

ORIGINAL ARTICLE

INTERNATIONAL LEGAL THEORY

Russia's expulsion: The Council of Europe as the guardian of European imperialism

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Abstract

On 16 March 2022, Russia became the first state to be expelled from the Council of Europe (CoE). The reshaping of power dynamics between international law actors is providing a favourable space to international organizations to use membership as a strategic tool. In order to understand under what circumstances the CoE decides to end membership, the article elucidates the substantive and symbolic grounds of Russia's expulsion. Substantive grounds are defined as non-compliance with the membership criteria of the CoE and its founding principles as regulated in Article 3 of its Statute. Symbolic grounds are what motivates the CoE in its positioning within the international legal order as indicated in the preamble of its Statute. The analysis of the substantive grounds will reveal that the violation of the CoE Statute and the prohibition on the use of force because of the invasion of Ukraine are not enough to explain Russia's expulsion. This article argues that Russia's expulsion relies on symbolic grounds that allowed the CoE to preserve its position as the guardian of European imperialism. The clash of the two actors' irreconcilable imperial policies proved for the CoE that Russia would no longer be at the receiving end of its demands. The Ukraine invasion signals a breaking point, escalating the inter-imperial rivalry to a level where the CoE believes Russia will no longer submit itself to the European international legal order as shaped by the Western European founders of the Organization.

Keywords: Council of Europe; expulsion; imperialism; international organizations; Russia

1. Introduction

After 26 years of membership, Russia ceased to be a member of the Council of Europe (CoE) following the invasion of Ukraine on 24 February 2022. The Committee of Ministers of the CoE decided that Russia's aggression against Ukraine was a serious breach of the founding principles of the Organization and that its membership was terminated as of 16 March 2022 based on the procedure initiated under Article 8 of the CoE Statute.¹ The first reaction from the CoE came the first day of the invasion and the Committee of Ministers indicated that the armed attack against Ukraine was a violation of international law.² The following day, the Committee stated that Russia

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¹CoE, Committee of Ministers, Resolution CM/Res(2022)2 on the Cessation of the Membership of the Russian Federation to the Council of Europe CM/Res(2022)2 (16 March 2022).

²CoE, Committee of Ministers, Situation in Ukraine, 1426bis Meeting, CM/Del/Dec(2022)1426bis/2.3 (24 February 2022).

violated the founding principles of the CoE and suspended its rights of representation under Article 8 of its Statute.³ On 10 March 2022, the Committee decided to consult the Parliamentary Assembly of the Council of Europe (PACE) on the termination of Russia's membership.⁴ On 15 March 2022, in an Opinion adopted with 216 votes in favour, none against and three abstentions, the PACE stated that Russia's military activities constituted an aggression under General Assembly Resolution 3314, and were in violation of Article 3 of the CoE Statute and the UN Charter.⁵ It further stated that due to the serious violations of its Statute, Russia could no longer be a member of the Organization.⁶ It asked the Committee of Ministers to request from Russia to withdraw from the CoE and in case Russia did not comply with this request to decide on the termination of its membership.⁷ The same day, Russia informed the Secretary General of the CoE that it was withdrawing from the Organization.⁸ On 16 March 2022, despite Russia's notification of withdrawal, the Committee of Ministers preferred to expel Russia from the Organization under Article 8 of its Statute.⁹ Russia became the first state to be expelled from the CoE since its establishment in 1949.

The reshaping of power dynamics between the actors of international law is providing a favourable space to international organizations to use membership as a strategic tool.¹⁰ At a first glance, it might seem that the CoE's decision to expel Russia relies solely on the invasion of Ukraine. In order to understand under what circumstances the CoE decides that it is no longer possible to cooperate with a state as a member, it is necessary to draw a broader picture that goes beyond Russia's aggression against Ukraine. To that end, the article elucidates the substantive and symbolic grounds which played a significant role in the expulsion decision of the CoE. For the purposes of this article, substantive grounds are defined as non-compliance with the membership criteria of the CoE and its founding principles as regulated in Article 3 of its Statute. According to Article 8 of the Statute, any member that seriously violates Article 3 can be expelled from the CoE. Article 3 of the Statute enshrines the founding principles of the Organization which are the rule of law and human rights, and it further requires states to realize the aim of the CoE which is to achieve unity between its members. Symbolic grounds are defined as what motivates the CoE in its role as a regional international organization within international legal order as indicated in the preamble of its Statute. The preamble of the CoE Statute stipulates that its role as a regional international organization is to preserve the 'human society and civilisation' and protect the European 'common heritage' between 'like-minded states'.¹¹ Delving into these symbolic grounds will allow us to understand the role that CoE assumes to play against other international actors.

³CoE, Committee of Ministers, Situation in Ukraine – Measures to be Taken, including under Article 8 of the Statute of the Council of Europe, 1426ter MeetingCM/Del/Dec(2022)1426ter/2.3 (25 February 2022). On the consequences of the representation rights, see also CoE, Committee of Ministers, Resolution CM/Res(2022)1 on Legal and Financial Consequences of the Suspension of the Russian Federation from its Rights of Representation in the Council of EuropeCM/Res(2022)1 (2 March 2022).

⁴CoE, Committee of Ministers, Consequences of the Aggression of the Russian Federation against Ukraine, 1428bis Meeting CM/Del/Dec(2022)1428bis/2.3 (10 March 2022).

⁵CoE, PACE, Consequences of the Russian Federation's Aggression against Ukraine, Opinion 300 (15 March 2022).

⁶*Ibid.*

⁷*Ibid.*

⁸CoE, 'The Russian Federation Is Excluded from the Council of Europe', *Newsroom*, 16 March 2022, available at www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe.

⁹CoE, Committee of Ministers, Resolution CM/Res(2022)2 on the Cessation of the Membership of the Russian Federation to the Council of EuropeCM/Res(2022)2 (16 March 2022). Despite Russia's request to withdraw from the Organization, the Committee of Ministers decided to expel Russia, a decision that clearly violates Article 8 of the CoE Statute. If Russia were to withdraw in line with Article 7, it would continue to be a member until the end of the financial year. Rather than waiting until the end of December 2022, the Committee of Ministers preferred the termination of membership to take effect immediately and therefore expelled Russia without allowing it to withdraw.

¹⁰C. M. Brölmann et al., 'Exiting International Organizations: A Brief Introduction', (2018) 15 *International Organizations Law Review* 243, at 259.

¹¹1949 Statute of the Council of Europe, Preamble.

Investigating these symbolic grounds will demonstrate that the ‘common heritage’ that the CoE aims to preserve stands for a particular form of heritage that only embraces strong commitment with European values in the way they shape the international legal order.

This article argues that Russia’s expulsion relies on symbolic grounds that allowed the CoE to confirm its position as the guardian of European imperialism. The analysis of the substantive grounds will reveal that the violation of the CoE Statute and the prohibition on the use of force because of the invasion of Ukraine are not enough to explain why Russia was expelled from the Organization. Russia was in violation of the CoE Statute for a long time and there were serious substantive grounds that could justify its expulsion. The substantive grounds, however, were not deemed to be sufficient by the Organization to end the membership. On the one hand the CoE, which has put great effort in transforming Russia since its admission, is supporting Ukraine’s rapprochement with Western states and on the other hand Russia is openly fighting back against Ukraine’s alliance with NATO and EU. This inter-imperial rivalry between the actors manifested itself with the rearrangement of membership in the CoE. In that sense, the expulsion of Russia from the CoE can be read as the latter’s affirmation of its role as the guardian of European imperialism.

The article is structured as follows. The second section explains how European imperialism has been part and parcel of the CoE’s expansionist agenda. The third section analyses the substantive grounds of Russia’s expulsion. It explains how Russia’s relations with the CoE started to deteriorate with the annexation of Crimea. It also examines the fragile relationship between Russia and the European Court of Human Rights (ECtHR). Then, the article focuses on the symbolic grounds of Russia’s expulsion. It investigates the distinction that the CoE makes between a ‘European state’ and the ‘European continent’. It explores how the current rivalry between Russia and the CoE is reminiscent of the period when the latter was established as a force against the former. The fifth section draws on these substantive and symbolic grounds to claim that Russia’s expulsion is the result of a clash of interest in an inter-imperial rivalry between two international law actors. It explains how the CoE used the expulsion as a strategic tool to proclaim its role as the guardian of European imperialism in the international legal order. The article finishes with some concluding remarks.

2. The privilege of the CoE to harbour the centre

European imperialism is intrinsic to the formation of international law which proclaims to be universal.¹² The scholarship examining the historical development of the current international legal order stemming from a European tradition of international law is abundant.¹³ Since universality does not have an authentic substance and has to draw from a particular that transcends all other particulars, the European legal tradition is what fills the void of the universality of international law.¹⁴ European imperialism, which aims at expanding the zone of control and domination of the European legal tradition, and how it operates takes on a new

¹²S. Pahuja, ‘The Postcoloniality of International Law’, (2005) 46 *Harvard International Law Journal* 459; E. Jouannet, ‘Universalism and Imperialism: The True-False Paradox of International Law’, (2007) 18 (3) *European Journal of International Law* 379.

