

Use and abuse of international law: Russian military training and exercises in its foreign relations



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Abstract

This Hybrid CoE Working Paper studies the international legal instruments that govern military training and exercises, and the use and abuse of those instruments. Its scope will be limited to Russian activities that are related directly or indirectly to military training and exercises, even if they sometimes appear to have no more than an informative purpose. The activities will be considered if they appear to be used in order to influence political and military decision-making by states or international organizations. The paper also studies the actions and reactions of other states, as well as those of international organizations. Furthermore, it examines possible legal instruments and methods by which the international community can take legal, administrative, or military action to protect itself from such external influence.

The paper concludes that carefully planned and coordinated efforts are needed, including but not limited to the use of several legal venues by states and international organizations, combined and coordinated where possible, to make them even potentially effective against planned military action by authoritarian regimes that target the very core of sovereignty and exploit weaknesses in international law. It is essential that those who defend themselves against such military action fully respect the rule of law in international relations. This means that any countermeasures against illegal or potentially malicious activities must be fully in line with international law because approved and respected international practice is one of the most important tools in its development, as well as a tool for countering hybrid threats.

Introduction

This Hybrid CoE Working Paper focuses on the application of international law in cases related to the military training and exercises of the Russian Federation. In this paper, the use and abuse of international legal instruments, also referred to as lawfare, in the context of military training and exercises is viewed as an extension of its regular purpose, that is the development of military capability to prepare for and conduct military operations, including in times of armed conflict.

The scope of the paper will be limited to Russian military activities that are related directly or indirectly to military training and exercises, even if they sometimes appear at first sight to have only an informative purpose. The activities will be considered if they appear to be used in order to influence the political and military decision-making of states or international organizations. Moreover, the paper studies the actions and reactions of other states, as well as those of the United Nations and the European Union towards these activities. It also examines possible legal instruments and methods by which states and international organizations can take legal, administrative, or military action to protect themselves from such external influence.

The importance and timeliness of the issue is highlighted by the Russian military aggression towards Ukraine, which began with the invasion of Crimea in 2014, followed by the full-scale attack in 2022. The training and exercises described in this paper were one of the many factors that facilitated and eventually led to Russia's aggression towards Ukraine, both as

a precursor and as a test bench. While these preceding activities alone may not amount to a violation of international law, they did contribute to the violation of international law in the armed attack on Ukraine. At the time of writing, Russia's war of aggression against Ukraine is still ongoing. There is persistent speculation and apprehension that the war will spread to other countries neighbouring Russia, while Russia's training and exercise activities have continued, at times also in collaboration with its international partners.

This paper first briefly introduces the most relevant international legal instruments relating to military exercises, such as the UN Charter, the OSCE Vienna Document, the UN Convention on the Law of the Sea (UNCLOS), the Chicago Convention on Civil Aviation, and the Vienna Convention on Diplomatic Relations.

Second, the paper looks at the ways in which the legal framework can be applied to protect the sovereignty of the countries neighbouring Russia. The tools are manifold, including using existing national and international legal instruments and fora including diplomatic efforts, sanctions regimes, strengthening the national legislation and its administrative processes against such activities, and their coordination with national military activities.

Third, the paper presents case studies with practical examples of the ways in which Russia has used these legal instruments in military training and exercises, applying them to its own advantage at the expense of the international community, either by undermining respect for international law or the sovereignty of other

states. The first case study presents an overview of Russian military training and exercises in order to provide a context for the ways in which these activities can be used as a tool in Russia's relations with other states. The second case study concerns Russian military training and exercises that fall below the so-called "effective control" test under international law and which seek to influence other nations, in order to demonstrate how the activities possibly fall short of a breach of international law but may nevertheless affect the sovereignty of states. The third case study discusses Russia's failure to apply the OSCE Vienna Document prior to the invasion of Ukraine on 24 February 2022 to show how an instrument designed to uphold European security was disregarded, paving the way for the full-scale military attack by Russia.

The fourth case study looks into the use of the high seas and international airspace for military training and exercises by Russia, illustrating how the rules on freedom of international navigation and aviation have been used to have an adverse effect on other states in a demonstration of power politics.

The paper concludes by drawing lessons from the case studies and the international responses to them. The role of respect for international law in the fight against hybrid threat activities is at the heart of the concluding discussion. The reflection focuses on the point that international legal instruments should be strictly respected and used for their original purpose of upholding peaceful relations between states and avoiding conflicts.

The international legal framework concerning military training and exercises

There is no clear uniform set of international legal instruments applicable to military training and exercises in relations between states. Several international agreements apply to them, but as such they are not designed to address them specifically. At the global level, the United Nations forms the cornerstone of the legal framework for international peace and security. At the regional level in Europe, the Organization for Security and Co-operation in Europe (OSCE) has created a technical-level process for upholding peaceful relations based on reporting obligations on military activities, including military training. Freedom of navigation on the high seas and aviation in international airspace is guaranteed in accordance with specific international agreements, which also apply to military training and exercises to some extent.

Globally, the **Charter of the United Nations (UN Charter)**¹ lays the foundation for the interaction between states, most importantly in this regard the commitment under Article 1 to take “effective collective measures for the prevention and removal of threats to the peace” and under Article 2 to “settle their international disputes by peaceful means”, as further elaborated in Chapters VI and VII of the UN Charter. The UN Security Council is the only UN organ that has the power to decide on the measures to maintain or restore international peace and security. Considering the right of the permanent members of the Security Council to veto any such decision, it should be remembered that Russia can effectively block efforts to counter its breaches of international law. The venues left in this regard under the UN system are the General Assembly under Chapter IV and the various regional

arrangements as stipulated in Chapter VIII of the UN Charter. The other UN organizations may also be considered for non-legally binding action, most importantly the International Court of Justice under Chapter XIV for legal disputes between states and the United Nations Human Rights Council for the protection of individual human rights. Even though there are no specific references to military training and exercises in the UN Charter, such activities must be conducted in line with it, and they must not conflict with its limitations and intentions designed to uphold international peace and security.

