

**Is Crimea Kosovo? Fundamental Misunderstandings and Failed Diplomacy Between
Russia and the West in the Post-Cold War International System**

Alina Antonova

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Committee:
Christopher Jones
Daniel Chirot
Frederick M. Lorenz

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Alina Antonova

University of Washington

Abstract

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Alina Antonova

Chair of the Supervisory Committee:
Professor Christopher Jones
International Studies

The Cold War ended with the collapse of the Soviet Union, the rise of the United States as global hegemon, and the endurance of an international system with no seemingly agreed-upon rules. It appears that Russia and the West have fundamentally different understandings of international law and relations and, in most cases, are unable to operate within a middle ground when it comes to conflict. The Russian and American reactions to the Kosovo and Crimea cases underscore this disparity; both sides have accused the other of violating international law, each providing their own justifications, and each side has engaged in inconsistent interpretations of international law. Furthermore, the Russian perspective on international law and relations has largely been missing in Western literature and international dialogue, likely contributing to already existing misunderstandings between Russia and the West. This study makes use of case studies—Crimea and Kosovo—as examples of Russia’s distinct approach to and perspective on international law and relations, and to understand the Russian perspective within the changing dynamics of the twenty-first century. The diverging Russian and Western traditions of and approaches to federalism provide an additional layer of analysis and another way to understand the Kosovo and Crimea cases. The study essentially claims that the answer to the question, “is Crimea Kosovo?” does not matter so much as understanding why each side thinks the way it does, in an attempt to identify areas of misunderstanding between Russia and the West and to hopefully uncover areas of future cooperation as well.

INTRODUCTION

In his March 8, 2014 speech addressing the Russian Parliament in connection with the request for Crimea to join the Russian Federation, Vladimir Putin made a statement comparing Kosovo's secession from Serbia to Crimea's secession from Ukraine.¹ This comparison was widely condemned by the West, which claimed that Russia was violating international law with its actions in Ukraine and that the Kosovo case was unique and did not create or justify any other move towards independence in the world.² By contrast, the West enthusiastically supported Kosovo's declaration of independence in 2008 and the International Court of Justice later determined that the declaration did not violate international law.³ The Russian perspective concerning Kosovo was that it would back whatever position Serbia takes and that it would uphold the sovereignty and territorial integrity of Serbia.⁴ The Russian position on Crimea was clearly articulated by President Putin, who claimed that Crimea's secession from Ukraine followed the Kosovo precedent and referred to the United Nations Charter, which speaks of the right of nations to self-determination, making its secession completely legitimate and not requiring any permission from the country's central authorities.⁵

¹ See "Address by the President of the Russian Federation," March 18, 2014, <http://en.kremlin.ru/events/president/news/20603>.

² See "Putin Compares Kosovo's 2008 Independence to Russia's Annexation of Crimea; Others Disagree," last modified March 19, 2014, <http://www.foxnews.com/world/2014/03/19/putin-compares-kosovo-2008-independence-to-russia-annexation-crimea-others.html>; Daniel W. Drezner, "Putin's Excuse for a Referendum is Wrong: Crimea Isn't Kosovo-At All," March 17, 2014, <http://www.theguardian.com/commentisfree/2014/mar/17/putin-referendum-crimea-kosovo>; Ilya Somin, "Why the Kosovo 'Precedent' Does Not Justify Russia's Annexation of Crimea," March 24, 2014, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/24/crimea-kosovo-and-false-moral-equivalency/>.

³ See "Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion)," July 22, 2010, <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&case=141&p3=4>.

⁴ See "Statement by Russia's Ministry of Foreign Affairs on Kosovo," February 17, 2008, http://archive.mid.ru/bdomp/brp_4.nsf/e78a48070f128a7b43256999005bcbb3/041c5af46913d38ac32573f30027b380!OpenDocument.

⁵ See "Address by the President of the Russian Federation," March 18, 2014, <http://en.kremlin.ru/events/president/news/20603>.

This divergence in perspectives, in itself, represents a fundamental divergence in Russian and Western interpretations of international law, relations and world order. Both sides have accused the other of violating international law, each providing their own justifications, and each side has also engaged in inconsistent interpretations of international law. The Cold War ended with the collapse of the Soviet Union, the rise of the US as global hegemon, and the endurance of an international system with no agreed-upon rules. It seems that Russia and the West have fundamentally different understandings of international law and relations and, in most cases, are unable to operate within a middle ground when it comes to conflict, particularly in the Eurasian space, which is characterized by multiple treaties on multiple topics.⁶ Furthermore, the Russian and Western reactions to Kosovo and Crimea underscore this disparity.

Although Russia and the US have been able to cooperate on issues such as stabilizing Afghanistan, counterterrorism and economic development,⁷ the Kremlin felt that it was being treated as a junior partner by the US during this process and it has also stood firm on issues that it saw vital to Russia's own security,⁸ such as the Crimea and Kosovo cases, which are tied to the general issue of NATO expansion. If not resolved, these issues could threaten any prospects for further meaningful cooperation between the two powers. Russia and the US, in fact, tend to cooperate in response to a common security threat rather during times of peace, compromising the prospects of building a large capital of trust that is required to make the relationship between the two powers work.⁹ The problem of mistrust between Russia and Western countries has persisted despite the end of the Cold War, and the two sides' definitions of national interests

⁶ The Eurasian zone represents somewhat of a thick web of international law, particularly characterized by important legal issues contained in documents such as the Budapest Memorandum of 1994 (tied to the START I and START II Arms Control Treaties, the INF Treaty, the CFE Treaty) and the Helsinki Accords of 1975.

⁷ Andrei P. Tsygankov, *The Strong State in Russia: Development and Crisis* (New York: Oxford University Press, 2014), 196.

⁸ *Ibid.*, 197.

⁹ *Ibid.*, 200.

have been largely incompatible—“while Western governments have expected Russia to follow their lead in security policies, Russia has insisted on equal relationships and viewed the unwillingness of the West to accommodate the Kremlin as threatening or disrespectful of Russia’s interests.”¹⁰

A potential source of misunderstanding is the failure or unwillingness to adequately consider the Russian perspective on international law and relations, which tends to differ from the Western perspective. Magda Leichtova recognizes the absence of a consensus among world powers and argues that Russia views the world¹¹ as more a place of a zero-sum game, “of balance of power among geopolitical wholes, rather than a social construct”... “perceiving international politics from the viewpoint of realist concepts of balance of power, geopolitical centers and sphere of influence.”¹² The Russian view is contrasted with the Western view of “a postmodern and impenetrable network of specialized actors creating their own status in multilevel and multi-themed relations with surrounding actors.”¹³ I venture to make the claim that we must understand and take seriously the Russian perspective on international law and relations in the context of the dominant Western perspective (and as demonstrated by diverging Western and Russian reactions to the Crimea and Kosovo cases), whether we agree with it or not, in order to see progress in the improvement of relations between Russia and the West.

The assumed universality of (Western) international law further complicates the picture: the West has been reluctant to recognize civilizational-cultural factors and differences that continue to shape the understanding of international law both within and outside the West.¹⁴

¹⁰ Andrei P. Tsygankov, “The Russia-NATO Mistrust: Ethnophobia and the Double Expansion to Contain “the Russian Bear”,” *Communist and Post-Communist Studies* 46, no. 1 (2013): 179.

¹¹ And, in particular, the zone between Cold War NATO and the present day Russian Federation.

¹² Magda Leichtova, *Misunderstanding Russia Russian Foreign Policy and the West* (Farnham: Ashgate Publishing, 2014), 6.

¹³ *Ibid.*, 18.

¹⁴ Lauri Mälksoo, *Russian Approaches to International Law* (Oxford: Oxford University Press, 2015), 18.

Because its civilizational idea about itself partly differs from that of the West, Russia's participation in international law and institutions where Western political and legal ideas dominate...“could not genuinely help Russia (or the West) but instead, would create permanent problems of ‘translation’ and tensions regarding the values behind norms and, ultimately, compliance.”¹⁵ While the Western perspective on and interpretation of international law and relations has been dominant in international dialogue, the Russian perspective has largely been missing. Today, “Russians know incomparably more about Western thinking and debates on international law than Westerners know about how international law is constructed in Moscow, St Petersburg and Kazan.”¹⁶

In my study, I make use of two case studies—the Crimea and Kosovo cases—as examples of Russia's distinct approach to and perspective on international law, relations and world order, and to understand the Russian perspective within the changing dynamics of the twenty-first century. This study is important because it is an attempt to provide the missing Russian perspective that has been so often ignored or disregarded. A failure to do so may result in further escalation of conflict and undermine any prospects for a solution to the Ukraine crisis and future cooperation between Russia and the West. Essentially, I claim that the answer to the question, “is Crimea Kosovo?” does not matter so much as understanding why each side thinks the way it does. This is not an attempt to determine whether one or the other perspective is right or wrong. Whether we agree with a certain perspective or not, it is important to at least treat each perspective as being equally valid and attempt to understand why a certain party behaves the way it does. This is the first step towards identifying a middle ground where there is potential for

¹⁵ Ibid., 195.

¹⁶ Ibid., 193.

meaningful and productive dialogue and for peaceful management of problems in the world community.

As this study will later reveal, the contested issues in the Crimea and Kosovo cases represent core fundamental and perhaps even existential matters on the side of both Russia and the West. For the West, Kosovo is critical while Ukraine, although still important, remains mainly symbolic. In other words, while Ukraine is not especially crucial for NATO or the EU, the EU/NATO commitment to the ongoing integration of the former Yugoslav republics is vitally important and is closely linked to similar processes such as those involving former Warsaw Pact states. For Russia, the reverse seems to be true—Kosovo is mainly symbolic while Ukraine remains critical. That is, while Russia seems to have largely accepted the outcome of the Kosovo case, Ukraine remains immensely important and presents irreconcilable differences in regard to NATO, the EU and regional integration that are not present in the case of Kosovo.

Finally, it is important to make note of the absence of any discussion in this study regarding the Donbas situation in Eastern Ukraine and, in general, the Ukrainian view on the issues discussed in this study. Although this thesis presents a framework that could additionally be used to analyze the Donbas situation, the outcome of this case is ongoing and it is still too early to see a clear outcome in the Donbas case as in the cases of Kosovo and Crimea. Moreover, while there may be a clear Russian position on this case and its larger implications, there does not yet seem to be a clear Western position or even a clear position within Ukraine itself. The Ukrainian view on these issues in general falls outside the present scope of this thesis, although it presents an intriguing subject for further study.

The first section of this study will introduce the Crimea and Kosovo cases, providing a brief overview, and then proceed with elaborating on the distinct and diverging Russian and

Western (US) reactions to each of these cases. The second chapter of this study will provide insight on the observations presented in the first chapter while seeking to reveal areas of fundamental misunderstandings and failed diplomacy between Russia and the West in the post-Cold War period. It will begin with a general discussion of the Russian and Western (US) approaches to international law and relations and then connect this to their specific reactions to Kosovo and Crimea, demonstrating that their reactions were largely consistent with their general approaches to international law and relations. The third and final chapter of this study will focus on the diverging traditions of Russian and Western federalism as a major source of misunderstanding between them. This discussion will consider federalism in both the national and supranational context and will introduce the Kosovo and Crimea cases as both the symbols and the substance of this debate.