¹³Y. Onuma, ‘When Was the Law of International Society Born? An Inquiry of the History of International Law from an Intercivilizational Perspective’, (2000) 2 *Journal of the History of International Law* 1; M. Koskeniemi, ‘International Law in Europe: Between Tradition and Renewal’, (2005) 16 *European Journal of International Law* 113; B. Bowden, ‘The Colonial Origins of International Law: European Expansion and the Classical Standard of Civilization’, (2005) 7 *Journal of the History of International Law* 1; A. Anghie, ‘The Evolution of International Law: Colonial and Postcolonial Realities’, (2006) 27 *Third World Quarterly* 739; M. Koskeniemi, *The Gentle Civilizer of Nations* (2009); L. Obregón Tarazona, ‘The Civilized and The Uncivilized’, in B. Fassbender and A. Peters (eds.) *The Oxford Handbook of the History of International Law* (2012), 917.

¹⁴I. Aral and J. d’Aspremont, ‘The Universalizing Narratives of International Law and their Binary Contestations’, in I. Aral and J. d’Aspremont (eds.) *International Law and Universality* (2024), 1 at 4–8.

significance when it comes to the CoE. The states that have been at the forefront in the universalization of a European understanding of international law have also been the founding members of the CoE. The Organization enjoys the privilege of sitting at the centre of the international legal order by forming an alliance that has created the fundamental principles of today's universal international law.¹⁵ In other words, the CoE acts with the authority of representing the legal tradition that transcended all other particulars to become the universal. It is not surprising, therefore, that these founding states continued their ambition to expand their zone of control and domination through the Statute of the CoE. It should be noted that the centre that the CoE occupies is not shared by all its members. The CoE reserves the centre to a particular geographical place it calls the 'European continent', which is inhabited only by Western European states. It will be shown in the following sections that the distinction that the CoE makes between the centre and the periphery forms an important aspect of its imperialist agenda.

Imposing one's political, legal, cultural views upon others through law is not unique to European states, or states alone.¹⁶ International organizations have been useful actors to further particular interests by pursuing imperial policies.¹⁷ The scholarship has so far paid little attention on how the CoE has been an important vehicle to reproduce European imperialism as a regional international organization.¹⁸ The emphasis has most of the time been on the EU as a regional political and economic actor. Another reason why the CoE has managed to spare itself from criticism for its imperial policies can also be explained with the attention being concentrated on the contributions that the ECtHR made to the development of international human rights law which in return overshadowed or shielded the Organization itself. As the following sections will demonstrate, the case of Russia showcases how the CoE plays a crucial role in the preservation of European imperialism.

An important aspect of imperialism has been the repression of difference.¹⁹ In the aftermath of formal colonization, international organization expansion has been used as a tool to reform new members in the image of Western states.²⁰ This has been masterfully executed by the CoE which has forced the new members to transform based on the membership criteria. As indicated in the Statute, the CoE is established to realize 'the ideals and principles which are [the] common heritage' of its founding members.²¹ In the case of the CoE, European imperialism has manifested itself by a policy of expansion that forced new members to transform themselves in the image of the founding members of the CoE who are all Western European states. The CoE has carved a solid zone of control and domination by following an expansionist agenda that required the new members to adopt the human rights and democratic governance standards set by its Statute. When one focuses on the expansionist agenda of the CoE, the Organization can hardly be

¹⁵J. d'Aspremont, 'International Law, Universality and the Dream of Disrupting from the Centre', (2018) 7 (7) *ESIL Reflections*.

¹⁶M. A. Carrai, 'Learning Western Techniques of Empire: Republican China and the New Legal Framework for Managing Tibet', (2017) 30 *Leiden Journal of International Law* 801; R. Knox, 'Civilizing Interventions? Race, War and International Law', (2013) 26 *Cambridge Review of International Affairs* 119; M. Shahabuddin, 'Regionalism, Hegemony, and Universality in the International Order of the Far East', in Aral and Aspremont (eds.), *supra* note 14, 199; H. G. Feyissa, 'Non-European Imperialism and Europeanisation of Law: Complexities of Legal Codification in Imperial Ethiopia', (2020) 1 *Third World Approaches to International Law Review* 152; A. Kotova and N. Tzouvala, 'In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law', (2022) 116 *American Journal of International Law* 710.

¹⁷B. S. Chimni, 'International Institutions Today: An Imperial Global State in the Making', (2004) 15 *European Journal of International Law* 1.

¹⁸On the lack of research on regional international organizations, see S. Besson and E. Kassoti, 'The International Law of Regional Organizations – Mapping the Issues', (2024) 21 *International Organizations Law Review* 1. On the use of regional international organizations for imperialist purposes, see G. F. Sinclair, 'Between Functionalism and Hegemony: Regional International Organizations in the History of International Law', (2024) 21 *International Organizations Law Review* 65.

¹⁹A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2007), 200.

²⁰G. F. Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (2017), 16.

²¹See Statute of the Council of Europe, *supra* note 11, Art. 1.

considered a platform of cooperation, discussion, dialogue, negotiation, or exchange but rather it is an incubator of states that have to mimic Western European states in their political and legal policies. It is a platform where those at the periphery have to obediently apply the demands of the centre.

The principles that were advanced by the CoE for its expansionism did not receive much resistance from the new members since they have usually been associated with a progress narrative. In order to expand its zone of control and domination, the CoE required all new members to respect the rule of law, human rights, and democracy as indicated in its Statute.²² The idea that certain legal principles will help to improve the human condition and bring about progress has often provided legitimacy to one's actions.²³ Refusing or even negotiating the substance of the rule of law, human rights and democracy was a recipe to be labelled backward, uncivilised, archaic, underdeveloped, or barbaric.²⁴ In order to be a part of the centre and share its power, new members had to follow these principles as dictated by the CoE. This process of transformation came to a deadlock regarding Russia when the CoE realized that the incorporation of Russia into the European international legal order and its containment was no longer an option following the invasion of Ukraine.

3. The substantive grounds of Russia's expulsion

Russia's relationship with the CoE was going through a rough period since the mid-2000s. Scholars were already discussing whether the relationship between Russia and the CoE was sustainable.²⁵ In other words, for many the divorce between the two actors did not come as a surprise. When the relationship between Russia and the CoE is examined, it can be observed that the rocky relationship between Russia and the CoE was not the main reason for the former's expulsion. The following sub-sections will elucidate how the annexation of Crimea and the relationship between the ECtHR and Russia were not deemed to be enough for the latter's expulsion from the CoE.

3.1. From the annexation of Crimea to the invasion of Ukraine

The process that ended with the expulsion of Russia can be traced back to the annexation of Crimea. The Crimean crisis was set off by the new turn that the relations between the EU and Ukraine took with the negotiations of the EU–Ukraine Association Agreement. The principal aim of the Agreement was to form a first step for the enhancement of Ukraine's legal, political, and economic framework with the EU. The Agreement was signed on 21 March 2014 after the ousting of President Yanukovich by the Ukrainian Parliament. This was a development that elevated the relations between Ukraine and the EU to a higher level by strengthening the political and economic cooperation between the two parties noting that 'political association and economic integration of Ukraine with the European Union will depend on progress in the implementation of

²²On the narration of democratic governance in progressive terms, see I. Aral, 'International Lawyers as Hope Mongers: How Did We Come to Believe that Democracy was Here to Stay?', (2024) 26 (2) *Journal of the History of International Law* 161.

²³T. Skouteris, 'Progress', in S. Singh and J. d'Aspremont (eds.), *Concepts for International Law* (2019), 719 at 723.

²⁴See Anghie, *supra* note 19, at 254–8.

²⁵B. Bowring, 'Russia and Human Rights: Incompatible Opposites', (2009) 1 *Goettingen Journal of International Law* 257, at 259; L. Mälksoo, 'Concluding Observations. Russia and European Human Rights Law: Margins of the Margin of Appreciation', in L. Mälksoo (ed.), *Russia and European Human-Rights Law: The Rise of the Civilizational Argument* (2014), 217 at 227; K. Dzehtsiarou and D. K. Coffey, 'Suspension and Expulsion of Members of the Council of Europe: Difficult Decisions in Troubled Times', (2019) 68 *International & Comparative Law Quarterly* 443.

this Agreement'.²⁶ Soon after the ousting of Yanukovych, who had very close ties with Moscow, Russia deployed military forces to its border with Ukraine.²⁷ On 16 March 2014, Crimea held a referendum and 95.5 per cent of voters were in favour of joining Russia.²⁸ While a Security Council draft resolution declaring the invalidity of the referendum and calling on all states not to recognize any alteration of the status of Crimea was vetoed by Russia,²⁹ the General Assembly adopted Resolution 68/262 titled 'Territorial Integrity of Ukraine' to underline the invalidity of the referendum.³⁰ On the following day of the referendum, the United States and the EU imposed sanctions on Russia.³¹ On 21 March 2014, Russia passed a legislation recognizing the annexation of Crimea.³²

While the Crimean crisis erupted mostly due to Ukraine's strengthening relations with the EU, the annexation triggered a new episode between Russia and the CoE. On 9 April 2014, the PACE adopted Resolution 1988 which declared that the annexation of Crimea and the Russian military aggression were in violation of the UN Charter and the Statute of the CoE.³³ The following day, the PACE adopted Resolution 1990 and decided to suspend Russia's voting rights at the Assembly and some of its representation rights in other CoE bodies until the end of 2014 stating that the annexation of Crimea constituted a grave violation of international law.³⁴ A year later, due to Russia's rejection to implement the measures requested by the Assembly, PACE decided to suspend additional representation rights at the Organization.³⁵ While the position of PACE regarding when the credentials of the Russian delegation would be annulled was firmly stated in Resolution 2034, in its following step, it preferred to adopt a milder stance. In Resolution 2063, it noted its regret regarding Russia's decision to cut all official communication with the Assembly and called on Russia to restart a constructive dialogue.³⁶ From 2016 to 2019, Russia did not submit credentials to PACE, most likely in order to avoid a potential non-accreditation of its credentials.³⁷ Despite Russia's refusal to respond to the demands of PACE, in 2019 the PACE decided to restore Russia's voting rights.³⁸

After the ousting of Yanukovych, who was a close ally to the Russian government, Russia increased its military presence in Crimea and continued with the annexation of the peninsula. The reaction of the CoE was first to condemn the annexation, then to suspend Russia's voting rights

²⁶European Union, Association Agreement between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part, L 161/3 (25 May 2014) Preamble.