At the regional level of international law, the most relevant instrument in this regard is the **Vienna Document 2011 on Confidence- and Security-Building Measures (Vienna Document) of the Organization for Security and Co-operation in Europe (OSCE)**.² The document establishes several mechanisms for defusing concerns related to military activities, including training and exercises, on the territories of the OSCE participating states. Among other confidence-building measures, the Vienna Document of 2011 stipulates certain restrictions on military activities, and the number of troops and armaments to be reported to other OSCE members, allowing them to monitor the exercise with their own military personnel. For example, larger military activities including a specific number of troops and military equipment, to which observers from other OSCE countries may be invited, must be notified 42 days in advance. Such military training and exercises include joint land force exercises with air or naval components; the engagement of military forces in an amphibious landing, heliborne landing, or parachute assault;

1 Charter of the United Nations (UN Charter), 24 October 1945.

2 Vienna Document 2011 on Confidence- and Security-Building Measures (Vienna Document 2011, VD11) of the Organization for Security and Co-operation in Europe (OSCE), 30 November 2011.

and the transfer of troops to a zone of application. These military activities will be subject to foreign observation if the military strength exceeds certain limits in terms of the number of troops, military materiel or types of activities.

As exercises not only take place on the internationally recognized sovereign territory of states but also on the high seas and in international airspace, the **United Nations Convention on the Law of the Sea (UNCLOS)**,³ the **International Convention for the Safety of Life at Sea (SOLAS)**, and the **Convention on International Civil Aviation (Chicago Convention)**⁴ may also apply. Although these conventions are largely relevant to civilian vessels and civil aircraft, they also contain an important element related to the protection of civilian activities on the high seas and in international airspace from the dangers associated with military training and exercises. To this end, Notices to Mariners and Notices to Airmen are publicly broadcast concerning, for example, military training and exercise activities in certain areas at a given time. For internationally approved purposes, they serve in part as a tool for restraining the otherwise well-established international norm of freedom of navigation on the high seas and flights in international airspace.

For certain questions related to the inviolability of representatives of states and their means of transport, the **Vienna Convention on Diplomatic Relations**⁵ between states is the most relevant instrument. It stipulates whether or not certain military activities may be considered to enjoy diplomatic immunity and as such not be

subject to legal search by authorities of another nation.

In terms of responsibility, customary international law defines the ways in which states may bear responsibility for their actions in activities such as military training and exercises, and to what extent. The **Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, adopted by the International Law Commission in 2001**,⁶ address the extent of a state's international obligations in its activities, such as military training and exercises. Similarly, the due diligence test of customary international law, which is related to the principles by which a state incurs international responsibility for committing an internationally wrongful act, sets an international standard under which a state's conduct, for example in military training and exercises, must be assessed in accordance with international law.

These are just a few selected examples of the instruments of international law applicable in this context. At the highest level is the United Nations system, with the UN Charter providing the basis for international cooperation and order. Below that, there are a number of regional and substantive instruments of international law. As regards relations and cooperation between states, international treaties and customary law provide a framework for resolving disputes. They also provide a venue for upholding international peace and security when national military training and exercises have an impact on other states.

3 United Nations Convention on the Law of the Sea (UNCLOS), 10 December 1982.

4 International Convention for the Safety of Life at Sea (SOLAS) and the Convention on International Civil Aviation (Chicago Convention), 7 December 1944.

5 Vienna Convention on Diplomatic Relations, 14 April 1961.

6 Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries of 2001 adopted by the International Law Commission, 12 December 2001.

The application of the legal framework to military activities

All of the aforementioned international instruments are based on the idea of international cooperation; in practical terms, various national authorities of member states involved in an issue are expected to find a solution to their differences. At best, these mechanisms allow states to act in good faith in several ways to find a solution to their disputes. Legitimate opposing claims by nations, for example concerning their internationally recognized borders, may be resolved through negotiations, occasionally supported for example by the offices of the United Nations and third countries. In certain cases, states may rely on confidential negotiations between themselves to reach solutions to problems, such as financial compensation in cases where a public acknowledgement of legal responsibility cannot be established. This has been demonstrated, for example, in monetary compensation and reparations for damage caused to the natural environment of a country by the armed forces of another state. The support of third parties in disputes between states may be a useful tool in identifying ways to resolve disputes. An example of this is the support provided by the International Committee of the Red Cross on issues related to international humanitarian law, such as the interpretation of international law by subject matter experts and the identification of good practices facilitating the fulfilment of international obligations.

When states permit others to observe their military activities, such as training and exercises, sometimes on the basis of treaty obligations, it can increase mutual understanding of the actual military situation of a state, open up venues for

consultations between states on their possible differences, and ease any potential tensions. The provision of information about military training and exercises in international airspace by means of Notices to Airmen, and on the high seas through Notices to Mariners, allows the exercise activities to proceed in an internationally accepted or tolerated fashion. In this way, the exercises are conducted while still allowing international air and sea traffic to continue, taking into account the limitations and dangers posed by the military activities. As a previous Hybrid CoE publication notes:

*"[i]n essence, these due regard obligations require that the state takes all necessary measures to ensure that its military activities do not undermine the rights and obligations of other states. In other words, the interference in the rights of other states must be as slight as possible and must be commensurate with the military exercise."*⁷

The unintended consequence of international mechanisms is that they leave states with ample opportunity to exploit these processes to their own advantage, including in violation of their international obligations. This is particularly pertinent in the case of the permanent members of the UN Security Council, who have the right of veto regarding Chapter VII decisions in the UN system. If there is a forum for discussion concerning disputes related to military activities such as training and exercises, they may be subject to delays of various sorts.

