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Lauri Mälksoo, *Russia, the Soviet Union, and Imperial Continuity in International Law*,

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Since 2022 many authors have been speaking about a "return" of Russian imperialism. But was it ever gone? Lauri Mälksoo's latest book, *Russia, the Soviet Union, and Imperial Continuity under International Law*, provides an answer. The author is one of the most authoritative voices when it comes to Russia's relationship with international law. In fact, the current book may be called a sequel to his monograph *Russian Approaches to International Law* (2015). In that book, he mostly focussed on the Tsarist era, when Russia promoted its notion of "civilizational distinctness" in international law. In *Russia, the Soviet Union, and Imperial Continuity under International Law*, in turn, Mälksoo pays special attention to the Soviet period (1917–1991) to prove "imperial continuity" between Tsarist Russia, the Soviet Union and today's Russian Federation. More precisely, he argues that certain legal concepts served to justify imperialist practices since the Tsarist Empire. Contrary to popular belief, this imperial legacy was not discontinued after the Russian Revolution (1917), even though the Soviets employed strong anti-imperialist rhetoric. Rather, imperial ideas lived on and continued to shape the legal discourse as well as the state identity in the Soviet Union as well as in today's Russian Federation. In other words: The Empire did not return; it never left!

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1. METHODOLOGY AND SOURCES – TAKING LEGAL SCHOLARSHIP SERIOUSLY

Mälksoo's main sources are works by eminent Russian legal scholars, including Imperial scholars such as Petr Shafirov (1670–1739) and Fedor Martens (1845–1909), Soviet scholars such as Evgeny Pashukanis (1891–1937), Evgeny Korovin (1892–1964) and Grigory Tunkin (1906–1993), as well as contemporary Russian jurists. Despite this focus on academia as a main source, Mälksoo's book is not trapped in the ivory tower. One can only agree with the author that the opinion of eminent Russian scholars was rarely *only* academic. Rather, both their role and their statements may be seen as "semi-official".[1] Many wore two hats. Shafirov, the author of the "first Russian work on international law",[2] served as vice-chancellor of the Empire. Martens was not only a professor at the University of St. Petersburg, but also a skilled diplomat and *inter alia* the legal mastermind behind the Hague Peace Conferences (1899 and 1907). In the Soviet Union scholars were not free to express views that differed from vital state interests. Rather, their role was "widely seen as helping and defending their country with arguments echoing the government's foreign policy views."[3] After a brief period of academic freedom, scholars in today's Russia again risk repression for challenging their government's position. They may be labelled foreign agents or worse. In this sense, Mälksoo is right in assuming that Russian scholarship has often been "semi-official".

On this solid methodological footing, the book takes on the herculean task of analysing 350 years of Russian/Soviet legal discourse and connecting it to state practice. It advances chronologically. The first two chapters deal with Tsarist Russia, while the following four chapters cover the Soviet period between 1917 and 1991. The final chapter is dedicated to post-Soviet Russia. In his analysis, Mälksoo draws lines between events that lie thousands of kilometres and hundreds of years apart. Is this even possible without being superficial? Yes, it is – and this probably represents the book's most stunning achievement. At no point does the reader feel lost or overburdened by information. It takes an author with exceptional knowledge in the fields of history, geography, linguistics and law to condense so many developments into a comprehensible train of thought. One gets the impression that the author has spent years collecting gears, springs and bolts to finally assemble these parts into an engine that runs smoothly. It also helps that Mälksoo excels at a skill all too rare in academia: brevity.

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[1] Quote from L. Mälksoo, *Russia, the Soviet Union, and Imperial Continuity in International Law*, Oxford University Press, Oxford: 2025, p. 24.

[2] *Ibidem*, p. 37.

[3] *Ibidem*, p. 24.

In addition, Mälksoo acts as a translator between different eras and regions. On the one hand, this may be understood literally. He extensively draws on Russian scholarship that would otherwise be unavailable to non-Russian speakers. Even those who know the language might not have access to some of the older books or manuscripts. But Mälksoo is also a translator in the cultural sense. He explains the idiosyncrasies of Soviet (and to a lesser extent, Russian) scholarship to an international audience. For example, the author repeatedly underscores that contradictions in Soviet scholarship were not accidental. They formed an integral part of Marxist dialectics: arguing *for* state continuity, yet *against* the continuity of certain obligations; acceding to a treaty *without* signing it; *granting* Russia's nationalities sovereignty by *taking away* parts of their autonomy. Western-educated lawyers will have trouble wrapping their heads around such paradoxes. Many Soviet lawyers, however, would have agreed with Stalin: "Yes, it's 'contradictory'. But this contradiction is Life, and completely reflects Marxist dialectic."[4]

2. MAIN THESIS – THE SOVIET UNION AS THE MISSING LINK FOR ESTABLISHING IMPERIAL CONTINUITY

Mälksoo's main thesis may be summarised as follows: Many eminent scholars in Tsarist Russia, the Soviet Union and today's Russian Federation have been interpreting international law in a similar, idiosyncratic way. This discourse has strong imperialist, at times even colonialist elements. This is what the author understands by "imperial *continuity*". It is commendable that Mälksoo does not use labels such as "imperialism" and "colonialism" lightly and interchangeably. He takes the time to define them in the introduction. With this semantic toolkit ready, he explores the imperial continuities in detail.