²⁷S. Walker, H. Salem and E. MacAskill, 'Russian "Invasion" of Crimea Fuels Fear of Ukraine Conflict', *The Guardian*, 1 March 2014, available at www.theguardian.com/world/2014/feb/28/russia-crimea-white-house.

²⁸L. Harding and S. Walker, 'Crimea Votes to Secede from Ukraine in "Illega" Poll', *The Guardian*, 16 March 2014, available at www.theguardian.com/world/2014/mar/16/ukraine-russia-truce-crimea-referendum. On the legality of the referendum, see A. Peters, 'The Crimean Vote of March 2014 as an Abuse of the Institution of the Territorial Referendum', in C. Calliess (ed.), *Liber Amicorum Torsten Stein* (2015), 255. See also Venice Commission, Opinion on 'whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea's 1992 Constitution is compatible with constitutional principles', Opinion no. 762/2014, CDL-AD(2014)002 (21 March 2014).

²⁹UN Security Council, UN Doc. S/2014/189 (15 March 2014).

³⁰UN General Assembly, UN Doc. A/RES/68/262 (27 March 2014).

³¹Ukraine Crisis: EU and US Impose Sanctions over Crimea', *BBC*, 17 March 2014, available at www.bbc.com/news/world-europe-26613567.

³²Ukraine: Putin Signs Crimea Annexation', *BBC* 21 March 2014, available at www.bbc.com/news/world-europe-26686949.

³³CoE, PACE, Resolution 1988 (2014)(9 April 2014) para. 14.

³⁴CoE, PACE, Resolution 1990 (2014)(10 April 2014).

³⁵CoE, PACE, Resolution 2034 (2015)(28 January 2015).

³⁶CoE, PACE, Resolution 2063 (2015)(24 June 2015).

³⁷A. Drzemczewski and K. Dzehtsiarou, 'Painful Relations between the Council of Europe and Russia', *EJIL: Talk!*, 28 September 2018, available at www.ejiltalk.org/painful-relations-between-the-council-of-europe-and-russia/.

³⁸CoE, PACE, Strengthening the Decision-Making Process of the Parliamentary Assembly Concerning Credentials and Voting, Resolution 2287 (2019) (25 June 2019)

and the cancellation of Russia's credentials was always at the table as a threat to force Russia to comply with the demands of the PACE. This process demonstrates how the relations between the CoE and Russia was already in downfall since 2014 due to Russia's violation of Ukraine's territorial integrity. Nevertheless, the annexation of Crimea and the following period, which is marked by Russia's unresponsiveness to the demands of CoE, fell short of taking the decision to expel it from the Organization. It is significant that despite the violation of Ukraine's sovereignty and territorial integrity, in 2019 PACE proceeded with restoring Russia's representation rights at the Organization.

3.2. The relationship between Russia and the ECtHR

As mentioned above, one of the fundamental principles and membership criteria of the CoE is respect for human rights. The ECtHR has performed a crucial role in this regard by determining what human rights mean for the Organization. The European Convention on Human Rights (ECHR) is a document that epitomizes the liberal democratic identity of the Organization's founding members.³⁹ As the body that provides the authoritative interpretation of the ECHR, the Court has transformed the Convention from a set of vague articles into a meticulously elaborate and detailed corpus of law. Since every CoE member is also a party to the ECHR, the Court's interpretation of human rights has created the minimum standards that all members have to respect in their domestic jurisdiction.⁴⁰ It can be argued that the Court has been instrumental in the harmonization of the human rights understanding among members states. Moreover, the Court's success in the development of international human rights law had an important influence on other regional human rights courts and monitoring mechanisms in such a way that some scholars argued that the Convention now finds itself at the heart of an emerging constitutional legal order at the global level.⁴¹ This shows the role that the Court plays regarding the expansion of a zone of control and domination regarding a European understanding of international human rights law.⁴² The Court's transformative power became particularly important vis-à-vis Russia after its admission to the CoE since it had to catch up with the human rights developments that it did not adopt during the Cold War.

The commitment of Russia to the protection of international human rights law has been ambivalent.⁴³ Russia's membership to the CoE and its ratification of the ECHR marked an important historical moment which signaled the willingness of Russia to adhere to the European human rights protection system.⁴⁴ During the admission of Russia to the CoE, a report prepared at the request of the PACE stated that 'the legal order of the Russian Federation does not, at the present moment, meet the Council of Europe standards as enshrined in the statute of the Council'.⁴⁵ In addition, when the Committee of Ministers asked the PACE's opinion on Russia's request to join the Organization, the PACE stated that, despite several shortcomings, it was based on the assurances that Russia had provided for the adoption of political, legal, and economic

³⁹S. Greer, 'What's Wrong with the European Convention on Human Rights', (2008) 30 *Human Rights Quarterly* 680.

⁴⁰See H. Keller and A. Stone Sweet (eds.), *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (2008).

⁴¹A. Stone Sweet and C. Ryan, *A Cosmopolitan Legal Order: Kant, Constitutional Justice, and the European Convention on Human Rights* (2018); W. Sandholtz, 'The ECtHR, Transregional Dialogues and Global Constitutionalism', (2020) 9 (3) *Global Constitutionalism* 543.

⁴²On Eurocentricism in international human rights law, see M. Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights', (2001) 42 (1) *Harvard International Law Journal* 201; U. Baxi, 'Voices of Suffering and the Future of Human Rights', (1998) 8 (2) *Transnational Law & Contemporary Problems* 125.

⁴³For a brief history of the development of human rights in Russia, see Bowring, *supra* note 25.

⁴⁴For a critical approach to Russia's admission to the CoE and the impact of its accession to the ECHR on the protection of human rights in other member states, see M. W. Janis, 'Russia and the Legality of Strasbourg Law', (1997) 8 *European Journal of International Law* 93.

⁴⁵CoE, PACE, Bureau of the Assembly, Report on the Conformity of the Legal Order of the Russian Federation with Council of Europe Standards (7 October 1994).

reforms that it was endorsing admission.⁴⁶ When Russia joined the CoE, there was an expectation that Russia would implement the necessary changes in order to mirror the human rights standards set by the Organization.⁴⁷ Russia was expected to reach the CoE's 'standard of civilization' by embracing the human rights values set by the ECtHR.⁴⁸ This is not surprising considering the expansion of international organizations is often used as a tool to reform the newcomers in the image of Western states.⁴⁹ The expectation with the membership of Russia was that it would transform itself in the image of CoE's founding members who were all Western European states. There was, however, resistance against this expectation and the so-called universal standards of Western states that did not always align with the standards of the Russian civilization.⁵⁰ According to Mälksoo, the statist approach of Russia to public international law prioritizes the state over the individual and this undermines the protection of international human rights.⁵¹ The mainstream Russian approach to international human rights law emphasizes the Western origins of the current international human rights system and draws attention to the risks it creates for the protection of state sovereignty and the principle of non-intervention in internal affairs.⁵²

The skepticism of Russia with regard to international human rights law can be observed in the implementation of the ECHR.⁵³ Russia acceded to the ECHR in 1998.⁵⁴ The violations that the ECtHR found in some cases created a strong reaction on the side of Russia. Among many others, the Court's findings on gender discrimination in *Markin v. Russia*,⁵⁵ solitary confinement in *Ilaşcu and Others v. Moldova and Russia*,⁵⁶ tax and enforcement proceedings in *YUKOS v. Russia*,⁵⁷ and judgments about its activities in Chechnya⁵⁸ and Georgia⁵⁹ received severe criticisms from Russian politicians.⁶⁰ On the other hand, Russia caused a serious delay

⁴⁶CoE, PACE, Russia's Request for Membership of the Council of Europe, Opinion no. 193 (1996).

⁴⁷On the use of human rights discourse as a civilizing mission, see M. Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights', (2001) 42 *Harvard International Law Journal* 201.

⁴⁸See gen. Anghie, *supra* note 19, at 84–7.

⁴⁹See Sinclair, *supra* note 20, at 14–16.