PART I: RUSSIA, THE WEST AND SELF-DETERMINATION: THE CASES OF KOSOVO AND CRIMEA

1.1 Brief Overview of the Kosovo and Crimea Cases

On February 17, 2008, the Assembly of Kosovo unanimously declared Kosovo's independence from Serbia. The legality of this declaration was later confirmed by a July 22, 2010 Advisory Opinion of the International Court of Justice. After the 2014 'Euromaidan' anti-government protests in Kiev and the subsequent ousting of President Yanukovich, the Supreme Council of Crimea declared its independence from Ukraine and several days later, a democratic referendum was held in Crimea on March 16, 2014, where an overwhelming majority of Crimeans voted to join Russia as a federal subject rather than to restore the 1992 Crimean Constitution and Crimea's status as part of Ukraine. As of this writing, the international community continues to be divided over the recognition of Kosovo as an independent state.

Kosovo is recognized by the majority of the United Nations and European Union member states, including the United States, France, Germany and Great Britain.¹⁷ Kosovo still remains unrecognized by a substantial number of states, including Serbia, Russia, China and several EU member states that face their own separatist movements—Spain, Slovakia, Cyprus, Romania and Greece—among other states in various regions of the world.¹⁸ The situation regarding Crimea is perhaps more complicated. The UN General Assembly resolution calling upon states not to recognize changes in the status of Crimea following the March 16 referendum resulted in 100 votes in favor, 11 against and 58 abstentions.¹⁹ Armenia, Belarus, Venezuela, Nicaragua and Cuba (among others) joined Russia in voting against the resolution, and several made statements about their recognition of the Republic of Crimea and Sevastopol as federal subjects of Russia.²⁰ The United States and the European Union have openly rejected the referendum and subsequent secession of Crimea, and continue to consider Crimea a part of Ukraine.²¹ In any case, the Russian and American reactions to these unique cases of self-determination, which will be elaborated on below, could not be any more different.

The Kosovo and Crimea cases share perhaps as many similarities as they do differences. These cases present a unique opportunity for an analysis that reveals the inevitable misunderstandings, contradictions and even a sense of fundamental legitimacy present in the behavior of both Russia and the US in the international arena. The Kosovo and Crimea cases, at their most basic level of analysis, can both represent cases of self-determination and fit the

¹⁷ C.J. Chivers, and Nicholas Kulish, 2008, “Kosovo is Recognized but Rebuked by Others,” *The New York Times*, February 19, http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html?_r=0.

¹⁸ *Ibid.*,

¹⁹ See “General Assembly Adopts Resolution Calling Upon States Not to Recognize Changes in Status of Crimea Region,” *UN.org*, Last modified March 27, 2014, <http://www.un.org/press/en/2014/ga11493.doc.htm>.

²⁰ *Ibid.*,

²¹ *Ibid.*,

general requirements for this, as there is no specific legal criteria (aside from precedent) to determine which groups may legitimately claim this right in particular cases.²²

According to the late historian and professor Betty Miller Unterberger, the right to self-determination has become one of the most complex issues facing the international community because “it could mean the right of people to choose their form of government within existing borders or by achieving independence from a colonial power”; “it could mean the right of an ethnic, linguistic, or religious group to redefine existing borders to achieve a separate national sovereignty or simply achieve a greater degree of autonomy...”; and “it could even mean the right of a political unit within a federal system such as Canada, Czechoslovakia, the former Soviet Union, or the former Yugoslavia to secede from the federation and become an independent sovereign state.”²³

In light of the above, it is not surprising that each Great Power (Russia; US) responded to the Kosovo and Crimea cases in opposite, inconsistent and even contradictory ways. We would expect Russia and the US to have a consistent response to the Kosovo and Crimea cases if they were objectively following a legal framework provided in international law documents regarding the legitimacy of cases of self-determination, but the absence of such a legal framework, the complex factors surrounding these cases, and each Great Power’s own individual interests and interpretations of international law have caused Russia to support Crimean ‘self-determination’

²² Daniel P. Moynihan, *Pandaemonium: Ethnicity in International Politics* (Oxford, New York: Oxford University Press, 1993).

²³ Betty Miller Unterberger, “Self-Determination.” *Encyclopedia of the New American Nation*, Accessed Feb 11, 2015. <http://www.americanforeignrelations.com/O-W/Self-Determination.html>.; Betty Miller Unterberger, “The United States and National Self-determination: A Wilsonian Perspective.” *Presidential Studies Quarterly* (1996), 26 (4): 926-941.

while condemning Kosovar self-determination, and the US to support Kosovar self-determination while condemning Crimean ‘self-determination.’

The Crimea and Kosovo cases do, however, also contain noteworthy differences. The most significant of these is that the Kosovo case ended in independence from Serbia, while the Crimea case ended in annexation by Russia. This fact is likely one of the most controversial and contested issues in these cases, causing some observers to claim that the Crimea case is not a legitimate case of self-determination. The question of whether Crimea is a case of self-determination, annexation or irredentism still remains disputed. It is also important to mention that there was no comparable level of violence in the Crimea case as there was in the Kosovo case, in a way making Kosovo a unique case. Finally, it is worth noting that the Kosovo case has the potential of ending with both Kosovo and Serbia becoming EU members and perhaps even NATO members. The Crimea case ended with Crimea as a part of the Russian Federation and therefore also a member of the Eurasian Economic Union (EEU). It is unlikely, however, that Ukraine as a whole will soon enter the EEU, or even NATO and the EU.

A brief overview of the Kosovo and Crimea cases reveals Russia and the West perhaps each have a different understanding of what a legitimate case of self-determination should look like. Although the Kosovo and Crimea cases can both be considered cases of self-determination, they came to independence through conditions that were alike but also different in some ways. International law does not, however, provide specific criteria for what constitutes a legitimate case of self-determination, and in fact allows for a very wide interpretation of this right. Below, the Russian and US reactions to each case will be explored.

1.2 The Russian Reaction

Kosovo

Russia's reaction to Kosovo's unilateral declaration of independence was one of strong opposition. A statement by Russia's Ministry of Foreign Affairs on Kosovo claims that Kosovo's declaration of independence violated the "sovereignty of the Republic of Serbia" and that "Russia fully supports the reaction of the Serbian leadership to the events in Kosovo and its just demands to restore the territorial integrity of the country."²⁴ In a press conference held on February 14, 2008, President Putin made the following remarks:

"We think that to support a unilateral declaration of independence by Kosovo is amoral and against the law. Territorial integrity is one of the fundamental principles of international law. The Security Council has issued Resolution 1244, which speaks of Serbia's territorial integrity, and all UN members must respect this resolution..."²⁵

On October 16, 2014 Putin reiterated Russia's stance on the Kosovo issue during a meeting with the Serbian President in Belgrade. He stated that Russia has a principled stance which is based not only on friendship and proximity [with Serbia], but also on international law and justice.²⁶

Regarding the 1999 NATO bombing of the former Yugoslavia, the Russian Federation's Ministry of Foreign Affairs (MFA) commented that the bombing was an act of aggression against the Federal Republic of Yugoslavia ("a demonstration of NATO's unilateral policy of force" and its "typical disregard for the foundational principle of peaceful resolution of international disputes") that plainly defied the UN Charter, the Helsinki Final Act, generally accepted international norms, and the UN Security Council resolutions on Kosovo.²⁷ The MFA stated that rather than protecting Kosovar Albanians from oppression by the Serbian authorities

²⁴ See "Statement by Russia's Ministry of Foreign Affairs on Kosovo," Feb 17, 2008, http://archive.mid.ru/bdcomp/brp_4.nsf/e78a48070f128a7b43256999005bcbb3/041c5af46913d38ac32573f30027b380!OpenDocument.

²⁵ See "Transcript of Annual Big Press Conference," Feb 14, 2008, http://archive.kremlin.ru/eng/speeches/2008/02/14/1011_type82915_160266.shtml.

²⁶ See "Putin Reiterates Russia's Principled Stance on Kosovo Issue," Oct 16, 2014, <http://tass.ru/en/russia/754764>.

²⁷ See "Comment by the Foreign Ministry on the anniversary of NATO's 1999 aggression against Yugoslavia," March 24, 2015, http://archive.mid.ru/bdcomp/brp_4.nsf/e78a48070f128a7b43256999005bcbb3/3c33d8a1fc0139f643257e1200658c9c!OpenDocument.

and preventing a humanitarian disaster, NATO's actual motive was to "undermine Yugoslavia's political and economic capacity and its ability to continue pursuing an independent policy in the region, leading to the disintegration of the country..."²⁸

Crimea

In his March 18, 2014 speech addressed to State Duma deputies, Federation Council members, heads of Russian regions and civil society representatives in the Kremlin, President Putin provides his clear support for the outcome in the Crimea case. President Putin stated that the Crimean referendum was in full compliance with democratic procedures and international norms and that the Supreme Council of Crimea— as it declared independence and decided to hold a referendum—referred to the UN Charter (as did Ukraine when it seceded from the USSR), which speaks of the right of nations to self-determination.²⁹ He also mentioned that the Crimean authorities referred to the well-known Kosovo precedent, which represents a very similar situation to that of Crimea and is not a special case. Although the conflict in Kosovo resulted in many human casualties, President Putin claims that this is not a legal argument (that would make it a special case) and that the ruling of the ICJ says nothing about this.³⁰ He also quotes a comment by the UN International Court on July 22, 2010:

"No general prohibition may be inferred from the practice of the Security Council with regard to declarations of independence" and "General international law contains no prohibition on declarations of independence"; and an April 17, 2009 US written statement submitted to the UN international court in connection with the hearings on Kosovo: "Declarations of independence may, and often do, violate domestic legislation. However, this does not make them violations of international law."³¹

²⁸ Ibid.,

²⁹ See "Address by the President of the Russian Federation," March 18, 2014, <http://en.kremlin.ru/events/president/news/20603>.

³⁰ Ibid.,

³¹ Ibid.,

The Ministry of Foreign Affairs of the Russian Federation similarly stated that Crimea's declaration of independence from Ukraine contained legal justification, with references to the UN Charter and other international documents, as well as the decision of the UN's International Court of Justice on Kosovo, and therefore does not violate any provision of international law.³²

1.3 Western (US) Reaction

Kosovo

The United States formally recognized Kosovo as a sovereign and independent state on February 18, 2008. The United States considers Kosovo to be a special case that should not be seen as a precedent for other situations, and considers that the nature of events that led to Kosovo's independence were themselves unprecedented.³³ In February 18, 2008 statement recognizing Kosovo's independence, then US Secretary of State Condoleezza Rice officially stated that:

“The unusual combination of factors found in the Kosovo situation—including the context of Yugoslavia's breakup, the history of ethnic cleansing and the crimes against civilians in Kosovo, and the extended period of UN administration—are not found elsewhere and therefore make Kosovo a special case. Kosovo cannot be seen as a precedent for any other situation in the world today.”³⁴

In a later remark to the Assembly of Kosovo on May 21, 2009, Vice President Joe Biden stated that in his view, Kosovo's independence was and remains the only viable option for stability in the region, that Kosovo's independence “is irreversible—absolutely irreversible” and that the success of an independent Kosovo is a priority for the US.³⁵

³² See “Statement by the Russian Ministry of Foreign Affairs Regarding the Adoption of the Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol,” March 11, 2014, http://archive.mid.ru/bdcomp/brp_4.nsf/e78a48070f128a7b43256999005bcbb3/4751d80fe6f93d0344257c990062a08a!OpenDocument.

³³ See “The Case for Kosovo,” Feb 11, 2015 <http://www.state.gov/p/eur/ci/kv/c24701.htm>.

³⁴ See “U.S. Recognizes Kosovo as Independent State,” Feb 18, 2008, <http://2001-2009.state.gov/secretary/rm/2008/02/100973.htm>.