The most striking example of imperial continuity is the Russian/Soviet approach to treaty law – more specifically the use of *clausula rebus sic stantibus*. According to this principle, a treaty may cease to be binding (or may be modified) if the fundamental circumstances that existed when it was concluded have changed dramatically and unexpectedly. This principle is the antipode to *pacta sunt servanda*, i.e. the idea that treaties cannot be changed unilaterally and its commitments must be performed in good faith. Mälksoo shows in remarkable detail how both Tsarist and Soviet scholars emphasised *clausula rebus sic stantibus* as opposed to *pacta sunt servanda*. In 1870, for example, Russia announced that it would redeploy its military fleet to the Black Sea only 14 years after the Sea had been declared neutral in the Treaty of Paris (1856). Fedor Martens – like many other Russian/Soviet scholars

[4] Cited in Mälksoo (*ibidem*), p. 141.

after him – retroactively justified this step by invoking *clausula rebus sic stantibus*. While other European Powers reinforced the principle of *pacta sunt servanda* in the Treaty of London (1871), Martens argued that Russia had a right to reject any treaty if it "ran counter to [Russia's] basic rights as an independent power."[5] The *principle clausula rebus sic stantibus* remained popular among Soviet scholars, especially in the interwar period (1918–1939). Mälksoo provides a number of examples where Soviet scholars such as Korovin and Pashukanis insisted on its importance.

What does *clausula rebus sic stantibus* have to do with imperialism? Here, too, Mälksoo provides an answer. Flexible treaties benefit expanding empires. If states can renounce treaties whenever they like, every peace becomes a truce and every border becomes provisional. In such a system, smaller states lose out. Mälksoo concludes: "This was imperialist international law which structurally favored the stronger parties, empires, at least in its highly dynamic concept of treaties."[6] The author shows how this logic culminated in the conclusion of the Molotov–Ribbentrop Pact between Nazi Germany and the Soviet Union (23 August 1939). In its secret protocol, the parties carved out German and Soviet spheres of control and thereby violated the internationally recognised borders of six states (Latvia, Lithuania, Estonia, Poland, Finland and Romania) as well as the Covenant of the League of Nations (of which the USSR was a member until December 1939). Only after 1945, as Soviet foreign policy switched from expansion to consolidation, does Mälksoo note a gradual shift from *clausula rebus sic stantibus* towards *pacta sunt servanda*. After the Second World War, the Soviet Union became a saturated empire and had a vested interest in preserving the status quo.

Another noteworthy example of imperial continuity concerns the issue of national autonomy and self-determination. Mälksoo demonstrates that – with very few exceptions – Russian and Soviet scholars have called for centralisation rather than decentralisation of the state. The late Tsarist Empire which Lenin famously called "a prison of peoples" was not inclined to grant more autonomy to its many nationalities. Likewise, the Provisional Government (March–November 1917), composed of liberals and moderate Socialists, postponed such changes to the Constituent Assembly, which only met once in January 1918 before being dissolved by the Bolsheviks.[7] At this point, the author could have elaborated more that most nationalities in the Russian Empire had not even demanded national independence

[5] Cited in Mälksoo (*ibidem*), p. 55.

[6] *Ibidem*, p. 58.

[7] In this respect, Mälksoo quotes from a highly interesting memorandum written in 1919 by the former head of the legal department of the Ministry of Foreign Affairs of the Provisional Government, Andrei Mandelstam (1869–1949). The memorandum shows that many Russian liberals also shared certain imperialist narratives – see *ibidem*, pp. 79 et seq.

before 1918. Only a few peoples, such as the Finns and Poles, articulated this wish early on. In fact, most nationalities favoured other solutions to the "national question": a democratic federation with territorial autonomy and/or extra-territorial autonomy as promoted by the so-called Austro-Marxists.[8] Lenin's right to self-determination, which included a right of separation from Russia, went far beyond that. For this very reason, the Bolsheviks have often been called progressive. Mälksoo's book, however, counters this myth. He readily admits that the Bolsheviks promoted a strong right of self-determination in their foreign policy. Closer to home, however, they envisaged an "independence of a certain kind". The Bolsheviks only accepted self-determination if it furthered their ultimate goal of a socialist revolution. Thus, within Russia's former imperial borders, Lenin's concept of self-determination rather meant the continuation of imperialism: It tried to impose a new kind of centralised system which virtually none of the nationalities desired. Thus, Mälksoo is right when he speaks of an "appropriation of the language of self-determination" which remained "a legal-theoretical fiction" in practice.[9] It remains one of the great ironies of the 20th century that the Soviet Union would nevertheless act as an "incubator of nations".[10] In the words of the sociologist Rogers Brubaker: "The annals of unintended consequences are rich indeed, but seldom have intention and consequence diverged so spectacularly as they did in this case."[11]