⁵⁰L. Mälksoo, 'The Human Rights Concept of the Russian Orthodox Church and its Patriarch Kirill I: A Critical Appraisal', in Mälksoo (ed.), *supra* note 25, 15 at 24–5.

⁵¹L. Mälksoo, *Russian Approaches to International Law* (2015), 122.

⁵²*Ibid.*, at 122–4.

⁵³On the impact of the ECHR on Russian domestic law, see Mälksoo, 'Concluding Observations. Russia and European Human Rights Law: Margins of the Margin of Appreciation', *supra* note 25, at 218–20; J. D. Kahn, 'Russia's "Dictatorship of Law" and the European Court of Human Rights', (2004) 29 *Review of Central and East European Law* 1; B. Bowring, 'Russia's Accession to the Council of Europe and Human Rights: Compliance or Cross-Purposes?', (1997) *European Human Rights Law Review* 628; P. Roter, 'Russia in the Council of Europe: Participation à la Carte', in L. Mälksoo and W. Benedek (eds.), *Russia and the European Court of Human Rights: The Strasbourg Effect* (2018) 26.

⁵⁴In line with Art. 58 of the ECHR, Russia ceased to be a party to the Convention on 16 September 2022, six months after the termination of its membership to the CoE, see ECtHR, 'Resolution of the European Court of Human Rights on the Consequences of the Cessation of Membership of the Russian Federation to the Council of Europe in Light of Article 58 of the European Convention on Human Rights', 22 March 2022, available at [echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf](https://www.echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf).

⁵⁵*Konstantin Markin v. Russia* [GC], Judgment of 22 March 2012, [2012] ECHR.

⁵⁶*Ilaşcu and Others v. Moldova and Russia* [GC], Judgment of 8 July 2004, [2004] ECHR.

⁵⁷*Oao Neftyanaya Kompaniya YUKOS v. Russia*, Judgment of 20 September 2011, [2011] ECHR.

⁵⁸Among others, see *Isayeva v. Russia*, Judgment of 24 February 2005, [2005] ECHR; *Goncharuk v. Russia*, Judgment of 4 October 2007, [2007] ECHR; *Imakayeva v. Russia*, Judgment of 9 November 2006, [2006] ECHR. See also, P. Leach, 'The Chechen Conflict: Analysing the Oversight of the European Court of Human Rights', (2008) 6 *European Human Rights Law Review* 732; W. Abresch, 'A Human Rights Law of Internal Armed Conflict: The European Court of Human Rights in Chechnya', (2005) 16 *European Journal of International Law* 741.

⁵⁹Among others, see *Georgia v. Russia (I)* [GC], Judgment of 3 July 2014, [2014] ECHR; *Georgia v. Russia (II)* [GC], Judgment of 21 January 2021, [2021] ECHR; *Berdzenishvili and Others v. Russia*, Judgment of 20 December 2016, [2016] ECHR.

⁶⁰See Mälksoo, 'Concluding Observations. Russia and European Human Rights Law: Margins of the Margin of Appreciation', *supra* note 25, at 220.

in the entry into force of Additional Protocol 14 to the ECHR due to its non-ratification of the Protocol.⁶¹ This was condemned by the PACE which called on Russia to reconsider its refusal to ratify the Protocol.⁶² The Protocol was opened for signature on 13 May 2004 and member states were invited to ratify it within two years. On 12 May 2009, the Committee of Ministers adopted Additional Protocol 14*bis* which removed the requirement of ratification of all states for the entry into force of the Protocol.⁶³

The ECtHR judgments that found not only serious violations of the ECHR but also ruled for the payment of significant amounts of just satisfaction to victims created a strong reaction in Russia. For instance, the YUKOS judgment alone required Russia to pay more than 1.8 billion Euros for pecuniary damages to the applicants.⁶⁴ In 2015, this led to the amendment of the federal law which allowed the Constitutional Court to rule on the impossibility of the implementation of an international judgment in case it contradicted with the Russian Constitution.⁶⁵ This amendment on the enforceability of the judgments of the ECtHR disregarded Article 46 of the ECHR which affirms the binding force of the Court's judgments and requires states to abide by them. In 2020, the estrangement between Russia and the ECtHR was taken a step further. The Russian Constitution has been amended to stipulate that if the decision of an international treaty-body contradicted with the Constitution, it could not be enforced.⁶⁶ This development exemplified how Russia was adamant to burn the bridges with the ECtHR.

When the statistics at the time of its expulsion are examined, it can be observed that in 2021 the Court received 6,002 applications and in total had 17,367 cases to resolve against Russia.⁶⁷ In 2022, the Court's statistics showed that, despite acceding to the ECHR in 1998, among all other member states, Russia ranked second in the number of judgments that found at least one violation since the establishment of the Court in 1959.⁶⁸ Based on the figures of the European Implementation Network, Russia has not yet implemented 95 per cent of the leading ECtHR cases.⁶⁹ These figures indicate two important points. First, at a time when the Court already struggled to process an enormous number of applications, Russia was one of the countries that generated a considerable number of all the applications lodged to the Court in recent years. Second, Russia was not only one

⁶¹J. W. Reiss, 'Protocol No. 14 ECHR and Russian Non-Ratification: The Current State of Affairs', (2009) 22 *Harvard Human Rights Journal* 293.

⁶²CoE, PACE, Draft Protocol No. 14 bis to the Convention for the Protection of Human Rights and Fundamental Freedoms, Opinion 271 (2009) (30 April 2009). Dick Marty, the then chairman of the PACE Committee on Legal Affairs and Human Rights stated that if Russia 'felt that it could not comply with the principle of the independence of the Court then surely that country no longer belonged' cited in *ibid.*, 306.

⁶³CoE, Committee of Ministers, 119th Session of the Committee of Ministers CM(2009)58-final (12 May 2009).

⁶⁴*Oao Neftyanaya Kompaniya YUKOS v. Russia (Just Satisfaction)*, Judgment of 31 July 2014, [2014] ECHR.

⁶⁵B. Bowring, 'Russia and the European Convention (or Court) of Human Rights: The End?', (2020) *Revue Québécoise de Droit International* 201, 207; J. Kahn, 'The Relationship between the European Court of Human Rights and the Constitutional Court of the Russian Federation: Conflicting Conceptions of Sovereignty in Strasbourg and St Petersburg', (2019) 30 *European Journal of International Law* 933. For the opinion of the Venice Commission on the legal amendment, see Venice Commission, Russian Federation, Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court, 10–11 June 2016, Opinion no: 832/2015, CDL-AD(2016)016. See also, Y. Ioffe, 'The Amendments to the Russian Constitution: Putin's Attempt to Reinforce Russia's Isolationist Views on International Law?', *EJIL: Talk!*, 29 January 2020, available at www.ejiltalk.org/the-amendments-to-the-russian-constitution-putins-attempt-to-reinforce-russias-isolationist-views-on-international-law/.

⁶⁶L. Mälksoo, 'International Law and the 2020 Amendments to the Russian Constitution', (2021) 115 *American Journal of International Law* 78, 86–92.

⁶⁷ECtHR, Press Country Profile, September 2022, available at www.echr.coe.int/Documents/CP_Russia_ENG.pdf. As of May 2024, out of 64,200 cases pending before the Court, 9,200 of these cases were submitted against Russia, the second country with the highest number of pending cases, see ECtHR, Pending Applications, available at www.echr.coe.int/statistical-reports.

⁶⁸ECtHR, Violations by Article and by State, available at www.echr.coe.int/Documents/Stats_violation_1959_2022_ENG.pdf. At the end of 2023, the Court's statistics showed that Russia ranked first in the number of judgments that found at least one violation since the establishment of the Court in 1959, available at www.echr.coe.int/statistical-reports.

⁶⁹European Implementation Network, Russia, available at www.einnetwork.org/russia-echr.

of the countries that generated the highest number of applications, but it also failed to implement these judgments. In that sense, the Court's efforts to process these applications, redress human rights violations and evaluate the compatibility of the Russian domestic law with the ECHR, were not reciprocated in the efforts of the Russian government for the implementation of these judgments. This disparity between the workload on ECtHR caused by Russia and the lack of interest in putting the judgments into practice is an important ground that demonstrates Russia's move away from the CoE's founding principles which are about the protection of rule of law and human rights. It is striking, however, that none of the above led to the expulsion of Russia from the CoE.

4. The symbolic grounds of Russia's expulsion

The timing of Russia's expulsion from the CoE is not coincidental. Although Russia was walking on a tightrope in its relations with the CoE for a long time, it is significant that the divorce materialized soon after the invasion of Ukraine. It can be stated that the substantive grounds explained above were not enough for the CoE to expel Russia from the Organization. The following sub-sections will demonstrate how the expulsion required a stronger motivation such as the reaffirmation of the Organization's position as the guardian of European imperialism. This affirmation can be explained through two symbolic grounds which rely on the breach of peace in the 'European continent' and the revival of founding purposes of the CoE. It is these symbolic grounds that evidenced to the CoE that Russia could no longer be part of 'a closer unity between all like-minded countries of Europe' as indicated in the preamble of its Statute.