³⁵ See “Remarks by the Vice President to the Assembly of Kosovo,” May 21, 2009, <https://www.whitehouse.gov/the-press-office/remarks-vice-president-assembly-kosovo>.

The US was also responsible for leading the 1999 NATO bombing campaign of the former Yugoslavia in response to the crisis in Kosovo. In his address on the Kosovo Agreement, then president Bill Clinton stated that as a result of the campaign, America has achieved “a victory for a safer world, for our democratic values, and for a stronger America” and that “aggression against an innocent people has been contained and is being turned back.”³⁶ The three goals of the American Armed forces during the campaign were to “enable the Kosovar people...to return to their homes with safety and self-government; to require Serbian forces responsible for those atrocities to leave Kosovo; and to deploy an international security force, with NATO at its core, to protect all the people of that troubled land, Serbs and Albanians, alike.”³⁷

Crimea

The US reaction to the Crimean referendum and its secession from Ukraine is quite a departure from its reaction to the Kosovo case. On March 17, 2014, President Obama stated that the referendum in Crimea was a clear violation of Ukrainian constitutions and international law, and that it would not be recognized by the international community.³⁸ The US repeatedly claims to support Ukraine’s independence, sovereignty and territorial integrity and to reject the “sham referendum” that was held in Crimea.³⁹ Furthermore, the US claimed that through its involvement in Crimea, Russia disrupted “70 years of international order” and drew on “the condemnation of free, democratic societies across the globe”⁴⁰ and that “Russia’s actions are

³⁶ See “Address on the Kosovo Agreement (June 10, 1999),” *The Miller Center: University of Virginia*, accessed Feb 11, 2015, <http://millercenter.org/president/clinton/speeches/speech-3933>.

³⁷ *Ibid.*,

³⁸ See “Statement by the President on Ukraine,” March 17, 2014, <https://www.whitehouse.gov/the-press-office/2014/03/17/statement-president-ukraine>.

³⁹ See “One Year Later-Russia’s Occupation of Crimea,” March 16, 2015, <http://www.state.gov/r/pa/prs/ps/2015/03/238897.htm>.; “Statement by the Press Secretary on Ukraine,” March 16, 2014, <https://www.whitehouse.gov/the-press-office/2014/03/16/statement-press-secretary-ukraine>.

⁴⁰ See “One Year Later-Russia’s Occupation of Crimea,” March 16, 2015, <http://www.state.gov/r/pa/prs/ps/2015/03/238897.htm>.

dangerous and destabilizing” and that “violation of international law will bring increasing costs for Russia.”⁴¹

PART II: AN ANALYSIS OF THE RUSSIAN AND WESTERN CONCEPTIONS OF INTERNATIONAL LAW AND RELATIONS

The second chapter of this study will primarily draw on secondary sources that elaborate on the Russian and Western perspectives on international law and relations. The primary objective of this chapter is to highlight the differences in Russian and Western interpretations of international law and relations and to identify some potential areas of misunderstanding⁴² and failed diplomacy. It will begin with a general discussion of Russian and Western (US) approaches to international law and relations and then proceed with a discussion of how these distinct approaches are reflected in each actor’s reaction to the Kosovo and Crimea cases.

There will be slightly more space dedicated to the Russian perspective, as this study claims that the Russian perspective has largely been missing in Western literature. The Russian approach to international law and relations must, however, be discussed in the context of the Western approach, as Russia is often acting in response to Western actions.⁴³ The author is also aware of the fact that as there is no higher power to enforce international law, nations “obey” international law only to the extent that it serves their individual self-interests,⁴⁴ and it can be argued that no great power believes in any interpretation of international law that does not suit its interests. Although Russia and the US adhere (or pretend to adhere) to a certain kind of international law, they may deviate from this when it best serves their respective self-interests.

⁴¹ See “Statement by the Press Secretary on Ukraine,” March 16, 2014, <https://www.whitehouse.gov/the-press-office/2014/03/16/statement-press-secretary-ukraine>.

⁴² Characterized, in part, by sharply different legal conceptions.

⁴³ In particular, the enlargement of both the EU and NATO.

⁴⁴ Harold Hongju Koh, “Why Do Nations Obey International Law?” *Faculty Scholarship Series* (1997), Paper 2101, http://digitalcommons.law.yale.edu/fss_papers/2101.

Despite this pessimistic view of the international system, the way in which states claim to interpret international law tells us a lot about how they view their interests and helps us predict how they might act in future crises.

2.1 The Russian Approach

In her piece *Misunderstanding Russia: Russian Foreign Policy and the West*, Magda Leichtova makes the important point that Russian foreign policy is a complex phenomenon constructed from internal as well as external developments, perceptions and expectations.⁴⁵ She identifies two principal ideological foundations of Russian foreign policy—geopolitics and realism—which will be the focus of this section. Another important factor in the Russian approach to international relations is the perception of the West (primarily the US) as the most significant ‘Other’ of Russian foreign policy⁴⁶—“the West plays the role of the crucial Other, according to whose reactions, activities and strategies Russian foreign policy is measured and constructed.”⁴⁷ The West is viewed not only as a potential threat to security, but also as an actor that can be emulated in some respects. This section will end with a consideration of what some scholars refer to as Putin’s pragmatic approach to foreign policy.

Geopolitics serves as the basic “tool” or foundation of Russia’s orientation in the international system—it corresponds with the Russian concept of its own identity, “more closely connected with geographical location and physical aspects of the existence of the Russian state.”⁴⁸ There is a view that the Russian state has certain obligations to defend its territory or

⁴⁵ Magda Leichtova, *Misunderstanding Russia: Russian Foreign Policy and the West* (Farnham: Ashgate Publishing, 2014), 2.

⁴⁶ Particularly relating to the Eurasian zone.

⁴⁷ Leichtova, *Misunderstanding Russia*, 97.

⁴⁸ Leichtova, *Misunderstanding Russia*, 18.

culture or expand to areas “naturally” falling under Russian influence.⁴⁹ Therefore, an important geostrategic task would be to “preserve the geopolitical shape of the historic Russian state, prevent fundamental reorientation of new states into hostile partners and limit the possibilities of third parties in gaining influence on the territory of the historic Russian state.”⁵⁰ Furthermore, a geopolitical method of viewing and interpreting the international system also legitimizes a political course of striving towards regaining the status of a world power.⁵¹ Russia’s approach to international relations largely focuses on the concept of polarity in the international system and the “tendency towards unipolarity under the hegemony of the US is considered by Russia’s elite as undesirable as this also corresponds to the belief in a cultural uniqueness and power significance which would remain understated in such a system.”⁵² Russia therefore advocates for the multipolar organization of the international system, with the Russian Federation representing one of the poles.⁵³

Realism is also dominant in Russia’s approach to international relations and more specifically, the realist concepts of zero-sum game logic and the division of the international system according to the concepts of spheres of influence and balance of power.⁵⁴ The Russian Federation’s realist understanding of the international system “interprets international relations as an environment which is dangerous and untrustworthy.”⁵⁵ The need to defend its extensive territory and vast borders makes it easy for Russia to feel endangered, “especially when a conflict breaks out in close vicinity to its borders or when other world powers begin to expand

⁴⁹ Ibid.,

⁵⁰ N. Narochinitskaya, *Россия и русские в современном мире* [*Russia and Russians in the Contemporary World*] (Moscow: Algoritm, 2009), 253.

⁵¹ Leichtova, *Misunderstanding Russia*.

⁵² Ibid., 19.

⁵³ See “Concept of the Foreign Policy of the Russian Federation,” last modified February 12, 2013, http://archive.mid.ru/brp_4.nsf/0/76389FEC168189ED44257B2E0039B16D.

⁵⁴ Bobo Lo, *Russian Foreign Policy in the Post-Soviet Era: Reality, Illusion and Mythmaking* (Basingstoke: Palgrave Macmillan, 2002).

⁵⁵ Leichtova, *Misunderstanding Russia*, 37.

their sphere of influence,” and Russian elites seem to think that a strong, powerful Russia is necessary to counter such threats.⁵⁶ In his piece *Russian Foreign Policy in the Post-Soviet Era: Reality, Illusion and Mythmaking*, Bobo Lo claims that Russia asserts zero-sum logic most often in the Western vector of its foreign policy, and this is especially evident in Russia’s strong objection to NATO expansion.⁵⁷ NATO’s expansion (perceived by Russia as being led by the US) into the post-Soviet space is seen by Russia as Western encroachment on its sphere of influence and also as a direct threat to Russia’s security.⁵⁸ Finally, balance of power is another realist concept that figures in the Russian approach to international relations. When a balance of power is achieved, “no actor is overly dissatisfied with the division of power in the system and no one has complete superiority over the other”⁵⁹—it is important for Russia to balance power in the system (e.g., through alliances with China and India) against the domination of the West under the leadership of the US.⁶⁰

A final point that is important to make is that Russia’s approach to international relations is formed within the context of the West (particularly the US) representing the most significant Other. At least since Peter the Great, “the West has played a special role in Russian development, and much of the country’s international behavior has meant efforts of the Russian Self to win recognition by its significant Other.”⁶¹ On the one hand, the West influences the self-legitimization of the Russian political regime through its domination of the discourse of liberal

⁵⁶ Ibid.,

⁵⁷ See Lo, *Russian Foreign Policy*; “Concept of the Foreign Policy of the Russian Federation” (2013)

⁵⁸ Leichtova, *Misunderstanding Russia*.

⁵⁹ Ibid., 22.

⁶⁰ See Leichtova, *Misunderstanding Russia*, 23; Fyodor Lukyanov, “Russian Dilemmas in a Multipolar World,” *Journal of International Affairs* (2010), 63 (2): 19-32; Beom-Shik Shin, “Russia’s Perspectives on International Politics: A Comparison of Liberalist, Realist and Geopolitical Paradigms,” *Acta Slavica Iaponica* (2009), 26: 1-24.

⁶¹ Andrei P. Tsygankov, *Russia’s Foreign Policy: Change and Continuity in National Identity* (2nd ed. Lanham, Md.: Rowman & Littlefield Publishers, 2010), 226.

democracy.⁶² The West's superiority in this regard "pushes Russia to form new alliances (new economies and new powers) and new tactics (with an emphasis on the role of the UN and international law)."⁶³ On the other hand, the West also represents a prominent security interest and potential threat to security. The West is the "main criterion for success or failure; it is the great Other with which Russia compares its own strategies and decisions."⁶⁴ While the West plays a role in the way that Russia defines its own identity, it is also treated as a threat to the Self.

In recent years, various scholars⁶⁵ have noted the emergence of what is referred to as the "Pragmatism of President Putin" or "Great Power Pragmatism" following 9/11. It is both a continuation of and slight deviation from previous Russian approaches to foreign policy and international relations. Putin visualized Russia as a great power and sought Western recognition of this. Rather than balancing the US' power, the "key objective was now pronounced as an economic modernization for the sake of preserving the great power status."⁶⁶ What began as a willingness to cooperate with the West in combating global terrorism post-9/11 later changed in the direction of assertiveness around 2005 following the "color revolutions." In fact, the brief period immediately following the September 11 attacks can be referred to as the "era of missed opportunities" between Russia and the West, as this was a time when potential misunderstandings between the two powers that exist today could have potentially been avoided. Immediately after the 9/11 tragedy, Putin reached out to Bush and facilitated the establishment of US bases in Central Asia. From the Russian point of view, Putin hoped that Russia would be accepted as part of the "international entourage that decides everything" and that the US would

⁶² Leichtova, *Misunderstanding Russia*.

⁶³ *Ibid.*, 94.

⁶⁴ *Ibid.*, 26.