7 For an in-depth analysis of the use of international legal mechanisms in relation to blocking the high seas, see: Tiia Lohela, Valentin Schatz, Hybrid CoE Working Paper 5: 'Handbook on Maritime Hybrid Threats – 10 Scenarios and Legal Scans' (Hybrid CoE, November 2019). Particularly important in this regard is "Legal scan of Scenario 4. Declaring a shooting and exercise area and blocking SLOCs", p. 22.

For example, states may provide only limited answers to the questions at hand, use the forum's administrative rules as justification for postponing consultations, and provide incomplete or deceptive information. This has been demonstrated in the case of Russia's armed aggression against Ukraine since 2014. Russia's military training and exercises have often been a precursor to its use of force in violation of international law, yet the UN Security Council has been unable to condemn Russia's activities in an internationally binding manner, or take action to restore international peace and security, due to Russia's veto power.

States may also simply disregard well-reasoned requests for consultations, meaning that legitimate concerns cannot be discussed and resolved between the parties concerned. Sometimes, public statements alleging that another state has violated international obligations may

serve as a delaying tactic, particularly when states are unable to disclose all the facts of an issue under their national laws. States may also take advantage of private security companies in furthering their national interests instead of national military authorities. In such cases, the situation often remains open, as the responsibility of the state for the activities of a private enterprise cannot necessarily be determined, and outside scrutiny cannot be conducted with well-established international mechanisms applicable to state military actors. This has been demonstrated by the regional mechanism of the OSCE, which is specifically designed to provide collective security and stability. Russia has long failed to meet its reporting obligations related to military training and exercises, thereby hindering other OSCE members in the vital function of observing these activities and their effect on international peace and security.

International law mechanisms against the abuse of military training and exercises as a tool of escalation

Peaceful means within the UN Charter

National governments that are willing to settle their disputes with other states by peaceful means, in such a manner that does not endanger international peace, security and justice, have several options, as stated in the UN Charter. The detailed means are stipulated in Article 33 of Chapter VI on Pacific Settlement of Disputes as follows: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice, leaving the actions of the UN Security Council as the second course of action. Moreover, any UN member can refer such disputes to the UN Security Council or the General Assembly. Should the UN Security Council act, it is guided by the Charter to consider that legal disputes should in general be referred to the International Court of Justice.

In the case of military training and exercises, these are the easiest and most useful ways to de-escalate situations of concern to other nations. This is because the choice of appropriate measures is left to the states to decide and the outcome may be settled with or without involving third parties. Pacific settlement of disputes in this case may include liaisons of different kinds. Sharing information on planned military training and exercises well in advance, either publicly or confidentially, among responsible actors at the international level can facilitate the development of de-escalation mechanisms even before the activities begin. In the event that a dangerous situation related to military training and exercises cannot

be foreseen and therefore avoided, ensuring direct communication between the respective authorities will allow, for example, an exchange of views on how to secure the safety of international navigation and aviation. In the event of a near-miss or an actual accident, even more consultation between the respective authorities is needed to ensure that the incident can be investigated and the necessary steps taken to avoid similar hazards in the future.

However, these mechanisms are not particularly forceful in relation to low-level escalation of any security situation through military training and exercises if there is no genuine intention and will to ensure preservation of international peace and security, and no proper procedures in place. In order to successfully de-escalate such a situation, there is a need for a strong commitment by several states in combination with other measures. These measures include – in the absence of action by the UN Security Council – a commitment by the UN General Assembly to de-escalation linked to international financial and other sanction mechanisms, as well as potential legal condemnation by the International Court of Justice.

Extensive and coherent international cooperation can demonstrate that hostile action or the escalation of a tense security situation through military training and exercises only means additional costs and political opposition towards powers that seek to endanger international peace and security. The obvious difficulties in this case relate to states' willingness to act uniformly against a potential threat to international peace and security, combining such efforts with economic sanctions, for example,

to discourage low-level escalation measures. Nevertheless, if successful, this would mean defusing a potential or likely escalation of a security situation caused by military training and exercises.

UN organizations with powers to settle disputes

Although not specifically mentioned in Chapter VI of the UN Charter, **the UN structure provides a wide range of international bodies where states can voice and discuss their cases, duly assisting in the peaceful settlement of disputes.** Among these bodies, **the International Law Commission** promotes the progressive development and codification of international law; **the Division for Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs of the UN** serves as the secretariat of UNCLOS; and the Office of Legal Affairs also provides technical assistance to UN member states.

Apart from the UN Charter mechanisms, the international treaties and related documents discussed in this paper contain several ways of reaching a peaceful settlement of disputes. These include the activities of **the International Maritime Organization**, established as a specialized UN agency to develop and maintain a comprehensive regulatory framework related to maritime safety, also under the SOLAS Convention, with the support of its secretariat.

These mechanisms provide international legal expertise of the highest standard in the case of military exercises in international and territorial waters that have the potential to escalate and

provoke disputes. However, their limitations are related to their narrow applicability, being confined to legal standards and excluding diplomatic efforts. Their usefulness therefore relates to specific legal questions concerning military exercises on the high seas and their use alongside other measures for the peaceful settlement of disputes.