4.1. The breach of peace in the 'European Continent'

The Committee of Ministers and the PACE indicated on several occasions that the armed attack of Russia against Ukraine was a clear violation of the prohibition on the use of force and the aim of the CoE to resolve disputes by peaceful means.⁷⁰ In that sense, the violation of Article 2/4 of the UN Charter and Article 3 of the CoE Statute was a key reason for its expulsion.⁷¹ This is not, however, the first time that a CoE member engages in armed conflict. A closer analysis of the CoE's reaction to cases where its members have been involved in use of force demonstrates that the mere violation of Article 2/4 of the UN Charter is not in itself reason enough for the Organization to expel a member. Rather than its normative value and role in preserving the current international legal order as a system that functions through the resolution of disputes by peaceful means, the expulsion of Russia after its invasion of Ukraine demonstrates that the CoE pays more attention to the prohibition on the use of force when it is violated in the 'European continent'.

In his televised speech on 24 February 2022, President Putin stated that their 'special military operation' against Ukraine was justified under Article 51 of the UN Charter which regulates the right to self-defence.⁷² Russia claimed that its 'special military operation' was justified since it was

⁷⁰CoE, Committee of Ministers, Resolution CM/Res(2022)2 on the Cessation of the Membership of the Russian Federation to the Council of Europe, CM/Res(2022)2 (16 March 2022); CoE, Committee of Ministers, Situation in Ukraine, 1426bis Meeting CM/Del/Dec(2022)1426bis/2.3(24 February 2022); CoE, PACE, Consequences of the Russian Federation's Aggression against Ukraine, Opinion 300(15 March 2022).

⁷¹Although not expressly stated in Article 3 of the CoE Statute, solution of disputes through peaceful means was developed as a membership criterion during the admission process of Eastern European states, see E. Klein, 'Membership and Observer Status', in S. Schmahl and M. Breuer (eds.), *The Council of Europe: Its Law and Policies* (2017), 41 at 48.

⁷²Address by the President of the Russian Federation', 24 February 2022, available at en.kremlin.ru/events/president/transcripts/67843. See also, 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).

acting in individual self-defence against the threat posed by Ukraine and NATO and collective self-defence to protect Donbas.⁷³ Some international lawyers also argued that Putin's speech implied a humanitarian intervention argument.⁷⁴ In its response to the request of Ukraine for provisional measure before the ICJ, Russia stated that its actions were justified solely based on the right to self-defence and overrode any justification based on humanitarian intervention.⁷⁵ A great majority of states⁷⁶ and international lawyers⁷⁷ are of the opinion that the use of force by Russia against Ukraine is in violation of Article 2/4 of the UN Charter and that its military actions cannot be justified based on a right to self-defence. The position of the CoE was also clear. On 15 March 2022, PACE noted that Russia's armed attack against Ukraine was in violation of the UN Charter and constituted an aggression in light of General Assembly Resolution 3314 'Definition of Aggression'.⁷⁸ In the same vein, when the Committee of Ministers adopted the Resolution that terminated Russia's membership of the CoE, it stated that the aggression of Russia against Ukraine was a serious breach of Article 3 of its Statute.⁷⁹

It is not the first time that a CoE member is being accused of a violation of Article 2/4 of the UN Charter. There are several instances where CoE members have been accused of violating the prohibition on the use of force against a non-member. Western states have long been criticized for having a monopoly over the violation of Article 2/4 of the UN Charter without facing serious repercussions.⁸⁰ Belgium's intervention in the Congo in 1960 and 1964,⁸¹ UK's use of force in the Falklands in 1982,⁸² France's armed activities in Mali in 2013⁸³ and military operations conducted against ISIS are only some examples.⁸⁴ Two cases that have been severely condemned by the international community as a violation of the prohibition on the use of force deserve closer

⁷³J. A. Green, C. Henderson and T. Ruys, 'Russia's Attack on Ukraine and the Jus Ad Bellum', (2002) 9 *Journal on the Use of Force and International Law* 4, 8.

⁷⁴M. Milanovic, 'What is Russia's Legal Justification for Using Force against Ukraine?', *EJIL: Talk!*, 21 February 2022, available at www.ejiltalk.org/what-is-russias-legal-justification-for-using-force-against-ukraine/.

⁷⁵*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, 'Document (with Annexes) from the Russian Federation Setting Out Its Position Regarding the Alleged "Lack of Jurisdiction" of the Court in the Case', ICJ, 7 March 2022, available at www.icj-cij.org/public/files/case-related/182/182-20220307-OTH-01-00-EN.pdf. See also M. Milanovic, 'Russia's Submission to the ICJ in the Genocide Case; Russia's Withdrawal from the Council of Europe', *EJIL: Talk!*, 11 March 2022, available at www.ejiltalk.org/russias-submission-to-the-icj-in-the-genocide-case-russias-withdrawal-from-the-council-of-europe/.

⁷⁶UN GA, Resolution ES-11/1 'Aggression Against Ukraine', UN Doc. A/RES/ES-11/1 (2 March 2022); UN GA, Resolution ES-11/4 'Territorial Integrity of Ukraine: Defending the Principles of the Charter of the United Nations', UN Doc. A/RES/ES-11/4 (12 October 2022); UN GA, Resolution ES-11/6 'Principles of the Charter of the United Nations Underlying a Comprehensive, Just and Lasting peace in Ukraine', UN Doc. A/RES/ES-11/6 (23 February 2023).

⁷⁷M. Milanovic, 'What is Russia's Legal Justification for Using Force against Ukraine?', *EJIL: Talk!*, 24 February 2022, available at www.ejiltalk.org/what-is-russias-legal-justification-for-using-force-against-ukraine/; R. Janik, 'Putin's War against Ukraine: Mocking International Law', *EJIL: Talk!*, 28 February 2022, available at www.ejiltalk.org/putins-war-against-ukraine-mocking-international-law/; N. Krisch, 'After Hegemony: The Law on the Use of Force and the Ukraine Crisis', *EJIL: Talk!*, 2 March 2022, available at www.ejiltalk.org/after-hegemony-the-law-on-the-use-of-force-and-the-ukraine-crisis/; see Green, Henderson and Ruys, *supra* note 73; I. W. Brunk and M. Hakimi, 'Russia, Ukraine, and the Future World Order', (2022) 116 *American Journal of International Law* 687; see Kotova and Tzouvala, *supra* note 16; O. Corten and V. Koutroulis, 'The 2022 Russian Intervention in Ukraine: What Is Its Impact on the Interpretation of Jus Contra Bellum?', (2023) 36 *Leiden Journal of International Law* 997.

⁷⁸CoE, PACE, Consequences of the Russian Federation's Aggression against Ukraine, Opinion 300, (15 March 2022).

⁷⁹CoE, Committee of Ministers, Resolution CM/Res(2022)2 on the Cessation of the Membership of the Russian Federation to the Council of Europe CM/Res(2022)2 (15 March 2022).

⁸⁰See Chimni, *supra* note 17.

⁸¹R. Kolb, 'The Belgian Intervention in the Congo – 1960 and 1964', in T. Ruys and O. Corten (eds.), *The Use of Force in International Law: A Case-Based Approach* (2018), 76.

⁸²E. Henry, 'The Falklands/Malvinas War – 1982', in Ruys and Corten, *ibid.*, 361.

⁸³K. Bannelier and T. Christakis, 'The Intervention of France and African Countries in Mali – 2013', in Ruys and Corten, *ibid.*, 812.

⁸⁴O. Corten, 'The Military Operations against the "Islamic State" (ISIL or Da'esh) – 2014', in Ruys and Corten, *ibid.*, 873.

attention to analyze the reaction of the CoE. First, regarding the NATO bombing of Yugoslavia, since most states that actively participated in the bombing were CoE members, the Organization did not raise a serious concern about the lawfulness of the humanitarian intervention. In a Resolution adopted following the bombing, the PACE stated its regret that 'due to the intransigent policy of the leadership of the Federal Republic of Yugoslavia and the inability of the United Nations Security Council to reach a unanimous decision, military action had to be taken by Nato to prevent a human tragedy in Kosovo'.⁸⁵ The reaction of the Committee of Ministers did not even mention the military action undertaken by NATO and discussed only the humanitarian crisis and human rights violations in Kosovo.⁸⁶ Second, in the case of UK's involvement in the war in Iraq, right after the invasion the PACE adopted a Resolution which stated that the use of force in Iraq was not justified.⁸⁷ It noted that PACE was against the use of unilateral use of force without the authorization of the Security Council and that the attack in Iraq was in violation of the prohibition on the use of force.⁸⁸ It is noteworthy that the Resolution did not mention the role of the UK in the invasion, did not formulate any request about UK's withdrawal from Iraq, but rather talked about how the war 'revealed divisions between Europe and the United States and between European countries themselves'.⁸⁹ The cases of NATO bombing of Yugoslavia and the invasion of Iraq demonstrate that when a member state is involved in an act that can be considered an unlawful use of force, the CoE does not seem to be too much concerned, let alone initiate a discussion on the suspension or termination of membership.