⁶⁵ See Leichtova, *Misunderstanding Russia*; Tsygankov, *Russia's Foreign Policy*.

⁶⁶ Tsygankov, *Russia's Foreign Policy*, 225.

be more attentive to Russian interests in return for Russia supporting the US post-9/11.⁶⁷ Putin hoped that the US would view Russia as a partner, recognize its sphere of influence in the post-Soviet space and treat it as an equal.⁶⁸ This, however, did not happen and resulted in a missed opportunity in cooperation between Russia and the West. Rather than continuing to seek integration with the West, the Kremlin became disillusioned with this previous policy and instead, Russia has enhanced its own capabilities and increased its strength.⁶⁹ This change stemmed from the conviction that Western countries, especially the US, were not interested in recognizing Russia as an equal partner.⁷⁰

As a result, “Great Power Pragmatism” emerged and the Kremlin “no longer believed in defensive cooperation with Western nations and insisted on greater acceptance of Russia’s interests.”⁷¹ Although this policy still stressed the need for pragmatic cooperation with the West, it also “embraced the notion of multipolarity based on a more equitable distribution of resources for influence and economic growth, which laid the ground for a more self-confident Russia.”⁷² Russia was ready to actively challenge the actions of others, particularly the US, if they were “unilateral” and disrespectful of international law. This does not mean that Russia was pursuing an anti-Western policy; on the contrary, this policy sought to strengthen “membership within a US-EU-Russia alliance, developing ties with growing powers, such as China and India, and sharing the world’s economic benefits with poor non-Western nations.”⁷³ Russia’s perceived attainment of great power status has allowed it to pursue a policy of pragmatism towards its Western partners. Moscow’s insistence on the greater acceptance of its core interests—one of

⁶⁷ Angela Stent, *The Limits of Partnership: U.S.-Russian Relations in the Twenty-First Century* (Princeton, New Jersey: Princeton University Press, 2014), 69.

⁶⁸ *Ibid.*, 259.

⁶⁹ Lukyanov, “Russian Dilemmas.”

⁷⁰ *Ibid.*,

⁷¹ *Ibid.*,

⁷² *Ibid.*, 177-178.

⁷³ *Ibid.*, 178.

these being a strong opposition to NATO's eastward expansion—likely played a role in Moscow's decision to annex Crimea.

2.2 The Western (US) Approach

In the previous section, we have identified the US as holding a prominent position in Russia's conception of the West, while also representing the most significant Other in the Russian conception of international relations. The US' approach to international law and relations will therefore be the focus of this section. This approach is slightly more challenging to assess, considering that there are variations in foreign policy that come with changes in administration. This is not as much of an issue in the Russian case, as Vladimir Putin served as president during both the Crimea and Kosovo cases, and there did not seem to be any notable variations in the Russian approach to international law and relations in the period between the Crimea and Kosovo cases. In regard to the US, the Bush Administration was in power during the Kosovo case, and the Obama Administration in the case of Crimea. It is safe to say that each administration took a slightly different approach to international law and relations, although there does appear to be a general continuity in the US approach to international law and relations.

Barry R. Posen's *Restraint: A New Foundation for U.S. Grand Strategy* offers valuable insight into the general US approach to international relations following the collapse of the Soviet Union.⁷⁴ He claims that there is little disagreement among Republican and Democratic foreign policy experts about the threats the US faces and the remedies it should pursue.⁷⁵ Posen also argues that the present US strategy can be referred to as Liberal Hegemony, which did not

⁷⁴ Barry Posen, *Restraint: A New Foundation for U.S. Grand Strategy* (Ithaca, New York: Cornell University Press, 2014).

⁷⁵ *Ibid.*, 5.

fully emerge until the aftermath of September 11, 2001 and was dominant during the Obama Administration.

During the George W. Bush Administration, however, a convergence of Cooperative Security and Primacy (the strategic orientation of the Republican Party) was the primary strategy employed in regard to international relations. Advocates of Cooperative Security sought to create a stable peace, and threats to stable peace included “unreformed “rogue” states (a catchall term for heavily armed authoritarian survivors of the Cold War), failed or failing states, and the proliferation of nuclear weaponry.”⁷⁶ If left unattended, these threats could erode the foundation of freedom and threaten world peace. According to Cooperative Security advocates, the solutions to these issues included arms control, cooperative security institutions (liberal democracies that would oppose rogue states and stabilize failed states), and Western technological superiority (this would permit military interventions that would be cheap, quick, and relatively free of collateral damage).⁷⁷ Aside from remaining deeply skeptical of international security organizations, proponents of Primacy generally agreed with the tenets of Cooperative Security. Proponents of Primacy wanted the US to maintain its preeminent position and use its power to spread democracy and market economies. Foremost among their fears at the time was a resurgent Russia, and the preservation of primacy, along with “precluding the emergence of any potential future global competitor,” quickly became a vital interest.⁷⁸ There is strong agreement between the two strategies that the US must remain the strongest military power in the world by a very wide margin.

Following the Bush Administration, Liberal Hegemony became the dominant US strategy. Posen argues that this strategy is hegemonic because it “builds on the great power

⁷⁶ Ibid., 7.

⁷⁷ Ibid.,

⁷⁸ Ibid., 8.

advantage of the US relative to all other major powers” and “intends to preserve as much of that advantage as possible through a range of actions, including a sustained investment in military power whose aim is to so overwhelm potential challengers that they will not even try to compete, much less fight.”⁷⁹ The liberal component of this strategy refers to the aim of defending and promoting a range of values associated with Western society in general, and the US in particular (e.g., democratic governance, free markets, rule of law). The spread of these values is seen as being essential for US security, as there is a view that the US can only be truly safe in a world full of states like itself, and that it should use its power to pursue this outcome.⁸⁰ This view stems from the idea of American exceptionalism and the realization that “the US might actually have sufficient power to spread its ideas about domestic governance and international order” following the defeat of Communism.⁸¹ However, Posen claims that the grand strategy of Liberal Hegemony is unnecessary, counterproductive, costly, and wasteful.⁸² As an outcome of this strategy, the US-led NATO enlargement campaign in particular expanded US obligations in ways that did little for US security and needlessly antagonized Russia.

2.3 Making Sense of the Russian and Western (US) Reactions to Crimea and Kosovo— “Fundamental Misunderstandings and Failed Diplomacy”

The clear contrast between the Russian and US reactions to the Kosovo and Crimea cases suggests that further analysis is necessary to understand why this may be the case. This contrast reflects the divergence in the Russian and US conceptions of international law, and also their own individual interests. An important theme in this section is that it is unproductive and even dangerous to assume the universality of international law. According to Lauri Mälksoo, the

⁷⁹ Ibid., 5.

⁸⁰ Ibid., 6.

⁸¹ Ibid.,

⁸² Ibid., xi.

“powerful Western idea of universality of international law has blurred our sense of the reality of international law on the ground outside the West.”⁸³ Furthermore, it remains possible that when “two world leaders from different regions and civilizations meet and refer in their conversations and debates to ‘international law,’ they have historically and culturally different concepts and associations in mind regarding what international law implies.”⁸⁴ As in the previous section of this chapter, more space will be dedicated to understanding the Russian perspective, as it has generally been missing in Western discourse.

One important distinction between Russian and Western thinking about international law concerns the values that each actor prioritizes. Western thinking (especially that of the US) places more emphasis on the international protection of human rights, democratic accountability of governments and economic integration in the framework of globalization.⁸⁵ State sovereignty becomes less important than the perspective of the rights of the individual. Russians, however, continue to give priority to the principle of state sovereignty, and the peace and security of the international system is considered to be more important than international human rights.⁸⁶ Russia feels that through international law, it is also defending its own special status enshrined in the UN Charter, that of a strong state that “not only has the right to sway away from US-led globalist tendencies but is also entitled to a regional-historical ‘greater space.’”⁸⁷ Finally, Moscow may have a different understanding from Western globalists of what the UN ideals are—“instead of global governance, the promotion of democracy, and human rights, Moscow sees balance of power between coexisting and competing greater spaces.”⁸⁸

⁸³ Lauri Mälksoo, *Russian Approaches to International Law* (Oxford: Oxford University Press, 2015), 193.

⁸⁴ Mälksoo, *Russian Approaches to International Law*, 18.

⁸⁵ Mälksoo, *Russian Approaches to International Law*, 19.

⁸⁶ Mälksoo, *Russian Approaches to International Law*.

⁸⁷ Mälksoo, *Russian Approaches to International Law*, 192.

⁸⁸ Mälksoo, *Russian Approaches to International Law*, 184.

The diverging Russian and US conceptions of international law and relations introduced in the first two sections of this chapter are also reflected in their respective reactions to the Kosovo and Crimea cases and can provide an additional underlying explanation for their behavior. Russia's reaction to the Kosovo case reflects the realist foundations of its approach to international relations (especially directed toward NATO) and also reflects the perception that it is not being treated as an equal by the West. Russia's general opposition to NATO's eastward expansion can be witnessed in its negative reaction to the 1999 NATO bombing campaign. The Kosovo operation was carried out in direct defiance of Russia's dissent and "empowered the image of the "arrogant" West, which, if not completely ignoring Russia's objections, at least does not heed Russia's protests and does not take its interests into consideration."⁸⁹ The war in Yugoslavia clearly showed Russian leaders that their claims to equal partnership with the West were exaggerated.⁹⁰ Russia found itself in the role of "consultant" whose voice did not necessarily have to be heard, while Western states made their own decisions and carried out their own adopted solutions to international crises.⁹¹ As Russia was in a weakened position following the collapse of the Soviet Union, "Kosovo was the most bitter pill for Russia to swallow in its hopes of remaining a world power that makes decisions on solutions to security crises in the international system."⁹²

Russia's negative reaction to Kosovo's declaration of independence is likely a combination of support for its historic ally, Serbia; its continued aversion to the actions of NATO in 1999 and beyond; its insistence on the need to preserve state sovereignty and territorial integrity (a priority in Russian thinking about international law, as mentioned above); and

⁸⁹ Leichtova, *Misunderstanding Russia*, 21.

⁹⁰ Leichtova, *Misunderstanding Russia*, 114.

⁹¹ *Ibid.*,

⁹² Leichtova, *Misunderstanding Russia*, 124.

possibly its desire to push back against the West and its continued involvement in Kosovo and Eastern Europe in general.

Russia's reaction to the Crimea case reflects both the geopolitical and realist foundations of its approach to international relations. From a geopolitical standpoint, Russia feels that it has certain obligations to defend its territory or culture or expand to areas falling naturally under Russian influence. It is safe to say that Russia considers Ukraine to be an area that falls naturally under its influence, along with certain other post-Soviet states. In fact, Lauri Mälksoo and Henry Kissinger both make the claim that some of the former Soviet republics, and especially Ukraine, are considered to be 'separate' rather than 'foreign' countries. The implications of this are that in Moscow's view, some sort of regional concrete order prevails in regard to the former Soviet republics rather than international law. Mälksoo makes the point that "when Moscow emphasizes 'international law,' it primarily keeps in mind its relations with the US, Great Britain and China" but "not so much the lands of the former Russian [Romanov] and the Soviet Empires."⁹³ Kissinger also makes the point that the West must understand that to Russia, Ukraine can never just be a foreign country, as Ukraine holds historical, religious and strategic significance for Russia.⁹⁴

From a realist standpoint, Russia views the world as a dangerous place and the need to defend its vast borders makes Russia feel endangered, especially when conflict breaks out near its borders or when other world powers gain influence in the regions. The last point is clearly illustrated, again, by Russia's strong opposition to NATO expansion into the former Soviet space—Russia would not tolerate interference in its zone of privileged interests, let alone permit

⁹³ Mälksoo, *Russian Approaches to International Law*, 177.