Other international organizations

As mentioned above, **the regional organizations are recognized under the UN Charter as a means of dispute settlement.** **The Court of Conciliation and Arbitration** serves as the mechanism for the peaceful settlement of disputes between states under the Convention on Conciliation and Arbitration within the OSCE. The OSCE also has a wide range of other mechanisms to prevent conflicts, such as the inter-parliamentary discussions in the Parliamentary Assembly; the Vienna Mechanism with the OSCE Vienna Document (which facilitates reporting on and monitoring of military activities conducted by member states);⁸ the Moscow Mechanism (which allows the sending of a mission of experts to assist Participating States in the resolution of a particular question or problem relating to the human dimension, and which has been used twice in Ukraine since the Russian invasion);⁹ and the Conflict Prevention Centre (CPC, which is responsible for planning the establishment, restructuring, and closure of operations on the ground in order to ensure early warning, crisis management and post-conflict rehabilitation).¹⁰

8 Vienna Document.

9 Moscow Mechanism, adopted at the third stage of the Conference on the Human Dimension in 1991 (Moscow Mechanism), 1 December 1991, <https://www.osce.org/files/f/documents/5/e/20066.pdf>.

10 OSCE Factsheet, The Conflict Prevention Centre, https://www.osce.org/files/f/documents/e/3/13717_0.pdf.

Other international organizations may also be used. For example, **the European Union** has offered its good offices for the settlement of disputes and has a well-established framework for crisis management. At a practical level, it has established civilian and military missions, operations, and other mechanisms that go beyond emergency response, including crisis prevention, preparedness, and resilience in the face of crises in support of the peaceful settlement of disputes. In addition to the collective defence of its member states, **the North Atlantic Treaty Organization (NATO)** also has several mechanisms to support the international settlement of disputes. These include setting up military operations and supporting countries such as Ukraine with political and material aid.

The usefulness of the regional mechanisms lies in their specific expertise in the local complexities of international relations. The combination of legal and diplomatic measures through regional mechanisms is potentially the most effective tool for de-escalation, and the mechanisms are also well-suited to dealing with military exercises, as they include tools specifically related to such exercises, especially in the case of the OSCE Vienna Document. However, they are only strong if they are adhered to by the parties to the dispute. Hence, they cannot be the only venue through which de-escalation actions are taken.

Case studies

Overview of Russia's military training and exercises

Military training and exercises are instruments that can serve several purposes, both nationally and jointly. In Russia, there are primarily two types of exercises: annual strategic command staff exercises and combat readiness inspections. They are seen as a normal routine to “test military readiness, refine operational concepts, assess new equipment and technologies, and improve command and control”;¹¹ Russian exercises may also serve as “coercive signaling toward neighboring states and foreign audiences”;¹² and there are concerns about “Russian use of military exercises as a pretext to mask preparations for potential and actual invasions”.¹³

Activities range widely from regular testing of military capabilities to the most extreme use of military training and exercises as an antecedent to an armed attack on another nation in grave violation of international law. Russia seeks to demonstrate its military power and effectiveness as a military superpower.¹⁴ It may also use large-scale exercises with publicly informed purposes to disguise the non-public aims and intentions of the activities.¹⁵ Russia may also want to convince its adversaries that it is committed to non-aggression.¹⁶ At the same time, there are also long-term objectives in neighbouring countries, as Russia is also considered

to “retain a de facto presence inside Belarus due to the constant rotation of forces for training and coordination purposes”.¹⁷

In short, Russia's training and exercises are not only a tool of the military for the benefit of the military, they are also used as a tool by the government as a whole to send messages and to influence different audiences with regard to its capabilities and intentions.

The first case study examines large-scale Russian military training and exercises that do not directly violate the territorial integrity of other states.

The focus of the second case study is the materialization of the threat related to military training and exercises that extends beyond their capability-building purpose, as demonstrated by the Russian invasion of Ukraine on 24 February 2022.

The third case study is on the reservation of high seas and international airspace for military training and exercises by Russia. It demonstrates that with Notices to Mariners on the high seas and Notices to Airmen in the international airspace, military training and exercises may serve not only the interest of securing navigation, but also serve as a test of control over large areas.¹⁸

11 Andrew S. Bowen, ‘Russian Military Exercises’ (Congressional Research Service, 4 October 2021).

12 Bowen, ‘Russian Military Exercises’.

13 Bowen, ‘Russian Military Exercises’.

14 Vira Ratsiborynska, Daivis Petraitis, Valeriy Akimenko, Marius Varna, ‘Russia's strategic exercises: messages and implications’ (NATO Strategic Communications Centre of Excellence, July 2020), https://stratcomcoe.org/pdfs/?file=/publications/download/ru_strat_ex_29-07-e147a.pdf?zoom=page-fit.

15 Ratsiborynska et al., ‘Russia's strategic exercises: messages and implications’, p. 35.

16 Ratsiborynska et al., ‘Russia's strategic exercises: messages and implications’, p. 6.

17 Bowen, ‘Russian Military Exercises’, p. 2.

18 Ratsiborynska et al., ‘Russia's strategic exercises: messages and implications’, p. 60.

Russian military training and exercises without direct violation of the territorial integrity of other states

As discussed above, Russia basically conducts two main types of military exercises: annual strategic command staff exercises and combat readiness inspections. The strategic command staff exercises test the large-scale projection and operational capabilities of the Russian military districts: with western (Zapad), southern (Kavkaz), central (Tsentr) and eastern (Vostok) following one another in leading the exercises in a yearly rotation at the end of the annual training period.¹⁹ This case study focuses on such activities from 2013 until 2019 with the aim of studying the possible changes in the way they affect other nations throughout the time period.