There are also cases where CoE members have engaged in armed attacks against another member state. According to some international lawyers, Turkey's intervention in Cyprus in 1974 was beyond its rights under the Treaty of Guarantee concluded between Cyprus, Greece, Turkey, and UK, and also against the prohibition on the use of force.⁹⁰ Following Turkey's intervention, PACE invited the parties to the conflict to resolve the issue through diplomatic and peaceful means and did not discuss the lawfulness of Turkey's use of force.⁹¹ In the same vein, discussions at the Committee of Ministers were mostly concentrated on the humanitarian aid that should be provided in Cyprus and no resolution was adopted in relation to Turkey's intervention.⁹² After the declaration of independence of Turkish Republic of Northern Cyprus in 1983, the Security Council adopted Resolution 541 and called upon the international community not to recognize the independence of Northern Cyprus.⁹³ The ECtHR delivered several judgments indicating that Turkey exercised effective control over Northern Cyprus and violated the Convention on several grounds.⁹⁴ None of these, however, including allegations about unlawful use of force by a member

⁸⁵CoE, PACE, Crisis in Kosovo and Situation in the Federal Republic of Yugoslavia, Resolution 1182 (1999).

⁸⁶CoE, Committee of Ministers, 'Crisis in Kosovo and the situation in the Federal Republic of Yugoslavia (FRY)' Reply to Recommendations 1397 and 1400 (1999), Doc. 8387 (26 April 1999).

⁸⁷CoE, PACE, Europe and the War in Iraq, Resolution 1326 (2003)(3 April 2003).

⁸⁸*Ibid.*

⁸⁹*Ibid.*

⁹⁰O. Dörr, 'Turkey's Intervention in Cyprus – 1974', in Ruys and Corten, *supra* note 81, 201; D. Wippman, 'International Law and Ethnic Conflict on Cyprus', (1996) 31 *Texas International Law Journal* 141; M. L. Evriviades, 'The Legal Dimension of the Cyprus Conflict', (1975) 10 *Texas Journal of International Law* 227.

⁹¹CoE, PACE, Situation in Cyprus and in the Eastern Mediterranean Area, Resolution 573 (1974)(29 July 1974); CoE, PACE, Situation in Cyprus and in the Eastern Mediterranean Area, Resolution 574 (1974) (25 September 1974); CoE, PACE, Situation in Cyprus, Recommendation 759 (1975) (24 April 1975); CoE, PACE, Situation in Cyprus (general policy of the CE), Resolution 615 (1976) (30 January 1976); CoE, PACE, Situation in Cyprus, Resolution 657 (1977) (8 July 1977); CoE, PACE, Situation in Cyprus, Resolution 673 (1978) (27 April 1978).

⁹²CoE, Committee of Ministers, Conclusions of the 234th Meeting of the Ministers' Deputies, 21–22 August 1974, Conclusions of the 235th Meeting of the Ministers' Deputies (6 September 1974); CoE, Committee of Ministers, Conclusions of the 236th Meeting of the Ministers' Deputies, 16 to 24 September 1974.

⁹³UN Security Council, Resolution 541, UN Doc. S/RES/541(1983) (18 November 1983).

⁹⁴*Cyprus v. Turkey [GC]*, Judgment of 10 May 2001 [2001] ECHR; *Loizidou v. Turkey [GC]*, Judgment of 18 December 1996, [1996] ECHR.

state which was then followed by the partition of another member state, initiated a suspension or termination of membership process for Turkey.⁹⁵

After several years of tension, military conflict started between Russia and Georgia in August 2008.⁹⁶ Direct clashes between Russian and Georgian forces took place in Abkhazia and South Ossetia. On 26 August 2008, Russia recognized Abkhazia and South Ossetia as independent states. In their statements before the Security Council, both states argued that the other state started the aggression and that they acted in response to that armed attack.⁹⁷ The PACE adopted a Resolution that deplored the use of military force by its two members to resolve a long-standing dispute.⁹⁸ It condemned the recognition South Ossetia and Abkhazia as independent states which was a violation of international law and the CoE Statute.⁹⁹ It further condemned the reluctance of both states to investigate human rights and humanitarian law violations and mentioned that there were serious allegations about ethnic cleansing conducted by Russia.¹⁰⁰ Some members of PACE have tabled a motion requesting a reconsideration of the Russian delegation's credentials but PACE decided to ensure a constructive dialogue for the fulfilment of its requests from Russia.¹⁰¹ The Committee of Ministers mainly discussed the human rights dimension of the conflict and did not adopt a resolution about the conflict.¹⁰²

Despite several cases where CoE members have engaged in armed attacks either against a CoE member or non-member, it is only after the invasion of Ukraine that the Organization has put so much emphasis on the violation of the prohibition on the use of force and decided to terminate Russia's membership. In order to understand why the CoE adopted a different position in the invasion of Ukraine, it is useful to analyze the language used by the Organization. On 10 March 2022, the Committee of Ministers indicated that the aggression of Russia against Ukraine 'constitutes a breach of peace of unprecedented magnitude on the European continent since the creation of the Council of Europe'.¹⁰³ This statement clearly shows that the previous cases where CoE members have been engaged in violations of international law against one another are not as important as when this breach happens in the 'European continent'. In the same vein, when the PACE recommended the expulsion of Russia from the CoE, it stated that Russia posed 'a blatant menace to security in Europe'.¹⁰⁴ The search engine of the CoE's website reveals that in no other

⁹⁵PACE adopted a Resolution which affirmed that the PACE regretted the inaction of the Committee of Ministers regarding the unilateral declaration of independence of the TRNC, see CoE, PACE, Situation in Cyprus, Resolution 816 (1984) (21 March 1984).

⁹⁶See P. W. Schluz, 'Geopolitics at Work: The Georgian–Russian Conflict', (2009) 1 *Goettingen Journal of International Law* 329; A. Nußberger, 'The War between Russia and Georgia – Consequences and Unresolved Questions', (2009) 1 *Goettingen Journal of International Law* 341; J. A. Green, 'Passaportisation, Peacekeepers and Proportionality: The Russian Claim of the Protection of Nationals Abroad in Self-Defence', in J. Green and C. Waters (eds.), *Conflict in the Caucasus: Implications for International Legal Order* (2010), 54.

⁹⁷UN Security Council, 5951st Meeting, Verbatim Record, UN Doc. S/PV.5951 (8 August 2008). See also the report about the use of force in the conflict prepared by the fact-finding mission established by the Council of the EU, Independent International Fact-Finding Mission on the Conflict in Georgia, Report of the Independent International Fact-Finding Mission on the Conflict in Georgia (September 2009), volume II, 229–294, available at www.mpil.de/files/pdf4/IIFFMCG_Volume_II.pdf.

⁹⁸CoE, PACE, The Consequences of the War between Georgia and Russia, Resolution 1633 (2008) (2 October 2008). See also, CoE, PACE, Implementation of Resolution 1633 (2008) on the Consequences of the War between Georgia and Russia, Resolution 1647 (28 January 2009); CoE, PACE, Humanitarian Consequences of the War between Georgia and Russia, Resolution 1648 (28 January 2009); CoE, PACE, Humanitarian Consequences of the War between Georgia and Russia: Follow-up Given to Resolution 1648 (2009), Resolution 1664 (29 April 2009); CoE, PACE, The War between Georgia and Russia: One Year after, Resolution 1683 (29 September 2009).

⁹⁹CoE, PACE, The Consequences of the War between Georgia and Russia, Resolution 1633 (2008) (2 October 2008).

¹⁰⁰*Ibid.*

¹⁰¹*Ibid.*

¹⁰²CoE, Committee of Ministers, Minutes, 119th Session, CM(2009)PV-final (12 May 2009).

¹⁰³CoE, Committee of Ministers, Consequences of the Aggression of the Russian Federation against Ukraine, 1428bis Meeting, CM/Del/Dec(2022)1428bis/2.3 (10 March 2022).

¹⁰⁴CoE, PACE, Consequences of the Russian Federation's Aggression against Ukraine, Opinion 300 (15 March 2022).

cases, including the conflict between Turkey and Cyprus, Russia and Georgia, Armenia and Azerbaijan, the Committee of Ministers or the PACE have used the term ‘European continent’ or put such an emphasis on violations taking place in Europe. This shows that since Russia violated the prohibition on the use of force against another member in the ‘European continent’ at close proximity to Western states, unlike other cases where this prohibition was violated elsewhere, this required its expulsion.

The meaning of ‘European continent’ and how it is used by the CoE becomes important to understand the expulsion policy of the Organization. According to Article 8 of the CoE Statute, only a member that has ‘seriously violated article 3’ may be expelled from the Organization. In light of all the decisions adopted by the Committee of Ministers following the invasion of Ukraine, it is possible to state that the violation of the prohibition of the use of force and the breach of peace by Russia constitutes a serious violation of membership criteria as regulated in Article 3 of the CoE Statute. The violation of the prohibition of the use of force becomes a serious violation of Article 3 when it takes place, in the words of the Committee of Ministers, in the ‘European continent’. The ‘European continent’ that the Committee of Ministers refers to seems to be reserved for a particular geographical location. The Committee of Ministers appears to make a distinction between the centre which is the ‘European continent’ spanning from Western to Eastern Europe, and the periphery that includes other states that are not located in close proximity to Western European states.¹⁰⁵ It is only when the prohibition of the use of force is violated in the ‘European continent’ that it becomes a serious violation of Article 3 of the CoE Statute and membership criteria.