⁹⁴ Henry Kissinger, "Henry Kissinger: To Settle the Ukraine Crisis, Start at the End," *The Washington Post*, March 5, 2014, https://www.washingtonpost.com/opinions/henry-kissinger-to-settle-the-ukraine-crisis-start-at-the-end/2014/03/05/46dad868-a496-11e3-8466-d34c451760b9_story.html.

NATO expansion into Ukraine. NATO expansion is against Russia's interests and is viewed as a threat to security, and Moscow now finds itself in the position to "regain some of its military potential and a good deal of its international influence which allows it to push back against the West."⁹⁵ As previously mentioned, there is a narrative in Russia that during the first decades of its post-Soviet existence, the country had been too weak to stand up for its interests in the face of Western encroachment.⁹⁶ Rajan Menon and Eugene Rumer claim that Russia's annexation of Crimea is a progression of the same Russian foreign policy following its recovery from the horrible decade of the 1990s—"a policy designed and implemented to keep Ukraine out of NATO and NATO out of Ukraine."⁹⁷ This last point can be applied to the Kosovo case as well, as Russia felt that its interests were ignored during a time when it could not do much about it.

The US reaction to the Kosovo case can primarily be viewed in the context of the desire to spread human rights and democracy, as the war in Kosovo was initiated to achieve humanitarian and ideological goals. Posen claims that following the collapse of the Soviet Union, NATO, under US leadership, chose to expand rather than contract its horizons, and this became a key element of Liberal Hegemony.⁹⁸ During the NATO operations against Serbia over Kosovo in 1999, the alliance committed itself to a more expansive agenda that included addressing uncertainty and instability in and around the Euro-Atlantic area, ethnic and religious rivalries, territorial disputes, the abuse of human rights, and so on.⁹⁹ Regarding the US in particular, its uses of military power since the end of the Cold War have usually been to eradicate violent identity politics "through the installation of liberal democratic structures" that it believed

⁹⁵ Rajan Menon and Eugene B. Rumer, *Conflict in Ukraine: The Unwinding of the Post-Cold War Order* (Cambridge, MA: The MIT Press, 2015), 977.

⁹⁶ Menon et al., *Conflict in Ukraine*.

⁹⁷ Menon et al., *Conflict in Ukraine*, 983.

⁹⁸ Barry Posen, *Restraint: A New Foundation for U.S. Grand Strategy* (Ithaca, New York: Cornell University Press, 2014), 37.

⁹⁹ *Ibid.*,

“would channel political energies in more benign directions.”¹⁰⁰ The war with Serbia over Kosovo was, in fact, occasioned by “the effort of the Serb state to suppress the national identity of the Albanians who constituted the majority of citizens of the province of Kosovo.”¹⁰¹ The US intervention was essentially a “humanitarian military intervention” that was also motivated by the desire to spread democracy and to prevent the revival of authoritarian states in Europe.

The US reaction to the Crimea case is, perhaps, less clear. It is possible that there was some legitimate concern regarding the ‘undemocratic’ nature of the Crimean referendum. It is more likely, however, that the US was concerned about the changing of Ukraine’s borders as a result of the secession of Crimea, which constituted a violation of the Helsinki Accords of 1975 and numerous other treaties. Equally important is the fact that the US also has an obligation to guarantee the security of Ukraine as a result of the Budapest Memorandum on Security Assurances for Ukraine of 1994. The Memorandum essentially required Ukraine to give up the nuclear arms on its territory in exchange for security assurances against threats or use of force against the territorial integrity or political independence of Ukraine.¹⁰² Russia’s annexation of Crimea likely places an uncomfortable focus on the worth and credibility of security assurances pledged to Ukraine by the US, as the US underlined its commitment to Ukraine’s sovereignty and territorial integrity by signing the Memorandum.¹⁰³ Finally, it is worth noting that perhaps if Crimea had declared independence and not joined Russia, the US reaction may have been different.

A brief analysis of the diverging Russian and American reactions to the Kosovo and Crimea reveal that they may indeed perceive and use international law differently, and violate it

¹⁰⁰ Posen, *Restraint*, 50.

¹⁰¹ Posen, *Restraint*, 56.

¹⁰² Steven Pifer, “The Budapest Memorandum and U.S. Obligations,” *The Brookings Institution*, Dec 4, 2014, <http://www.brookings.edu/blogs/up-front/posts/2014/12/04-budapest-memorandum-us-obligations-pifer>.

¹⁰³ *Ibid.*,

for different reasons. While the US foreign policy agenda prioritizes the international protection of human rights, democratic accountability of governments and economic integration in the framework of globalization, Russia continues to prioritize sovereignty and territorial integrity and focus on balance of power. Their different approaches to international law and relations are underlined in their reactions to the Kosovo and Crimea cases, and their underlying interests in the outcome of these cases. Lauri Mälksoo makes a legitimate claim that “the global edifice of international law is stuck with the fact that there actually hardly ever was a genuine and deep-going agreement between Moscow and the West regarding underlying values and principles of the post-World War II international legal order.”¹⁰⁴

From the perspective of Western states (which are more oriented towards a liberal approach in international relations), “Russia appears to behave in an unreasonable, hostile or almost paranoid manner.”¹⁰⁵ Russia inevitably brings with it a wholly different concept of international relations, logically leading to misinterpretations in mutual relations.¹⁰⁶ According to Leichtova, the “main causes of these misunderstandings were the application of Western liberal and democratic expectations on the results of the Russian transformation on one hand, and Russia’s perception of various activities of the West as being arrogant, threatening or marginalizing to Russia on the other.”¹⁰⁷

As discussed above, a clear example of a Western activity that was perceived by Russia as being arrogant, threatening or marginalizing is the eastward expansion of NATO. By making the decision to expand NATO eastward and exclude Russia from the process, it strengthened the

¹⁰⁴ Mälksoo, *Russian Approaches to International Law*, 177.

¹⁰⁵ Leichtova, *Misunderstanding Russia*, 25.

¹⁰⁶ *Ibid.*,

¹⁰⁷ *Ibid.*,

sense that the West was not accepting Russia as one of its own.¹⁰⁸ As previously mentioned, NATO's expansion into the post-Soviet space is seen by Russia as Western encroachment on its sphere of influence and also as a direct threat to Russia's security.¹⁰⁹ At the same time, Western states interpreted the expansion of NATO as an enlargement of a "security community" of peaceful, non-warring countries, to another region.¹¹⁰ The expansion of NATO was viewed by the West as a step toward the qualitative improvement of international ties, peaceful cohabitation and collective defense.¹¹¹ The next and final chapter of this study will continue with this theme and present the competing Russian and Western traditions and understandings of federalism as a major source of misunderstanding between them. Russia's interaction with Western federal structures such as NATO will remain a major theme, possibly revealing the external boundaries of Western European federalism.

PART III: A FUNDAMENTAL MISUNDERSTANDING—RUSSIAN VS. WESTERN FEDERALISM AND FEDERALIST SYSTEMS

This third and final chapter will build on the analysis presented in Part II by introducing yet another fundamental misunderstanding between Russia and the West, and an additional way of analyzing their reactions to the Kosovo and Crimea cases, by examining the Russian and Western traditions of and approaches to federalism. This discussion of federalism is multi-dimensional: it examines federalism in both a national and supranational context, and in an Eastern vs. Western context. The Russian concept of federalism is a different understanding from that of the West, and a common definition of federalism between East and West generally does

¹⁰⁸ Tsygankov, *Russia's Foreign Policy*.

¹⁰⁹ Leichtova, *Misunderstanding Russia*.

¹¹⁰ Lionel Ponsard, *Russia, NATO and Cooperative Security: Bridging the Gap* (London and New York: Routledge, 2007).

¹¹¹ *Ibid.*,

not exist. This has implications for Crimea and Kosovo and how we understand these cases, as these differences result in a Russian preference for a multipolar international system and a preference for multilateral institutions that do not place binding obligations on members. While the West claims that its values are universal, Russia remains firm in its claim that various regions of the world (including Eurasia) continue to maintain their own distinctive and legitimate values. Perhaps it is possible to claim that there exists a clash between Russian and Western federalism in Eurasia, and a struggle between the two over influence in the region, and the Kosovo and Crimea cases are both the symbols and the substance of this struggle. Perhaps this study also reveals the eastern limits of Western federal institutions and limits to the external boundaries of Western European federalism.

3.1 Russian vs. Western National Traditions of Federalism

Russia's vast territory and unique combination of cultural and ethnic diversity make federalism a natural solution to the territorial governance of the country. In fact, Russia's experience with federalism stretches back to the 19th Century, but Russia's path towards federalism has proven challenging, and federalism within Russia fundamentally differs from that of the West in several aspects. This study will focus on just a few factors that appear to be the most consequential, making the Russian case unique by setting it apart from the West, and complicating the establishment of genuine federalism in Russia today.

Elena Chebankova claims that Russia has developed some unique answers to the most fundamental questions posed by Western federal thought and theology.¹¹² First, Russia has "denied the principles of covenant on moral ideological grounds" and second, it "viewed liberty

¹¹² Elena Chebankova, "Russia's Nonconvenantal Federalism: Past and Present," *Journal of Church and State* (2009), 51 (2): 312.

and authority in extreme, unlimited terms.”¹¹³ Although these ‘answers’ were originally viewed in religious terms, they have since transformed into “deep-seated socio-political perceptions, which play an important cultural role in the evolution of center-regional and federal relations in Russia.”¹¹⁴ In Chebankova’s view, cultural aspects, of which religion remains one important component, remain significant to the way and style that political actors understand and operate particular institutional settings.

As is the case in Russia, federalism in the West has a long history that is largely based on religious foundations but unlike Russia, the theological notion of covenant has become a guiding principle behind the idea and practice of modern Western federalism. Covenant provides “the two most important conceptual pillars that are central to our contemporary understanding of federal systems.”¹¹⁵ First, “it generates legalistic, contractual, and ultimately constitutional interactions among the composite units of a federal state.”¹¹⁶ Second, “it supports individual integrities of contracting parties, thus skillfully combining the principles of unity and diversity, freedom and authority, the creation of a wide social entity, and the preservation of the uniqueness of its constituent parts.”¹¹⁷ Covenantalism had enormous political implications in that it raised the questions of the limitations of power in both church and state and of governmental checks and balances.¹¹⁸ Furthermore, a theological covenant gives rise to political constitutionalism in a secular world,¹¹⁹ thereby resulting in a democratic evolution that satisfies

¹¹³ Ibid., 313.

¹¹⁴ Ibid.,

¹¹⁵ Ibid.,

¹¹⁶ Ibid.,

¹¹⁷ Ibid.,

¹¹⁸ See J. Wayne Baker and Charles S. McCoy, *Fountainhead of Federalism: Heinrich Bullinger and the Covenantal Tradition* (Westminster: John Knox Press, 1991); Daniel J. Elazar and John Kincaid, *The Covenant Connection: From Federal Theology to Modern Federalism* (Lanham: Lexington Books, 2000); Quentin Skinner, *The Foundations of Modern Political Thought*, Volume 2: The Age of Reformation (New York: Cambridge University Press, 1978).

¹¹⁹ Elazar & Kincaid, *The Covenant Connection*.

legitimate human needs and extends human rights and popular participation.¹²⁰ Constitutionalism is “of paramount importance to federalism, in that the supreme and binding constitution is a cornerstone of all federal structures.¹²¹ As we can see, theological covenantalism, secular constitutionalism, and political federalism are all closely interconnected in the Western federal tradition.

