, Martti Koskeniemi, 'Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization' (2007) 8 *Theoretical Inquiries in Law* 9.

<sup>278</sup> See, e.g., Kyle Rapp, 'Justifying Force: International Law, Foreign Policy Decision-making, and the Use of Force' (2022) 28 *European Journal of International Relations* 337, especially 340–342; James A. Green, 'An Unusual Silence' (2007) 157 *New Law Journal* 1478.

<sup>279</sup> Indeed, this trend can, some argue, already be identified. See Cathcart (n.96) 188; Moorehead (n.83) 218.

<sup>280</sup> See Section 1.