Apart from *clausula rebus sic stantibus* and self-determination, Mälksoo also highlights other areas of continuity, e.g. regarding the topics of state succession vs state continuity, the principle of maintaining a balance of power and the idea of Russia's status as a "great power" (*velikaya derzhava*). These ideas are interconnected and share a common origin. International law was shaped by Russia's foreign policy, and this foreign policy often pursued territorial expansion. More than once, Mälksoo argues, the conquest of new regions was portrayed as the restoration of a rightful ownership. This was certainly true for the Tsarist Empire, but also for Soviet Russia and the early Soviet Union, which sought to reestablish the former imperial borders – often under the guise of promoting socialism. Concepts like *clausula rebus sic stantibus* were used to justify such behaviour. Only after 1945 was international law used to maintain the status quo, until the collapse of the Soviet Union. Today,

[8] The Transcaucasian nationalities, for example, stubbornly refused to *de jure* secede from Russia even after the October Revolution. See also the earlier report of the Russian ethnographer Lev Shternberg (1910), who noted the "remarkable absence of national separatism" in Asiatic and most of European Russia, cited in F. Hirsch, *Empire of Nations: Ethnographic Knowledge and the Making of the Soviet Union*, Cornell University Press, Ithaca: 2005, p. 32.

[9] Mälksoo, *supra* note 1, p. 94.

[10] V.A. Kivelson & R.G. Suny, *Russia's Empires*, Oxford University Press, New York: 2017, p. 281.

[11] R. Brubaker, *Nationalism Reframed: Nationhood and the National Question in the New Europe*, Cambridge University Press, Cambridge: 1996, pp. 25–26.

Putin's complaint that "some republics left the centre with more than what they came with" illustrates that Russia is currently not a saturated power.[12] Mälksoo also addresses this point and describes how the annexation of Crimea and the full-scale invasion of Ukraine were justified with age-old legal concepts: *clausula rebus sic stantibus* regarding the violation of the 1994 Budapest Memorandum and the 2003 border treaty with Ukraine and self-determination (of Russians abroad), whose enforcement cannot amount to aggression. The wheel has come full circle.

SUMMARY – BUT WHAT ABOUT...?

Mälksoo argues convincingly that imperialist ideas have been permeating Russian/Soviet scholarship and foreign policy. His book represents a sober (and sobering) account of how leading Russian/Soviet scholars prepared, supported and justified imperialism. One question, however, remains unanswered. Is Russia truly special in this regard? To what extent do other states – at least other *powerful* states – act similarly?

Mälksoo acknowledges that Russia of course does *not* have a monopoly on imperialism, nor on justifying imperialism through law. Even in his introduction the author stresses that "[t]he rhetoric of US President Trump about Canada, Gaza, Panama, and Greenland indeed demonstrates that imperialism is not confined to Russia." Throughout the book Mälksoo manages to weave in comparisons with other imperial powers. His focus on Russia is nevertheless justified for two reasons. Firstly, the Russian/Soviet approach appears to be truly unique in some areas (e.g. *clausula rebus sic stantibus*). Secondly, the *continuity* of imperialism from Russia to the Soviet Union was previously understudied. Somehow, certain Soviet narratives managed to outlive the Soviet Union itself. Among them is the myth that the Bolsheviks radically and irreversibly renounced imperialism in 1917; and consequently that the position of today's Russian Federation is not – in part – the product of imperialist expansion. The relevance of this question is not limited to Ukraine. Most recently, for example, a debate flared up between Russian and Kyrgyz historians after Kyrgyz textbooks used the word "colonialism" to describe Soviet rule.[13]

Whether other states – such as the USA – also interpret international law in an imperial manner is a separate question. In all fairness, this is not a question that *any single* book could answer. Rather, Mälksoo's work should be seen as an invitation to other scholars. His monograph certainly has the potential to spark lively debates

[12] Cited in Mälksoo, *supra* note 1, p. 3.

[13] C. Putz, *A Textbook Debate: Why Russian Historians Told Kyrgyz Historians to Ditch the Term "Colonialism"*, The Diplomat, 28 May 2026, available at: https://thediplomat.com/2026/05/a-textbook-debate-why-russian-historians-told-kyrgyz-historians-to-ditch-the-term-colonialism/ (accessed 31 March 2026).

in the field of comparative law. *Russia, the Soviet Union, and Imperial Continuity under International Law* represents an outstanding piece of scholarship that manages to condense complex developments into digestible conclusions. Well written, insightful and concise, it gives interested readers access to a field of legal discourse previously reserved for a handful of specialists. Now, we can only hope that others will follow Mälksoo's example.