The **Zapad 2013** exercise took place some months before the Russian annexation of Crimea in 2014. The exercise does not seem to have been a precursor to the annexation, but rather a large-scale test of Russian military reform, conducted in collaboration with Belarus. The primary objective was to achieve fewer but more effective military units. The training adversary was described as unconventional enemy troops (NATO), who were equated with terrorists.²⁰ The number of troops was estimated to be up to three times the size officially notified to the OSCE.²¹ Taking this and other factors into

account, the purpose may have been to prepare for a conventional military conflict rather than for counter-terrorism operations.²² The exercise also had a strategic deterrence dimension, leading to increased tension in the Baltic Sea region.²³ It also trained a number of other government authorities.²⁴ The most notable findings of legal relevance concerning this exercise are that Russia was clearly willing to test the response of countries in the Baltic Sea region to the tensions caused by its exercise. It appears that no legal action was taken, and that reactions were limited to statements at the political level.

Vostok 2014 in the eastern military district was spread over a vast area. It was accompanied by a Strategic Missile Forces exercise, the largest of its kind since 2010. It tested combat readiness, deployability and control systems within a scenario apparently focused on preventing the spread of an armed conflict.²⁵ Although little is known for sure about the scenario, the assessment is that it did not appear to be associated with any risk of escalation or other links to international peace and stability. Thus it seems that at least from a legal point of view, the exercise was in line with the requirements of international law.

The **snap exercise of March 2015** officially focused on territorial defence in the Arctic,

19 Interview with Jukka Viitaniemi, researcher, National Defence University, Finnish Defence Forces, 9.8.2022.

20 Giangiuseppe Pili, Fabrizio Minniti, 'Understanding Russia's Great Games: From Zapad 2013 to Zapad 2021' (Royal United Services Institute, 7 June 2022).

21 Liudas Zdanavičius, Matthew Czekaj (eds), 'Russia's Zapad 2013 Military Exercise. Lessons for Baltic Regional Security' (The Jamestown Foundation, December 2015), <https://jamestown.org/wp-content/uploads/2015/12/Zapad-2013-Full-online-final.pdf>.

22 Zdanavičius and Czekaj, 'Russia's Zapad 2013 Military Exercise', pp. 54–55.

23 Zdanavičius and Czekaj, 'Russia's Zapad 2013 Military Exercise', p. 76.

24 Johan Norberg, 'Training to fight – Russian Military Exercises 2011–2014' (Swedish Defence Research Agency, December 2015).

25 Norberg, 'Training to Fight – Russian Military Exercises 2011–2014', pp. 44–45.

Kaliningrad, occupied Crimea and the Black Sea. The scale of the exercise indicated that it simulated war with the United States and/or NATO. The wide range of naval and air activities was designed to contest and control the sea lanes and airspace surrounding the Russian Federation on a scale as yet unmatched by NATO.²⁶ It cannot be said that this exercise was intended to have a direct legal effect on countries other than Ukraine. For Ukraine, the exercise seemed to demonstrate Russia's willingness to defend its unlawful occupation of Crimea, while simultaneously violating international law by engaging in armed hostilities in the Donetsk and Luhansk regions of Ukraine, although this was not openly stated.

According to a NATO assessment, in **Zapad 2017** Russia repeated the previous Zapad 2013 violations of the Vienna Document reporting responsibilities. As well as failing to report the actual number of troops participating in the exercise, Russia also combined it with several information operations. This was reportedly done for intimidation purposes and to mask impending aggression, as was the case with the suspension of Russia's participation in the Treaty on Conventional Armed Forces in Europe (CFE Treaty) in 2007, as well as its aggression against Georgia in 2008, and against Ukraine in 2014.²⁷ The following Zapad exercise in September 2021 was in turn followed by the Russian aggression against Ukraine in February 2022. Zapad 2017 was clearly the most notable operation in

terms of its legal impact as it simultaneously 1) involved armed conflict, albeit not openly admitted, in the Luhansk and Donetsk regions of Ukraine; 2) led to the occupation of Crimea in violation of international law; and 3) did not comply with international legal commitments related to the number of forces in Europe and the corresponding reporting mechanisms.

Vostok 2018 was an international exercise in which Mongolian and Chinese armed forces trained alongside Russian armed forces in the Central and Eastern military districts, with an overall strength of around 300,000 troops. The training scenario was designed to test overall combat readiness and Command and Control (C2) at various levels, with fictional terrorist opponents in a multi-domain and multi-directional theatre. Various manoeuvres were employed, including the long-distance deployment of large units, massive air strike capabilities, and the testing of advanced weapon systems. The exercise conveyed a message of close cooperation with China and showcased military strength to the Western audience, while asserting that Russia did not have any aggressive plans.²⁸

Notably, the zone of application of the Vienna Document covers the whole of Europe as well as the adjoining sea area and air space, and extends from the western border to the Ural Mountains in Russia; hence, it did not apply to the Vostok 2018 training areas.²⁹ Previous exercises within the zone of application of the

26 Thomas Frear, Ian Kearns, Lukasz Kulesa, 'Preparing for the Worst: Are Russian and NATO Military Exercises Making War in Europe More Likely?' (European Leadership Network, August 2015).

27 Dave Johnson 'ZAPAD 2017 and Euro-Atlantic Security' (NATO Review, 14 December 2017), <https://www.nato.int/docu/review/articles/2017/12/14/zapad-2017-and-euro-atlantic-security/index.html>.