In Russia, however, the absence the covenantal component that was present in the West became the chief impediment to the evolution of federal perceptions and processes within the country,¹²² including the development of constitutionalism. According to Chebankova, Russian Orthodox theology, which impacts Russia’s political thought, interpreted the main principles of Western federal thought in a profoundly different way—“it purposefully rejected covenantal societal constraints and established largely hierarchical ideals of social interactions,”¹²³ thereby making constitutionalism culturally alien to Russia, and making Russia feel more at ease with organic political structures, “in which the recognition of individual liberties is circumscribed.”¹²⁴ The Russian federal thought that surfaced by the 19th century “bore distinctly Orthodox traditional traits.”¹²⁵

The Western tradition of federalism was largely foreign to Russia, and it is no surprise that Russia’s unique worldview could largely impede the evolution of a Western-style federal practice in Russia. The absence of covenantalism in Russia is particularly important, as this had an adverse impact on the evolution of its constitutional process. Russia’s noncovenantal cultural mentality has seriously influenced the evolution of Russia’s center-regional relations and

¹²⁰ See Neal Riemer, “Covenant and the Federal Constitution,” *Publius* (1980), 10 (4): 135-48; Rozann Rothman, “The Impact of Covenant and Contract Theories on Conceptions of the U.S. Constitution,” *Publius* (1980), 10 (4): 149-63.

¹²¹ Chebankova, “Russia’s Noncovenantal Federalism,” 315.

¹²² *Ibid.*, 317.

¹²³ *Ibid.*, 340.

¹²⁴ *Ibid.*, 323.

¹²⁵ *Ibid.*, 320.

contributed to “the inability of the national center to maintain its continuing promise of devolution and recognition.”¹²⁶ This has resulted in “the prevalence of informal methods of center-regional political interaction, and impeded the development of genuine constitutionalism.”¹²⁷ Following the collapse of the Soviet Union, Russia has ultimately failed to develop an appropriate constitutional model of federalism, and to build a federation that would adequately reflect the realities of existent federal relations. The 1993 Constitution,¹²⁸ the main document outlining the federal structure of contemporary Russia, contains “inconsistencies between the prerogatives that derive from the Federation Treaty and the actual constitutional text,” which has “contributed to the instability of Russian federalism that followed.”¹²⁹

Russia’s existing constitutional provisions serve as a structural façade that does not reflect the real dynamic of center-regional, and in a broader scale socio-political, integration,¹³⁰ and “the meaning of self and shared rule cannot be read from the Russian constitution.”¹³¹ The Yeltsin era “exhibited an excessively loose federal structure, which demanded adaptive centralizing reforms.”¹³² Putin’s institutions, on the other hand, “have become overly hierarchical, failing to recognize the multiplicity of regional entities and their demand for autonomy.”¹³³ The increasing centralization that emerged following the collapse of the Soviet

¹²⁶ Ibid., 340.

¹²⁷ Ibid.,

¹²⁸ At some point, either by design or accident, the 1993 Constitution accepted federalist concepts that made Russia vulnerable to Western-federalist critiques of Russian federalism today.

¹²⁹ Anastassia Obydenkova and Wilfried Swenden, “Autocracy-Sustaining Versus Democratic Federalism: Explaining the Divergent Trajectories of Territorial Politics in Russia and Western Europe,” *Territory, Politics, Governance* (2013), 1 (1): 90.

¹³⁰ Chebankova, “Russia’s Noncovenantal Federalism,” 324.

¹³¹ Obydenkova & Swenden, “Autocracy-Sustaining Versus Democratic Federalism,” 104.

¹³² Elena Chebankova, “Adaptive Federalism and Federation in Putin’s Russia,” *Europe-Asia Studies* (2008), 60 (6): 1006.

¹³³ Ibid., 1007.

Union was likely driven by the Russian fear of the disintegration of a multi-cultural, multi-ethnic state—a fear that was real and serious following the collapse,¹³⁴ and a fear that persists today.

Successful federalist systems have traditionally arisen on the basis of historical characteristics and predispositions that were consistent with the federalist form of governance.¹³⁵ Russia did not have these as it set out to establish a federal system based on its new status as a “mono-national” entity. Any federal system is in a continuous process of evolution,¹³⁶ and it still remains unclear how federalism in Russia will develop in the future. In any case, Russia’s unique experience with federalism sets its experience apart from the Western federal tradition, and in many ways impedes the establishment of genuine federalism within the country today. In particular, Russia’s tradition of federalism has hindered the development of constitutionalism within the country, resulting in the domination of the center over its other federal units.

3.2 Eastern vs. Western Federalism in the Greater Eurasian Space

As discussed in the previous section, Russia and the West have fundamentally different experiences with federalism within their individual national units. This divergence additionally translates into Russian and Western approaches to federalism in the supranational context. While Western federal organizations such as the EU and NATO are composed of member states that essentially enjoy an equal status as federal units, these organizations also infringe on the national sovereignty of their member states. An analysis of Russia’s alternative federal economic and security structures to the EU and NATO—the EEU and the CSTO—reveals that Russia prioritizes national sovereignty and continues to maintain a dominant position as compared to other member states in the EEU and the CSTO. However, Russia has generally sought to

¹³⁴ See “Federalism in Russia: How is it Working?” Conference Report: 9-10 December, 1998, U.S. Department of State (1999), accessed April 19, 2016, http://fas.org/irp/nic/federalism_in_russia.htm.

¹³⁵ Ibid.,

¹³⁶ Ibid.,

cooperate with the EU and NATO through its own organizations, and this can be seen as a way to maintain its influence in the region while also seeking mutually beneficial outcomes.

The Eurasian Economic Union (EEU) vs. the European Union (EU)

The Eurasian Economic Union (EEU) came into force 1 January 2015, after Belarus, Kazakhstan and Russia signed the founding treaty in 2014.¹³⁷ Kyrgyzstan and Armenia have since joined. The EEU would represent one of the world's largest energy markets, "strategically located between Europe and Asia and comprising a population of about 182 million."¹³⁸ According to the 2013 Foreign Policy Concept of the Russian Federation, the EEU aims "not only to make the best of mutually beneficial economic ties in the CIS space but also to become a model of association open to other states," is "being formed on the basis of universal integration principles" and "is designed to serve as an effective link between Europe and the Asia-Pacific region."¹³⁹ According to some commentators, the EEU represents the most significant development in the region's economic and political landscape since the European Union's eastern expansion in the early 2000s.¹⁴⁰ The EEU's current member states include the Russian Federation, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, and the Kyrgyz Republic.¹⁴¹

The EEU was in many ways envisioned as an alternative to the European Union (EU),¹⁴² promising to replicate the security and prosperity of the EU in the post-Soviet space, and the

¹³⁷ Maria Pastukhova and Kirsten Westphal, "A Common Energy Market in the Eurasian Economic Union," *German Institute for International and Security Affairs* (2016), 1.

¹³⁸ *Ibid.*,

¹³⁹ See "The Concept of the Foreign Policy of the Russian Federation" (2013), art. IV, sec. 44.

¹⁴⁰ Arkady Moshes and Sean P. Roberts, "The Eurasian Economic Union: A Case of Reproductive Integration?" *Post-Soviet Affairs* (2015), 2.

¹⁴¹ See "EAEU Member-States," accessed April 24, 2016, <http://www.eaeunion.org/?lang=en#about-countries>.

¹⁴² Nicu Popescu, "Eurasian Union: The Real, the Imaginary and the Likely," *European Institute for Security Studies* (2014), Chaillot Paper No.32: 1-45.

organization of the EEU was similarly in many ways inspired by that of the EU.¹⁴³ The EEU is composed of a four-tiered government structure: the Eurasian Economic Commission, the Supreme Economic Council, the Eurasian Intergovernmental Council and the Court of the Eurasian Union.¹⁴⁴ The EU is similarly composed of the European Commission, the Council of the EU, the European Parliament and the European Court of Justice.¹⁴⁵ However, while the governance structure of the EEU is more pyramidal, the EU has more diffuse decision-making processes.¹⁴⁶ The EU and EEU also diverge on matters of national sovereignty and while the EU is characterized by a relatively equal status among member states, Russia seems to dominate in the EEU, likely due to its large size and considerable influence in the region.

The EU's approach to integration seeks to establish an internal 'European order' in its member states by "combining norms and values related to democracy, human rights and the rule of law, as well as the economic model of governance."¹⁴⁷ Unlike the EU, the EEU is justified by economic pragmatism rather than "shared values and history."¹⁴⁸ It is free of democratic conditionality for current and prospective member states, and all post-Soviet countries, regardless of their political regime, are welcome in the EEU.¹⁴⁹ The institutional framework of the EEU seeks to safeguard the sovereignty of its member states.¹⁵⁰ In fact, member states of the EEU tightly guard their national sovereignty, and the political survival of member-state elites "depends on their ability to remain "sovereigns," and to maintain tight control over the state."¹⁵¹ Ultimately, the EEU "is not a transformative project comparable to the EU"—EEU member

¹⁴³ Ibid., 9.

¹⁴⁴ Pastukova & Westphal, "A Common Energy Market in the Eurasian Economic Union," 1.

¹⁴⁵ Popescu, "Eurasian Union," 9.

¹⁴⁶ Ibid.,

¹⁴⁷ Rilka Dragneva and Kataryna Wolczuk, "Russia, the Eurasian Customs Union and the EU: Cooperation, Stagnation of Rivalry?" *Chatman House Russia and Eurasia Programme* (August 2012): 9.

¹⁴⁸ Ibid., 2.

¹⁴⁹ Ibid., 12.

¹⁵⁰ Moshes & Roberts, "The Eurasian Economic Union," 1.

¹⁵¹ Ibid., 14.

states are attempting to use economic integration to strengthen sovereignty, and they are not willing to “transform relations with partners by ceding sovereignty to supranational institutions.”¹⁵² The question of asymmetry is also relevant: just as the center has traditionally dominated in Russia’s own national experience with federalism, Moscow continues to dominate in its supranational federal organizations. Unlike EU member states, there is a stark asymmetry (in both size and influence) between Russia and the other EEU member states, and “Russia is seen as an opportunity but also as a threat by all EEU member states.”¹⁵³ As Russia is positioned at the heart of the EEU, it is “the economic engine upon which the success of the project depends,” and events such as the Ukraine crisis and economic sanctions, causing an economic slowdown in Russia, appear problematic to EEU integration.¹⁵⁴

Although the creation of a more robust institutional framework has lent credibility to the idea that the EEU “is in fact a more serious project than narrowly focused realist accounts acknowledge,”¹⁵⁵ the West continues to dismiss the EEU as a “thinly veiled manifestation of Russia’s geopolitical ambitions.”¹⁵⁶ In Europe, it is widely assumed that the EEU is a project aiming to isolate its members from the European Union and establish a political coalition under Russian leadership.¹⁵⁷ Within the EEU, however, both integration processes—the EU and the EEU—are regarded as complementary, and it is emphasized that “closer cooperation with institutions of and in the European Union is essential and would offer advantages to both sides.”¹⁵⁸ It is also emphasized that cooperation with the EU should be based on shared economic interests, and different political values of EU and EEU member states “should not be made into a

¹⁵² Ibid., 19.

¹⁵³ Ibid., 14.

¹⁵⁴ Ibid., 17.

¹⁵⁵ Ibid., 4.

¹⁵⁶ Ibid., 2.

¹⁵⁷ Pastukova & Westphal, “A Common Energy Market in the Eurasian Economic Union,” 6.