The selective sensitivity of the CoE to the violation of the prohibition on the use of force when it takes place in the ‘European continent’ also means that not every ‘European state’ is located in this continent, in other words in the centre of the Organization. According to Article 4 of the CoE Statute, any ‘European state’ that can fulfil the requirement of Article 3 can become a member of the Organization. During the admission process of Azerbaijan, Armenia, and Georgia, the PACE stressed that membership of these states was possible due to their cultural links with Europe.¹⁰⁶ In that sense, the practice of Article 4 shows that the term ‘European state’ was interpreted by the CoE in a broad sense.¹⁰⁷ However, the practice of Article 8 of the CoE Statute shows that there is a distinction between a ‘European state’ and the ‘European continent’. Any European state can be a member of the Organization even if they are not in whole or in part situated in the European continent as long as they share the European values. Nevertheless, if they violate the fundamental purposes of the CoE within the ‘European continent’, it can be a reason for their expulsion. The expulsion of Russia demonstrates that the word ‘Europe’ is interpreted differently in different contexts. When it comes to admission criteria, ‘European state’ is interpreted as states at a close proximity to European culture and values but when it comes to expulsion criteria, ‘European continent’ is used if the founding principles of the CoE are violated at close proximity to Western European states which constitute the centre of the Organization.

¹⁰⁵This sensitivity to a breach of peace in the ‘European continent’ is also reflected in the unprecedented move of learned societies’ reaction to the invasion of Ukraine which usually do not issue statements following violations of international law, among others see American Society of International Law, ‘Statement of ASIL President Catherine Amifir Regarding the Situation in Ukraine’, 23 February 2022, available at www.asil.org/sites/default/files/pdfs/ASIL_State_ment_Situation_in_Ukraine.pdf; European Society of International Law, ‘Statement by the President and the Board of ESIL on the Russian Aggression against Ukraine’, 24 February 2022, available at esil-sedi.eu/wp-content/uploads/2022/02/20220224_Statement-ESIL-Board.pdf; Global Institute for the Prevention of Aggression, ‘Statement on the Situation in Ukraine’, 24 February 2022, available at crimeofaggression.info/wp-content/uploads/GIPA-Statement_-Situation-in-Ukraine-24-February-2022.pdf; Just Security, ‘Statement by Members of the International Law Association Committee on the Use of Force’, 4 March 2022, available at www.justsecurity.org/80454/statement-by-members-of-the-international-law-association-committee-on-the-use-of-force/.

¹⁰⁶CoE, PACE, Enlargement of the Council of Europe, Resolution 1247 (1994) (4 October 1994).

¹⁰⁷See Klein, *supra* note 71, at 44–45. J. Flauss, ‘Les Conditions d’Admission des Pays d’Europe Centrale et Orientale au Sein du Conseil de l’Europe’, (1994) 5 *European Journal of International Law* 401, 405–6.

4.2. The revival of founding purposes

Russia's concern about Ukraine's growing political engagement with the EU has initiated a process which ended with the *de facto* annexation of Crimea. In 2022, Ukraine's possibility to join NATO triggered a new response by Russia. In order to assert its power in Eastern Europe and strengthen its control over the region, Russia took a further step and invaded Ukraine. The current political rivalry between European states and Russia is reminiscent of the post-Second World War period. In the aftermath of the Second World War, a European unity seemed necessary for the economic welfare of the continent and to avoid another war.¹⁰⁸ For the founders of the Organization, a peaceful Europe that would also prosper economically could only be constructed through a European alliance that stood against the rising power of communism.¹⁰⁹ At its origin, the CoE was established at the beginning of the Cold War as an organization that would create an alliance between Western European states with liberal democracies and a capitalist economy against the Soviet Union.¹¹⁰ In that sense, the CoE was founded not only to provide an international organization that would strengthen the democratic values in Europe but also to form a union against the Soviet Union. Said differently, the CoE was a vehicle for the preservation and strengthening of European states' control and domination over the international legal order.

The end of the Cold War brought with it the 'end of history' discourse where a Western understanding of liberal democracy started to expand its hegemony.¹¹¹ Several international lawyers started to declare that democratic governance was on its way to becoming a customary norm.¹¹² In the 1990s, due to the collapse of communist regimes European states were in a position to argue that liberal democracy was the only acceptable form of political governance. Since the CoE is an international organization established to enhance cooperation amongst European liberal democracies, the end of the Cold War played a significant role in its expansion. Until 1989, the CoE was a club of almost exclusively Western European States.¹¹³ It is only after the end of the Cold War that Central and Eastern European states started to join the Organization.¹¹⁴ At the time, there was an expectation that the founding values of the CoE, such as protection of human rights, democracy and rule of law, would be determining factors to promote progress in these new members.¹¹⁵ It is only after the collapse of communism in the Soviet Union that Russia was admitted to the CoE. The 'dynamic of difference' between European states and Russia was created through the difference of their political regimes and the gap between the two powers was bridged only when the latter accepted the political governance and economic structure of the former.¹¹⁶ Russia was an acceptable member of the union only when it accepted the

¹⁰⁸The main goals of the CoE are indicated in the preamble of its Statute as follows: 'Convinced that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation; Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy', in Statute of the Council of Europe.

¹⁰⁹A. S. Milward, *The Reconstruction of Western Europe: 1945–51* (1987), 178.

¹¹⁰N. Weiß, 'Origin and Further Development', in S. Schmahl and M. Breuer (eds.), *The Council of Europe: Its Law and Policies* (2017), 3 at 6; S. Greer and L. Graham, 'Europe' in D. Moeckli et al. (eds.), *International Human Rights Law* (2022), 463 at 465.

¹¹¹J. L. Gaddis, *The Cold War: A New History* (2005), Chs. 1–2.

¹¹²T. M. Franck, 'The Emerging Right to Democratic Governance', (1992) 86 *American Journal of International Law* 46; G. H. Fox, 'The Right to Political Participation in International Law', (1992) 17 *Yale Journal of International Law* 539; J. Crawford, 'Democracy and International Law', (1993) 64 *British Yearbook of International Law* 113.

¹¹³Founding members of the CoE are the United Kingdom, Belgium, France, Ireland, Italy, Denmark, Luxembourg, Norway, Sweden, and the Netherlands. Until the end of the Cold War, 12 states joined the organization: Greece (1949), Turkey (1950), Germany (1950), Iceland (1950), Austria (1956), Cyprus (1961), Switzerland (1963), Malta (1965), Portugal (1976), Spain (1977), Liechtenstein (1978), and San Marino (1988).

¹¹⁴See Weiß, *supra* note 110, at 15.

¹¹⁵*Ibid.*, at 18–19. See Klein, *supra* note 71, at 85.

¹¹⁶See Anghie, *supra* note 19.

European norms of democracy and rule of law, in other words submitted itself to the civilizing mission of the Organization.

Russia's antagonistic position against Ukraine's rapprochement with NATO has led to a new episode of polarization between European states and Russia. Russia's recent attitude towards the rapprochement of Ukraine to European states can be read as an inter-imperial rivalry where the Russian and European imperialisms clash over their control over Eastern Europe.¹¹⁷ Since Russia is reasserting its power by not complying with the demands of the CoE, it is once again excluded from this European club.¹¹⁸ The CoE's purpose to form an alliance against the Soviet Union was put aside at the end of the Cold War. It can be argued that this purpose is now coming back to life anew in an era of polarization between Russia and European states. In that sense, the expulsion of Russia relies on a symbolic ground which suggests that European states are closing ranks yet again against the increasing power of Russia in Eastern Europe. The reflection of this political polarization in international law has been the exclusion of Russia from the CoE that has been established to protect the domination of European states over the international legal order at the first place.

As indicated in the preamble of the CoE Statute, the founding members shared some common values that they wanted to protect and enhance through their cooperation. At the end of the Cold War, there was an expectation that the defeated powers of the bipolar rivalry had to transform themselves by adopting the CoE's standards of rule of law, democracy, and human rights and a Western-style market economy. These standards that were developed by the founding members of the CoE determined how the new members had to transform themselves to 'achieve greater unity' between member states.¹¹⁹ In the post-Cold War era, Russia joined the CoE by accepting to abide by these common values and submitting itself to the demands of this European club. The preamble of the CoE Statute is clear. The Organization was established because there was 'a need of a closer unity between all like-minded countries of Europe'.¹²⁰ The expulsion of Russia sends a clear message that it is no longer a like-minded state since it no longer yields itself to the demands of the CoE.

5. The clash of imperial policies

The analysis of the substantive and symbolic grounds of Russia's expulsion from the CoE aimed at showing that the decision does not solely rely on Russia's attempt at resolving a conflict through use of force and violation of the CoE Statute. Rather, it is important to draw a broader picture in order to understand the various reasons that lie behind this decision of the CoE. When the relationship between the two actors is examined, it can be seen that the annexation of Crimea and the lack of commitment of Russia to the ECHR have been important factors for the move away of Russia from the Organization. Despite these serious issues that made the relationship very fragile, the CoE did not move forward with the expulsion of Russia. The substantive grounds about the violation of founding principles of the CoE are not enough to explain why Russia was expelled right after its invasion of Ukraine. Unpacking the symbolic grounds provide a better understanding into the relationship of the two actors.