28 Ratsiborynska et al., 'Russia's strategic exercises: messages and implications'.

29 Vienna Document 2011 on Confidence- and Security-building Measures. Organization for Security and Cooperation in Europe (Vienna Document), p. 49. See also: Overview of Vienna Document 2011, U.S. Department of State, <https://2009-2017.state.gov/t/avc/cca/c43837.htm>.

Vienna Document were reported to be below the threshold of 13,000 troops, which would not trigger the observation mechanisms of the OSCE member states.³⁰ From a legal perspective, in Vostok 2018, Russia seemed to be willing to demonstrate its military strength with China, but without crossing a line that would be considered non-peaceful towards other states, which would be in violation of international law. It also demonstrated its long-term double standard of publishing credible troop strength when there was no legal commitment to do so, but willingness to violate its commitment to the confidence- and security-building measures (CSBMs) in the zone of application of the Vienna Document.

The **Tsentr 2019** exercises continued to apply the double standard in relation to the Vienna Document, as the officially declared troop numbers were 128,000 outside of the Western Military District, and inside it just below the threshold of the inspection mechanisms, in parallel exercises in which the Belarusian armed forces also participated. For the Tsentr 2019-Shchit Soyuza exercise in the Western area, Russia declared that it was intended to test combat readiness against illegal armed groups, rapid redeployment, and the ability of C2 agencies to ensure military security and defend the Union State.

Outside of the officially announced Tsentr 2019 exercises, Russian armed forces also trained with paratroopers in the Western area, as well as with the Northern Fleet in the Arctic with an undisclosed number of troops. Accord-

ing to a NATO StratCom COE publication, such “tweaking of the participant numbers and manipulation of the Vienna Document was a way for Russia demonstratively and officially to claim transparency, but in reality to deny other states the opportunity to verify its statements and activities”.³¹ While official figures do not provide evidence of Russia’s violation of international commitments under the Vienna Document, they seem to have been violated in the same way as in previous large-scale exercises in the Western area from 2011 onwards.

The **Grom 2019** exercise successively tested several Russian strategic and non-strategic nuclear forces in the largest officially known full-spectrum nuclear strike exercise. While Russia underlined the defensive nature of the exercise, it also demonstrated its capacity to engage all of its nuclear capabilities in an all-out nuclear war, if necessary, in response to a threat to the sovereignty and territorial integrity of the state resulting from outside aggression. The NATO StratCom COE publication concludes that “[t]he official Grom 2019 communications suggested a disparity between Russia’s formal nuclear doctrine, as publicised, and provisions that govern actual nuclear use”, resulting in doctrinal uncertainty.³²

Furthermore, it is argued that the scenario was not, in fact, retaliatory in nature, and that neither the US nor NATO has counterparts to the non-strategic nuclear weapons in the scenario.³³ Considering the International Court of Justice advisory opinion of 1996 on the Legality of the Threat or Use of Nuclear Weapons,³⁴

30 Ratsiborynska et al., ‘Russia’s strategic exercises: messages and implications’, p. 13.

31 Ratsiborynska et al., ‘Russia’s strategic exercises: messages and implications’, pp. 23–24.

32 Ratsiborynska et al., ‘Russia’s strategic exercises: messages and implications’, pp. 53.

33 Ratsiborynska et al., ‘Russia’s strategic exercises: messages and implications’, pp. 36, 41–43.

34 International Court of Justice (ICJ): ‘Legality of the Threat or Use of Nuclear Weapons’. Advisory opinion of

the arguable uncertainty in the Grom 2019 exercise between the declared and practised use of nuclear weapons raises concerns as to whether Russia was, in fact, training for the use of nuclear weapons in a way that would, in a real case, violate Article 2, paragraph 4, of the UN Charter. Accordingly, the prohibition of the threat or use of force against the territorial integrity or political independence of any state seems to be at risk due to the differences in actual nuclear capabilities between the US and NATO on one side and Russia on the other.

The failure of Russia to apply the OSCE Vienna Document prior to the invasion of Ukraine on 24 February 2022

Russia has always asserted its full compliance with the OSCE Vienna Document concerning the notification and observation of large-scale military training and exercises. Moreover, its statements on the exercise activities of its military units consistently stated how its actions were fully in line with international law before they were used to launch an armed attack on Ukraine on 24 February 2022.³⁵

Russia claimed that its activity in Belarus preceding the invasion of Ukraine was merely a military exercise in nature and wholly compliant with the OSCE Vienna Document in terms of the number of troops and amount of equipment. Belarus echoed these statements. Thus, judging by their statements, the Vienna Document was not applicable to the military exercises. Several OSCE participating states, including the US and the Baltic states, made consistent efforts to clarify the situation with both Russian and Belarusian representatives. All of these efforts were in vain. The responses from the Russian and Belarusian sides signalled their willingness, on the one hand, to uphold their commitments under the Vienna Document and to ensure that their activities were fully compliant with it, while criticizing the Western nations for their statements and military activities, on the other.

Russia did not participate in the OSCE meeting to clarify the situation at the request of Ukraine. In that meeting, the US State Department stated the following:

8 July 1996. pp. 246–247. The Court observed that “(...) in view of the current state of international law and of the elements of fact at its disposal, [it] cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake”. The Court added, lastly, that there was an obligation to pursue in good faith and to conclude negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

35 For a historic overview of Russia’s actions related to and neglect of its OSCE Vienna Document obligations, see e.g., Olivier Smith, ‘The Vienna Document and the Russian challenge to the European Security Architecture’, pp. 269–284. In: Beatrice Heuser, Tormod Heier, Guillaume Lasconjarias (Eds), ‘Military Exercises: Political Messaging and Strategic Impact’, Forum Paper n°26, (NATO Defence College, 2018). The Russian armed attack against Ukraine had already started in 2014 with the invasion of Crimea, and Russian statements clearly indicated Russia’s intention to change the course of Ukraine’s foreign and domestic policy to make it more favourably disposed towards Russia. There are several examples of Russian-related cyber operations in Ukraine before 2014 and up to the present day. Despite that, the international community failed to openly counter a number of violations of international law, including in relation to the military exercises and the Vienna Document requirements, in a situation where the military exercises were only a cover story before the invasion of 24 February 2022.