¹⁵⁸ Ibid.,

problem.”¹⁵⁹ To conclude, the EEU is still in its early stages of development, and its viability in terms of economic transactions and economic integration remains largely unclear.¹⁶⁰ However, there seems to be more potential for cooperation rather than conflict between the EU and the EEU, and only time will tell how this relationship will develop.

The Collective Security Treaty Organization (CSTO) vs. the North Atlantic Treaty Organization (NATO)

Russia’s dissatisfaction with the eastward expansion of NATO has been clearly articulated since the process began in the late 1990s. It is therefore unsurprising that Russia has sought out to establish its own Eurasian security organization in the region it regards as its own backyard and privileged sphere of influence—the Collective Security Treaty Organization (CSTO). So far, however, the CSTO seems to be more of an effective security provider in concept than in practice. The CSTO has existed since 1992, but it did not become a fully-fledged structure until the CSTO Charter and the Agreement on its legal status were incorporated in 2002.¹⁶¹ The organization can be characterized as an attempt to develop a multilateral framework with security cooperation between those CIS members willing to do so,¹⁶² and the CSTO’s agenda prioritizes regime security and state stability of its members while also providing ‘collective defense’ against external actors.¹⁶³ The 2013 Foreign Policy Concept of the Russian Federation identifies the CSTO as one of the key elements of the modern security system in the post-Soviet space that will be capable of counteracting current challenges and threats under the growing pressure of diverse global and regional factors in the area of its responsibility and the

¹⁵⁹ Ibid.,

¹⁶⁰ Moshes & Roberts, “The Eurasian Economic Union,” 5.

¹⁶¹ Nikolai Bordyuzha, “The Collective Security Treaty Organization: A Brief Overview,” *The Institute for Peace Research and Security of the University of Hamburg*, 339-350, <https://ifsh.de/file-CORE/documents/yearbook/english/10/Bordyuzha-en.pdf>.

¹⁶² Stephen Aris, “Collective Security Treaty Organization,” In *Handbook of Governance and Security* (Edward Elgar Publishing: 2014), 558.

¹⁶³ Ibid., 554.

adjoining regions.¹⁶⁴ Current member states include the Russian Federation, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan,¹⁶⁵ with Serbia and Afghanistan having been accorded observer status in 2013.

Russia's efforts to establish the CSTO can be seen in connection with the changing 'geopolitical balance' within the region, particularly increased US and NATO presence in the region.¹⁶⁶ Russia was concerned about losing geopolitical influence in the post-Soviet space¹⁶⁷ and Moscow hoped that a more effective and credible CSTO would elicit greater recognition of Russia as the primary security actor in the region by the West and uphold its status as a 'great power.'¹⁶⁸ As a response to NATO's eastward expansion and the US's missile shield plan in Eastern Europe, an additional capacity was added to the CSTO:¹⁶⁹ the Collective Peacekeeping Forces (CPF) was created in in 2007 and the Collective Operational Reaction Force (COFR) was established in 2009.¹⁷⁰ With the addition of the COFR, the CSTO now has a military force, allowing it to have a "wider agenda and more operational capacity."¹⁷¹ Although the CORF has not yet taken any military action in a security crisis, it bears the responsibility of repelling external aggressors, responding to security crisis within its member states, peacekeeping and conducting anti-narcotics operations.¹⁷²

¹⁶⁴ See "The Concept of the Foreign Policy of the Russian Federation" (2013), art. IV, sec. 47.

¹⁶⁵ See "Charter of the Collective Security Treaty Organization," accessed April 24, 2016, <http://www.odkb.gov.ru/b/azgengl.htm>.

¹⁶⁶ Aris, "Collective Security Treaty Organization," 557.

¹⁶⁷ Ibid., 558.

¹⁶⁸ Richard Weitz, "Averting a New Great Game in Central Asia." *The Washington Quarterly* (2006), 29 (3): 155-67.

¹⁶⁹ Dadan Upadhyay, "CSTO Emerging as an Alternative to NATO," *Russia and India Report (Russia Beyond the Headlines)*, January 10, 2012, http://in.rbth.com/articles/2012/01/10/csto_emerging_as_an_alternative_to_nato_14134.

¹⁷⁰ Aris, "The Collective Security Treaty Organization," 562.

¹⁷¹ Ibid.,

¹⁷² Ibid.,

While the CSTO was created as an alternative and counter to NATO, it has sought cooperation with NATO and was even modeled after NATO in some ways. The CSTO was designed to facilitate security cooperation between members and had a policy akin to NATO's, in which an attack against one is an attack against all.¹⁷³ The CSTO is composed of the Council on Collective Security, the Council of Ministers of Foreign Affairs, the Council of Ministers of Defense and the Committee of Secretaries of the Security Council.¹⁷⁴ In both organizations, the Secretary-General is the highest administrative official. In terms of CSTO-NATO cooperation, much political effort on the part of the CSTO has been particularly directed towards getting the CSTO acknowledged by NATO as an equal and legitimate partner, but NATO has consistently refused to enter into any contacts with the CSTO.¹⁷⁵ Following Ukraine crisis, however, the CSTO downgraded NATO ties and favors strengthening ties with the Shanghai Cooperation Organization (SCO); Nikolai Bordyuzha (the head of CSTO) said that world is on the edge of open conflict because of countries (in the West) that interfere in internal affairs of other states.¹⁷⁶ The SCO is another regional structure in Central Asia (along with the CSTO) that includes many members of the CSTO but most importantly, it includes a second major power aside from Russia—China.¹⁷⁷ The development of the SCO has further enhanced the role of the CSTO, but the SCO also has the potential of challenging the CSTO's influence in Central Asia in particular.¹⁷⁸

¹⁷³ See "Re-Examining the Collective Security Treaty Organization," *Stratfor*, August 6, 2012, <https://www.stratfor.com/analysis/re-examining-collective-security-treaty-organization>.

¹⁷⁴ Alexander Frost, "The Collective Security Treaty Organization, the Shanghai Cooperation Organization, and Russia's Strategic Goals in Central Asia," *China and Eurasia Forum Quarterly* (2009), 7 (3): 88.

¹⁷⁵ Pavel Baev, "The CSTO: Military Dimensions of the Russian Reintegration Effort," In *Putin's Grand Strategy: The Eurasian Union and its Discontents*, Central Asia-Caucasus Institute & Silk Road Studies Program (2014), 42.

¹⁷⁶ See "Russia-Led CSTO Downgrades NATO Ties," *Radio Free Europe/Radio Liberty*, last modified April 25, 2016, <http://www.rferl.org/content/russia-led-csto-downgrades-nato-ties/25424241.html>.

¹⁷⁷ Aris, "The Collective Security Treaty Organization," 561.

¹⁷⁸ *Ibid.*,

Finally, as is the case with the EEU, the CSTO diverges from NATO in matters of national sovereignty and asymmetry among its members. The Charter of the CSTO states that the CSTO seeks to ensure member states' security, sovereignty, and territorial integrity and that the organization "shall operate on the basis of strict respect of independence, voluntariness of participation, equal rights and duties of the member states, non-interference into the affairs falling within the national jurisdiction of the member states."¹⁷⁹ Russian Foreign Minister Sergey Lavrov has stated that the CSTO allows members "a choice of their own pattern of development" while NATO demands strict "bloc discipline" of its members.¹⁸⁰ Similar to the EU, NATO requires that candidates fulfill a series of military, political, economic, and legal criteria that have been outlined by NATO in separate membership action plans, or MAPs.¹⁸¹ The CSTO does not have such requirements and it is additionally centered on the role that Russia could play "in increasing the stability of the other member states and their existing political regimes."¹⁸² In regards to asymmetry, Russia possesses an overwhelming influence within all CSTO institutional arrangements and structures. An important consequence of this is that "the CSTO cannot conduct a collective military operation without Moscow's active support."¹⁸³ As a result, members of the CSTO continue to have reservations about a strong CSTO leading to greater Russian influence over their own affairs.¹⁸⁴ To conclude, aside from a "clear, rhetorical, and conceptual efforts

¹⁷⁹ See "The Charter of the Collective Security Treaty Organization," art. 2, sec. 5.

¹⁸⁰ Joshua Kucera, "Russia: NATO Forces "Rigid Discipline" From Members, Unlike SCO and CSTO," *EurasiaNet*, September 10, 2014, <http://www.eurasianet.org/node/69936>.

¹⁸¹ Eugen Tomiuc, "NATO: What Does it Take to Join?" *Radio Free Europe/Radio Liberty*, March 7, 2002, <http://www.rferl.org/content/article/1099020.html>.

¹⁸² Aris, "Collective Security Treaty Organization," 563-564.

¹⁸³ Richard Weitz, "Eurasian Security Institutions: The CSTO and SCO," *World Politics Review*, June 29, 2010, <http://www.worldpoliticsreview.com/articles/5916/eurasian-security-institutions-the-csto-and-sco>.

¹⁸⁴ Aris, "Collective Security Treaty Organization," 554.

towards increasing the CSTO's capacity," the CSTO has yet to increase this role as a practical actor on the ground.¹⁸⁵

3.3 Kosovo and Crimea as the "Symbols and Substance" of the Struggle Over Influence in Eurasia and the Outer Limits of Both Atlantic and Russian 'Enlargement'

As a result of the above analysis, we come to an additional understanding of how to interpret both the Crimea and Kosovo cases by focusing on Russian and Western federalism in the supranational context. Russia's efforts to establish alternative economic and security structures in the post-Soviet space reveal its preference for a multipolar world and its desire to maintain its influence in the region. Furthermore, there appears to be a general struggle between both Russia and the West over influence in Eurasia based their competing visions for the region. The establishment of their desired federal structures for the supranational governance of the region, and the question of which states will become members of these competing organizations, puts Crimea and Kosovo in the spotlight—Kosovo and Crimea are both the symbols and substance of this struggle. In the case of Kosovo, Russia was displeased with the fact that NATO acted in the absence of UN Security Council approval (and in direct defiance of Russia's dissent), that it had violated the national sovereignty of Yugoslavia, and that it was becoming involved in conflicts closer to Russia's own neighborhood. Russia's "annexation" of Crimea occurred in the context of Ukraine's prospective membership in Western federal structures (EU/NATO) rather than those that were established by Russia (EEU/CSTO), and the threat of potential NATO presence within close vicinity of Russia's borders was particularly relevant. Perhaps the way that Russia and the West understand federalism makes it so that there is nothing illogical about how each party acted in response to Crimea and Kosovo. It is also possible that Kosovo and Crimea represent the limits of Western federalism in the post-Soviet space.

¹⁸⁵ Ibid., 560-561.

As previously mentioned, the consistent Russian position from the late 1990s to the present has been the objection to the “unipolar system” built around the US alliance system and the universal claims of the EU/NATO bloc in regard to Western political and economic values. Russia prefers a multipolar world order, in which each “pole” in the world has its own distinctive and legitimate values. Russia’s efforts to establish the alternative military and economic organizations of the CSTO and EEU can be viewed in connection with Russia’s efforts to establish a “pole” in Eurasia to counterbalance that of Western Europe. Part II of this study has argued that Russia regards the post-Soviet region as its own backyard and privileged sphere of influence, and the continued enlargements of the federalisms of the EU and NATO are perceived as a direct threat to Russia. Recent statements by top NATO officials, equating Russia with the Islamic State and identifying them as the two main challenges faced by the western military alliance,¹⁸⁶ are surely not helping in changing Russia’s negative perception of NATO.