¹¹⁷See Kotova and Tzouvala, *supra* note 16.

¹¹⁸While being a peace-loving state is a membership criterion for the UN, there has been very few discussions about the expulsion of Russia from the UN or Security Council, see A. MacLeod, 'Ukraine Invasion: Should Russia Lose Its Seat on the UN Security Council?', 25 February 2022, available at www.kcl.ac.uk/ukraine-invasion-should-russia-lose-its-seat-on-the-un-security-council; R. Barber, 'Could Russia be Suspended from the United Nations?', *EJIL: Talk!*, 1 March 2022, available at www.ejiltalk.org/could-russia-be-suspended-from-the-united-nations/; T. Grant, 'Removing Russia from the Security Council: Part One', *Opinio Juris*, 18 October 2022, available at opiniojuris.org/2022/10/18/removing-russia-from-the-security-council-part-one/.

¹¹⁹See Statute of the Council of Europe, *supra* note 11, Art. 1.

¹²⁰*Ibid.*, Preamble.

The long-standing inter-imperial rivalry between European states and Russia can be explained through the political and economic divergences of the two actors.¹²¹ Historically, there have been fundamental divergences between European states with a liberal understanding of democracy and Russia's political regime. While on one hand European states with a liberal democracy prioritized free and fair elections, the protection of civil and political rights and democratic institutions, Russia's approach has been more state-centric with less emphasis on the protection of individual freedoms. While in the newly independent Soviet republics liberal democracy was considered a weapon against Russia, in the post-Soviet Russia, it received resistance for weakening control over the lost territories.¹²² The political divergences have also been reflected in the way they organized their economic structure. European liberal democracies adopted a market-based economy and endorsed free trade.¹²³ While the Soviet Union's economic structure relied on the state-ownership of the means of production, the post-Soviet era has been marked by a state-controlled market economy.¹²⁴ These fundamental divergences in their political and economic structure have led to a constant rivalry regarding the expansionist agenda of both sides. At the end of the Cold War, it was necessary for Russia both politically and economically to join the CoE as it aimed at integrating into liberal market economy.¹²⁵ It was a period when the United States had declared its hegemony and did not have many rivals on the international plane.¹²⁶ Nevertheless, when the current decline of US hegemony is thought together with the rise of other states such as Russia, China, and India in the international arena, it is not surprising that the changing international political gravity brings with it new alliances and reshapes the existing ones.¹²⁷ The reconfiguration of power dynamics and the rise of non-Western powers are forcing international organizations, in particular regional ones, to rethink with whom they are going to cooperate.¹²⁸

The expansionist agenda of the CoE that aimed at controlling the member states was put in practice through the transformation of new members based on the founding principles of the Organization. The role of Russia in the CoE was to be a recipient of rules that it had to adopt following its admission in 1998. For a while, Russia conformed to the requests of the Council by adopting the necessary domestic law changes. However, the annexation of Crimea initiated a period where Russia was no longer abiding by the demands of the PACE, later decided not to send a delegation and stopped all cooperation. When Russia's support for the secessionist movements in Georgia is thought together with the annexation of Crimea and the invasion of Ukraine, it can be observed that in recent years Russia is pursuing a territorially expansionist agenda in violation of the principle of territorial integrity. The support and eagerness of the US and European states to

¹²¹On the history of the imperial rivalry, see D. Lieven, *Empire: The Russian Empire and its Rivals* (2000).

¹²²S. E. Hanson, *Post-Imperial Democracies: Ideology and Party Formation in Third Republic France, Weimar Germany, and Post-Soviet Russia* (2010), at 196–7.

¹²³For a more detailed account on the connection between liberal internationalism and imperial expansionism, see K. Van Der Pijl, *Transnational Classes and International Relations* (1998), at 106–12.

¹²⁴On how the resurgence of state capitalism affects the transformation of the current geopolitical order, see I. Alami et al., 'Geopolitics and the "New" State Capitalism', (2022) 27 (3) *Geopolitics* 995.

¹²⁵D. J. McCarthy, S. M. Puffer and D. M. Satinsky, 'Will Russia Have a Role in the Changing Global Economy? Contrasting Western and Russian Cultural Lenses', (2019) 26 (2) *Cross Cultural and Strategic Management* 265, 266.

¹²⁶G. Allison, 'The New Spheres of Influence: Sharing the Global with Other Great Powers', (2020) 99 (2) *Foreign Affairs* 30, 32; G. J. Ikenberry, 'The Future of Multilateralism: Governing the World in a Post-Hegemonic Era', (2015) 16 *Japanese Journal of Political Science* 399; see Kotova and Tzouvala, *supra* note 16.

¹²⁷Four days after the invasion, Ukraine applied for EU membership and on 23 June 2022, the European Council granted candidate status to Ukraine, see EU, European Council, EUCO 24/22 (24 June 2022). On 7 April 2022, Russia has been suspended from the Human Rights Council, see UN General Assembly, Resolution ES/-11/3, UN Doc. A/RES/ES-11/3 (7 April 2022). On 17 March 2022, the Committee of Ministers suspended its relations with Belarus, see CoE, the Committee of Ministers, 1429th Meeting, CM/Del/Dec(2022)1429/2.5 (17 March 2022). Finland joined NATO on 4 April 2023, available at www.nato.int/cps/en/natohq/news_213448.htm. Sweden joined NATO on 7 March 2024, available at ~ = 'www.nato.int/cps/en/natohq/news_223446.htm#:~:text=Sweden%20became%20NATO's%20newest%20member,32%20countries%20among%20its%20members.

¹²⁸R. Zoellick, *The End of the Third World?: Modernizing Multilateralism for a Multipolar World* (2010), available at opknowledge.worldbank.org/handle/10986/29639.

integrate Ukraine into NATO and EU is seen by some scholars as an endeavour to expand the liberal international order in Eastern Europe in a way that is likely to incite Russia to take further action.¹²⁹ The invasion of Ukraine signals the start of a new era where Russia chooses to openly fight back against the rapprochement of a former ally with Western forces.¹³⁰

As indicated by Mälksoo: 'In the post-Soviet space, Russia is ardently advocating for its own regional conception of international law and world order to prevail against Western universalism.'¹³¹ The invasion of Ukraine showed to the CoE that Russia was assuming a new position within the international legal order. The admission of Russia to the CoE was an attempt to incorporate it into the European international legal order. Russia could maintain its membership to the extent that it accepted to receive and abide by the demands of the Organization. The invasion of Ukraine proved that Russia would not perform the role that was assigned to it by the CoE and would no longer be at the receiving end of its demands. On the one hand the CoE is supporting Ukraine's rapprochement with Western states and on the other hand Russia is aiming at expanding its sphere of influence by exerting more control over Eastern Europe. The invasion of Ukraine signals a breaking point, escalating the inter-imperial rivalry to a level where the CoE believes Russia will no longer submit itself to the European international legal order as shaped by the Western European founders of the Organization. The clash of these incompatible agendas ended with the expulsion of Russia from the CoE.

6. Concluding remarks

International law has always been a hegemonic tool that allowed actors to impose their particular views over others through a legal vocabulary.¹³² In the twentieth century, international organizations have become useful agents of this hegemonic rivalry. In Europe, by taking advantage of being the very centre and the provider of the particularity of the universal international legal order, the CoE has assumed a significant role in maintaining the imperialist agenda of its founders. While the growing skepticism about international cooperation of recent years has often manifested itself in the form of withdrawal from multilateral treaties or international organizations, the case of Russia signifies a new incident where it is this time the international organization itself that took a proactive role against a member state.¹³³ Russia's aggression against Ukraine prompted new alliances and had a serious impact on international cooperation, as can be illustrated by the application of membership of Ukraine to EU, Finland and Sweden's membership to NATO. We are witnessing a period where changing political dynamics will be reflected in membership to international organizations. The current multilateral order is changing. Examining the impact of increasing polarity in international politics on international organizations can help to shed more light on how both states and international organizations use membership as a tool to pursue their imperial endeavours.

¹²⁹J. J. Mearsheimer, 'The Causes and Consequences of the Ukraine War', (2022) 21 *Horizons: Journal of International Relations and Sustainable Development* 12.

¹³⁰S. Watkins, 'Five Wars in One: The Battle for Ukraine', (September-October 2022) 137 *New Left Review*, available at newleftreview.org/issues/ii137/articles/susan-watkins-five-wars-in-one.

¹³¹L. Mälksoo, 'Post-Soviet Eurasia, *Uti Possidetis* and the Clash between Universal and Russian-Led Regional Understandings of International Law', (2021) 53 *New York University Journal of International Law and Politics* 787, at 797.

¹³²M. Koskeniemi, 'International Law and Hegemony: A Reconfiguration', (2004) 17 *Cambridge Review of International Affairs* 197, at 198–9.

¹³³See Brölmann et al., *supra* note 10; European Parliament Briefing, 'The Future of Multilateralism: Crisis or Opportunity?', May 2017, available at [www.europarl.europa.eu/RegData/etudes/BRIE/2017/603922/EPRS_BRI\(2017\)603922_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603922/EPRS_BRI(2017)603922_EN.pdf).