(...) Russia probably has massed between 169,000–190,000 personnel in and near Ukraine as compared with about 100,000 on January 30. This estimate includes military troops along the border, in Belarus, and in occupied Crimea; Russian National Guard and other internal security units deployed to these areas; and Russian-led forces in eastern Ukraine.³⁶

Even though Belarus apparently did not take part in the military invasion of Ukraine with its own troops, its actions nevertheless constitute aggression as described by the United Nations General Assembly, as it allowed Russia to use Belarusian territory to perpetrate acts of aggression, including armed invasion or attacks, occupation, and annexation by force.³⁷

When considering this failure from the perspective of the UN Charter, it is clear that despite diplomatic and legal efforts, economic sanctions, which are the most concrete actions available, were not implemented. This was the case despite the fact that there was a massive military build-up, the largest in Europe since the Second World War, and an ongoing invasion of the internationally recognized territory of Ukraine, which clearly violated the UN Charter's core principles, which seek to resolve international disputes without resorting to war. The inability of the UN Security Council is evident due to the fact that Russia holds a permanent seat and is therefore able to veto any unfavourable binding resolutions against its actions. However, this did not prevent several countries from using sanctions and other tools of

international law against Russia. Yet despite these efforts, it was too little, too late on 24 February 2022 at the start of the Russian invasion via Belarus.

In addition, there was clearly a lack of coordination between sanctions and other economic, humanitarian, and military support under international law. It seems that it was easier to wait for the invasion than to make all efforts before the massive military attacks, also against civilian targets, of which several examples had already been observed since 2014. It could even be argued that although Russia was clearly behind the invasion, other UN member states had also failed to uphold international law.

It is difficult to find justifiable reasons for the lack of appetite for these efforts, and also for the failure to go beyond consultations in upholding the confidence-building measures. The price of failing to uphold international law in this and other areas is the ongoing armed conflict in Ukraine, resulting not only in massive human costs, but also in the abject failure to observe the fundamental and most important requirements of international law.

Use of the high seas and international airspace for Russian military training and exercises

In this case study, the focus is on the de facto reservation of the high seas and international airspace for Russian military training and exercises through Notices to Mariners in the context of freedom of the seas under UNCLOS and SOLAS, as well as Notices to Airmen under the Chicago Convention. Using these measures to

³⁶ U.S. Statement for the Vienna Document Joint PC-FSC Chapter III Meeting, 18 February 2022, <https://osce.usmission.gov/u-s-statement-for-the-vienna-document-joint-pc-fsc-chapter-iii-meeting-2/>.

³⁷ Interview, Viitaniemi, 9.8.2022.

warn of dangers, including those resulting from military training and exercises, is a well-established and necessary practice as such; they provide invaluable information in the planning of safe sea travel on the high seas for civil and military vessels alike. However, they also have adverse effects, including the need to change routes and timetables concerning maritime activities.

Freedom of the high seas is recognized under UNCLOS Article 87 to include freedom of navigation, fishing, laying of submarine cables and pipelines, and freedom of overflight of aircraft. Regulation 9 of Chapter V of the 1974 SOLAS Convention provides for the collection and compilation of hydrographic data and the publication, dissemination, and updating of all nautical information necessary for safe navigation, including the Notices to Mariners. Annex 15 of the Chicago Convention regulates a similar regime of Notices to Airmen for civilian air traffic in international airspace.

Russia blocked the use of large areas of the high seas and international airspace before the invasion of Ukraine on 24 February 2022. All four fleets of the Russian navy participated in the exercises in January and February 2022. They took place not only in areas close to Russia but also far away on the high seas, including the High North, the Northeast Atlantic, the Baltic Sea, the Black Sea, the Mediterranean, the Pacific, and the northern Okhotsk Sea in East Siberia. These vast operating areas around the globe were off-limits for regular sea traffic, including commercial traffic and military vessels alike.

As these activities were also the prelude to the unprovoked invasion of Ukraine, they were, by their very nature, in direct contradiction to the basic principles of the use of the high seas and international airspace for peaceful purposes and the enjoyment of all nations. They were in preparation for an act of aggression as defined by the UN General Assembly,³⁸ which duly condemned the Russian aggression against Ukraine with an overwhelming majority on 2 March 2022.³⁹

Considering their magnitude, the activities also effectively disrupted regular maritime traffic, which not only had immediate consequences for navigation on the high seas and overflight above them, but also led to the disruption of freight transport, with economic consequences. It can therefore be argued that they bore similarities to economic sanctions. The universally accepted reason for the use of economic sanctions under international law is that they are used by the UN Security Council, acting under Chapter VII of the UN Charter, to combat threats to international peace and security. In this case, the military training and exercise activities resulted in an act that was tantamount to the most powerful peaceful tool that states can use against other states.

38 UN General Assembly resolution 3314 (XXIX) of 1974.

39 UN General Assembly resolution A/RES/ES-11/1 of 2022.

Conclusions

International law as such contains several mechanisms that can be used to de-escalate situations caused by military training and exercises. However, they are ineffective unless states commit themselves to their international legal obligations and hence to the peaceful settlement of disputes.