It can be argued that the creation and existence of these competing “zones of influence” (EU/NATO vs. EEU/CSTO) represents a greater struggle between Russia and the West over influence in Eurasia, based on their competing federalist visions for the region. The European Union’s vision for the region “has for a long been inspired by [its] positive experience with enlargement.”¹⁸⁷ Following the successful “export” of the EU to Central Europe in the early 2000s, Brussels hoped that the entire European continent, and the surrounding areas, could be structured around the EU system and would gradually adopt EU norms.¹⁸⁸ This mirrors the US’ own aim of defending and promoting worldwide a range of values (democratic governance, free markets, etc.) associated with Western society. As this study has shown, the EU vision was

¹⁸⁶ See “NATO Chief Identifies IS, and Russia, as “Main Challenges,” *World Affairs Journal*, last modified April 7, 2016, <http://www.worldaffairsjournal.org/content/nato-chief-identifies-isis-russia-main-challenges>.

¹⁸⁷ Popescu, “Eurasian Union,” 35.

¹⁸⁸ *Ibid.*,

perhaps overly optimistic and not without its limits. In particular, Russia's vision for the region happens to be in opposition to that of the EU—Russia does not envision itself becoming integrated into the EU system (in which it would be required to give up its own sovereignty and adopt EU norms) and it has taken steps to advance its own geopolitical vision of a “bipolar” Europe and, by extension, Eurasia. In Russia's vision, “the EU would constitute one pole, and Russia (and the post-Soviet satellite states grouped around it) another,” and the Eurasian Union would represent Europe's second pillar.¹⁸⁹ This “Eurasian pole” would integrate the post-Soviet states around Russia and “increase Russia's bargaining power vis-à-vis Europe and the rest of the world in economic and political terms.”¹⁹⁰ Russia's vision does not promote a conflicting relationship between the “Eastern” and “Western” poles, however, and it is hoped that the two poles will cooperate and mutually benefit as part of a “Greater Europe.”¹⁹¹

The Crimea and Kosovo cases are both the symbols and substance of the struggle over influence in Western Eurasia, characterized by the spread of federalist institutions in the region. As stated above, one of the major motivations behind Russia pursuing the Eurasian integration project—vis-à-vis the EEU and the CSTO, and against the backdrop of the Ukraine crisis—is to “consolidate its status as the leading power in Eurasia and to preserve its own influence in the region.”¹⁹² Russian grievances over the collapse of the federal economic linkages among the former Soviet Union republics played a major role in the launch of its Eurasian Union project.¹⁹³ Furthermore, recent events in Ukraine—the removal of Yanukovich and the chain of events that followed (including the annexation of Crimea)—“have [particularly] served to create extra

¹⁸⁹ Ibid., 36.

¹⁹⁰ Ibid.,

¹⁹¹ Ibid.,

¹⁹² Pastukova & Westphal, “A Common Energy Market in the Eurasian Economic Union,” 2.

¹⁹³ Popescu, “Eurasian Union,” 43.

pressure on the integration process.”¹⁹⁴ Ukraine was supposed to be the “crown jewel” of a newly emerged, Russia-led Eurasia.¹⁹⁵ The Russian fear of the integration of Ukraine into Western federal structures (especially NATO), and the continued Russian grievances over the 1954 transfer of Crimea from the Russian Federation to Ukraine, likely played a significant role in Russia’s actions regarding Crimea. Ukraine became a “powder keg” in the geopolitical context of a tense dynamic between the European and Eurasian integration projects¹⁹⁶ described above. Russia was, in fact, ready to use military force to prevent Ukraine from going down a road of European integration.¹⁹⁷

Regarding NATO, Putin has noted that the annexation of Crimea was intended to prevent the arrival of NATO troops in the region and that Russia had acted defensively, as NATO was planning to deploy its navy in Sevastopol (the long-time site of Russia’s own Black Sea Fleet), creating a real threat to Southern Russia.¹⁹⁸ In addition, an unstable Ukraine, “with an unresolved territorial conflict over Crimea and ongoing hostilities in Eastern Ukraine,” would likely undermine its chances of joining NATO.¹⁹⁹ Regarding the EEU, this organization was “to a large degree conceived and designed to attract Ukraine” and “at times it has seemed that [it] [was] as much, if not more, about Ukraine than about Eurasia.”²⁰⁰ Part II of this study has shown that Ukraine is of great importance to Russia due to the strong cultural, historical and religious ties between the two, and Ukraine is often not even considered to be a separate country from the Russian perspective.²⁰¹

¹⁹⁴ Moshes & Roberts, “The Eurasian Economic Union,” 16.

¹⁹⁵ Popescu, “Eurasian Union,” 43.

¹⁹⁶ *Ibid.*, 35.

¹⁹⁷ Svante E. Cornell, “The European Union: Eastern Partnership vs. Eurasian Union,” In *Putin’s Grand Strategy: The Eurasian Union and its Discontents*, Central Asia-Caucasus Institute & Silk Road Studies Program (2014), 181.

¹⁹⁸ Popescu, “Eurasian Union,” 29.

¹⁹⁹ *Ibid.*,

²⁰⁰ *Ibid.*, 27.

²⁰¹ *Ibid.*,

Although Kosovo does not play nearly as consequential of a role as Ukraine does in the competing visions of a future Eurasia, it nevertheless embodies the struggle between Russia and the West over influence in the region. For Russia, Kosovo was likely an early warning sign of the consequences of NATO involvement outside of its traditional sphere of influence and closer to what Russia considers to be its own neighborhood. Not only did NATO act in the absence of UN Security Council approval, it did so in direct defiance of Russia's dissent, violating the national sovereignty of Russia's long-time ally, Serbia. Furthermore, NATO's intervention resulted in regime change in Serbia and led to the eventual disintegration of Yugoslavia. As noted in Part I of this study, Russia continues to support Serbia by refusing to recognize Kosovo's independence on the grounds that it violated Serbia's territorial integrity. Perhaps the outcome of the Kosovo case has served to exacerbate the existing Russian fear of the disintegration of its own multi-ethnic state, leading it to defend its sovereignty and strengthen its influence in the region outside of its borders, and to re-consolidate the authority of the federal center within its own borders, as is characteristic of the Russian tradition of federalism.²⁰² NATO played a significant role in the outcome of the Kosovo case, and NATO's continued expansion closer and closer towards Russia's own borders is not a welcome development. Finally, it is important to mention that Kosovo is a part of the entire post-Yugoslav reorganization of the Balkan Peninsula led by NATO and the EU; all of the former Yugoslav republics are now either full NATO members or partners, and all are now either EU members (Croatia and Slovenia), current candidate countries for EU accession (Macedonia, Montenegro and Serbia), or potential candidates for future EU enlargement (Bosnia and Herzegovina and Kosovo).

²⁰² Elena Chebankova, "Putin's Struggle for Federalism: Structures, Operation, and the Commitment Problem," *Europe-Asia Studies* (2007), 59 (2): 279.

As the EU envisions a ‘Greater Europe’ based on EU norms, the eventual EU/NATO membership of Kosovo and Ukraine would help to fulfill this vision. Western states would prefer to exist in a world full of other states just like themselves, as this is seen as being essential to security. Therefore, the EU and the US have a common vision of promoting Western values and institutions such as democratic governance, free markets and rule of law worldwide. If Kosovo or Ukraine were to join non-Western economic and security structures, such as those promoted by Russia, this would not require the adoption of these Western values and institutions.

Perhaps a larger point in this study is that the Crimea and Kosovo cases represent the eastern limits of Western federalism, and perhaps even the western limits of Russian counter-federalism. The competing efforts of the Western European (EU/NATO) and Eurasian (EEU/CSTO) integration projects reveal the “manifestation of hard competition between Russia and the EU and, by extension, the US.”²⁰³ A “Eurasian project that was keen to include Ukraine” and “an EU enlarging the single market beyond the EU”²⁰⁴ represent a greater struggle between Russia and the West over influence in Eurasia, and the Crimea and Kosovo cases are both the symbols and substance of that struggle, with NATO as a unifying factor in both cases. By promoting an alternative to the Western vision of a “Greater Europe” based on states that have adopted EU norms, Russia is challenging the Western-led “unipolar” world order that emerged after the Cold War. In Russia’s view, the EU/NATO bloc is not the right federal system for Ukraine, and it has made its position clear. Perhaps the Russia and the West must face a new reality: “the borders of the Eurasian project are clear, and so is the number of states that chose to pursue association with the EU.”²⁰⁵ However, in the author’s view, there is potential for future cooperation between the EU/NATO bloc and the EEU/CSTO bloc, but only if the West is willing

²⁰³ Moshes & Roberts, “The Eurasian Economic Union,” 16.

²⁰⁴ Popescu, “Eurasian Union,” 44.

²⁰⁵ Ibid.,

to recognize Russia's alternative economic and security structures as the legitimate counterparts to its own economic and security structures in the region.

CONCLUSION

This study has sought to take on the ambitious objective of identifying and exploring fundamental misunderstandings and failed diplomacy between Russia and the West (specifically the US) based on their distinctive approaches to international law and relations in the context of the post-Cold War international system. Their diverging reactions to the Crimea and Kosovo cases have served as a starting point: while Russia claimed that the Kosovo precedent could be applied to the Crimea case—thereby justifying its secession from Ukraine and its subsequent membership as a federal unit within the Russian Federation—the West condemned this comparison, claiming that Kosovo represented a unique case that could not serve as a precedent for any cases in the future, and that Russia's 'annexation' of Crimea had violated international law. These observations led the author to pose the consequential question that is presented in the very title of this study—is Crimea Kosovo? The author maintains that the answer to this question is not as important as understanding why each side thinks the way it does. It is particularly important to understand why the stakes in the Crimea case were much higher for Russia than they were for the West and, conversely, why the stakes in the Kosovo case were much higher for the West than they were for Russia.

This study refuses to place Russia-West relations within a confrontational framework and does not seek to determine which side was right or wrong; rather, it seeks to provide a genuine consideration of each perspective while treating each perspective as equally valid. This task is especially important in the context of a post-Cold War international system with no seemingly agreed-upon rules, and in the absence of an effective middle ground within which Russia and the West could effectively operate when it comes to conflict. Perhaps understanding each

perspective is the first step towards establishing productive dialogue between Russia and the West that has recently been lacking. While Part I of this study introduced the Crimea and Kosovo cases and elaborated on the Russian and US positions regarding each case, Part II took on the task of making sense of these positions within a general discussion of the distinct Russian and Western (US) approaches to international law and relations. It appears that Russia and the US reacted to the Crimea and Kosovo cases in a way that was largely consistent with their own priorities in their approaches to international law and relations. Part III provided an entirely different perspective from Parts I and II by focusing on the diverging traditions of Russian and Western federalism, in both the national and supranational context, as a major source of misunderstanding between them. The Crimea and Kosovo cases were introduced as both the symbols and substance of a greater struggle between Russian and Western federalism in Eurasia.

A major overall point in this study remains that the assumed universality of (Western) international law tends to disregard the civilizational-cultural factors and differences that continue to shape the understanding of international law both within and outside the West. Russia is a major case in point as its civilizational idea about itself partly differs from that of the West, and its participation in international law and institutions where Western ideas dominate could surely lead (and perhaps already has led) to “permanent problems of ‘translation’ and tensions regarding the values behind norms and, ultimately, compliance.”²⁰⁶ Perhaps if we better understand and take seriously the Russian perspective on international law and relations (whether we agree with it or not) in the context of a dominant Western perspective, we may see progress in the improvement of relations between Russia and the West and possibly avoid some of the fundamental misunderstandings and cases of failed diplomacy that characterize this relationship today.

²⁰⁶ Leichtova, *Misunderstanding Russia*, 195.

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