As the first case study shows, between 2013 and 2019, Russia also used military training and exercises for political purposes, such as demonstrating its readiness to disregard OSCE mechanisms, and the potential to use nuclear weapons. Although the signals conveyed by these exercises are disturbing, they cannot be seen as direct violations of the sovereignty of other states under international law. However, Russia failed to declare the Vienna Document information and thus effectively disrupted the functioning of international mechanisms designed to de-escalate military tensions prior to the military occupation of Crimea in 2014.

Moreover, the readiness to use nuclear weapons demonstrates the lack of commitment to respect the sovereignty of other states under the UN Charter. The practices would appear to form a series of long-term, low-level activities aimed at enabling an escalation of the international security situation if so decided. The disrespect for the de-escalation mechanisms described in the case studies can be seen as preparation for the full military invasion of Ukraine on 24 February 2022, constituting a clear breach of international law through an act of aggression.

Due to the inability, inaptitude and inactivity of the UN, especially in the Security Council due to Russia's veto rights, the de-escalation

measures related to Russia's military exercises did not stop or affect the Russian act of aggression.⁴⁰ This demonstrates the vulnerability of the international community to escalation efforts by strong military powers below the actual use of military force, and especially by the permanent members of the UN Security Council, namely those with the power of veto.

In accordance with the UN Charter, diplomatic and political efforts should always be at the forefront when it comes to resolving international disputes related to military training and exercises. The nations concerned and their supporters may use diplomatic and information activities in response to the use and abuse of international legal instruments within and outside of their framework; countries may make their official views known through heads of state and establish their position through the media. For example, the United States actively declassified and shared confidential intelligence reports aimed at increasing international awareness of the gravity of the situation and opening up ways to prepare for the Russian aggression prior to the invasion of Ukraine on 24 February 2022. **International legal fora, such as the International Court of Justice, can provide a means by which states can determine how international law should be applied in order to reach legally binding decisions.** They also set important precedents that can be used in the legal evaluation of situations, even though they often require action by the UN Security Council, which may involve economic sanctions to enforce a decision.

At the national level, states may use their domestic legislation to better prepare for the

⁴⁰ UN General Assembly Resolution 3314 (XXIX) of 1974 recognizes in Article 4 of the definition that the UN Security Council may define the act of aggression, as the list in Article 3 is not exhaustive.

adverse effects of the use and abuse of international instruments. Actions may include amendments to national legislation to better prepare for military training and exercises being used to disguise military aggression, for example in terms of territorial surveillance and protection. Other actions may include economic legal mechanisms for states, including changes to international trade, budget increases to achieve military preparedness, and situational awareness in the face of aggressive military training and exercises by authoritarian states. In order for a state to be adequately prepared, these actions will be ineffective if they are limited to the security authorities of the states concerned; **close cooperation between national authorities, for example in the exchange of information, coordination of activities, and as the facilitating framework for coherent national legislation is essential in preparing for all eventual consequences of aggressive military training and exercises.** Cooperation and facilitating legislation in relation to national defence includes but is not limited to preparedness for hostile cyber operations, abuse of national legislation in the facilitation of hostile military activities below the threshold of armed conflict, and statements by authoritarian states and their actors aimed at international and public misconceptions of the target state's legal activities.

As these activities alone are likely to prove insufficient, regional actors such as the OSCE, the European Union and NATO must be employed as an effective response to Russian

aggressive abuse of legal instruments related to military training and exercises. Coordination of efforts is needed not only by the states concerned but also by those indirectly affected by the deterioration of the international legal-based order. In the case of economic sanctions, this requires significant re-allocation of resources by nation-states, potentially resulting in unpopular decisions affecting society in several adverse ways, even if the effects turn out to be desirable.⁴¹ Authoritarian states and actors supporting their agenda may make these adverse effects appear more detrimental than they are.

Coordinated efforts by European regional mechanisms against Russian escalation efforts could include the publication of credible information for decision-making, such as a sound legal basis for such decisions, their expected outcomes, and estimates of how a situation could escalate if no action is taken. Any such actions must be supported by a comprehensive study of their justifiability under international law to prevent the further erosion of such law, and its abuse to advance the national interests of authoritarian states. They must also be effective as a countermeasure so that the willingness of authoritarian states to escalate the situation can actually be diminished. In the case of aggressive military training and exercises, this would point to cooperation between the respective authorities at national and international levels, demonstrating the capability and capacity to effectively counter any potential aggression without escalation of the situation.

41 For effects of sanctions against Russia and reactions, see e.g., EU EEAS High Representative Blog entry on 16 July 2022, https://www.eeas.europa.eu/eeas/sanctions-against-russia-are-working_en. See also: Jeffrey Sonnenfeld, Steven Tian, Franek Sokolowski, Michal Wyrebkowski, Mateusz Kasprowics, 'Business Retreats and Sanctions Are Crippling the Russian Economy' (July 19, 2022), <https://ssrn.com/abstract=4167193>. For a general overview, see also: Jamie Dettmer, 'The great sanctions debate' (Politico, 5 August 2022), <https://www.politico.eu/article/the-great-sanctions-debate-russia-gas/>.

The effectiveness of coordinated European efforts to maintain international peace and security endangered by Russian military training and exercises requires a long-term, well-balanced commitment. It is of utmost importance for the international credibility, acceptance and legitimacy of these efforts that they are always based on full respect for international law, regardless of the threat, and that the goal is always the maintenance of international peace and security. The severe consequences of the failure of the international community, and particularly of regional actors in Europe, were demonstrated all too well by Russian military aggression in the occupation of Crimea and other parts of Eastern Ukraine, as well as the launch of the full-scale invasion in 2022.

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