

POST-SOVIET EURASIA, *UTI POSSIDETIS* AND THE
CLASH BETWEEN UNIVERSAL AND RUSSIAN-
LED REGIONAL UNDERSTANDINGS OF
INTERNATIONAL LAW

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This article argues that a clash has emerged between the Western universalist and Russian particular concepts of international law, including on the conditions of sovereign statehood in the post-Soviet, or Russia's former imperial, space. In the post-Soviet space, Moscow has not unconditionally accepted the principle of uti possidetis, i.e., the rule that former boundaries between units of federalism would also constitute borders between new sovereign States. This article interprets Russia's interventions in the post-Soviet space, as well as recent attempts to create integration law in Eurasia, as Russia's attempts to create regional international law as the Eurasian concrete order, as opposed to 'Western' international law that is based on abstract universal principles.

I. INTRODUCTION

What do the following have in common within the context of international law: the ongoing frozen conflict in the Republic of Moldova,¹ the de facto territorial amputation of Georgia in 2008, Ukraine in 2014, the suppression of Belarusian opposition demonstrations since 2020, and the steady stream of new restrictions on opposition politicians and segments of civil society in the Russian Federation? At first glance, these examples appear too disaggregate to have any genuinely

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1. Since a military conflict in 1990–1992, the self-proclaimed Pridnestrovian Moldavian Republic (PMR; Transnistria) is a *de facto* separate entity from the Republic of Moldova.

common denominator, except for their relative geographical proximity and shared Soviet legacy. In another sense, the question posed seems redundant: all of these situations constitute serious violations of international law in post-Soviet territory. For example, the E.U.-sponsored Tagliavini report found several violations of international law in the August 2008 war between Russia and Georgia.² While Abkhazia and South Ossetia were recognized as states by Russia in 2008, they have been similarly recognized by only a few other states. With regard to sovereign title, the overwhelming majority of states continue to view these territories as part of Georgia. As far as Ukraine is concerned, the majority of the U.N. General Assembly (UNGA) has held that Crimea, which was annexed by Russia in March 2014, continues to be legally Ukrainian territory.³ Moreover, not a single country, including Russia, has formally recognized the separate entities in Ukraine's Donbass: the Donetsk and Luhansk 'People's Republics'. The same applies to Transnistria, which, while also *de facto* separate since the early 1990s, is internationally recognized as part of the Republic of Moldova.⁴

Flowing from these conflicts, Georgia and Ukraine have instigated significant 'lawfare' in international courts against the Russian Federation, with at least partial success.⁵ Moreover, the Russian government has regularly faced criticism for its serious violations of the European Convention on Human

2. HEIDI TAGLIAVINI, INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON THE CONFLICT IN GEORGIA REPORT (2009).

3. G.A. Res. 68/262, ¶ 6 (Mar. 27, 2014); *see* Press Release, General Assembly, General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region, U.N. Press Release GA/11493 (Mar. 27, 2014) (announcing that 100 States voted for the resolution, 11 voted against, and 58 abstained).

4. *See* HELENA RYTÖVUORI-APUNEN, POWER AND CONFLICT IN RUSSIA'S BORDERLANDS: THE POST-SOVIET POLITICS OF DISPUTE RESOLUTION 69 (2019).

5. *See, e.g.*, *Geor. v. Russ. (II)*, App. No. 38263/08, ¶ 351 (Jan. 21, 2021), <http://hudoc.echr.coe.int/eng?i=001-207757> (finding Russia responsible for violations of the European Convention on Human Rights); *Ukr. v. Russ. (re Crimea)*, App. Nos. 20958/14 & 38334/18, ¶ 510 (Dec. 16, 2020), <http://hudoc.echr.coe.int/eng?i=001-207622> (finding claims against Russia related to Crimea to be admissible); Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukr. v. Russ.*), Preliminary Objections, 2019 I.C.J. Rep. 558, ¶ 134 (Nov. 8) (finding jurisdiction for claims against Russia).

Rights at the European Court of Human Rights (ECtHR). This would certainly also be the case for Belarus, a close ally of Russia, if it were a member of the Council of Europe (remarkably, it is the only European State which is not). Nonetheless, it is clear that President Lukashenka's regime has systematically violated the U.N. Covenant on Civil and Political Rights, which Belarus ratified in 1973 when it was part of the Soviet Union (and, as part of an idiosyncratic compromise between the U.N. founding states, a member of the U.N.).⁶

The notion of Moscow as a consistent norm-breaker in the post-Soviet space is predominant in the West and many post-Soviet States, particularly those that have had major issues with Russian military actions and policies, such as Georgia and Ukraine.⁷ Of the E.U. member States, Poland and the three Baltic States of Estonia, Latvia and Lithuania (from Moscow's perspective, former Soviet Republics) in particular, have been vocal about Russia's actions in violation of international law. Some of their key disagreements, however, can be reduced to divergent historical memories and collective understandings of the events that triggered World War II, events that deeply affected all of these states in fundamental ways. Overall, Russia's record under international law remains intriguing. In its foreign policy rhetoric (including its national security strategy and foreign policy concept) the Russian Federation has consistently portrayed itself as a strong and sincere defender of international law, and of the U.N. Charter in particular.⁸ The

6. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (Byelorussian Soviet Socialist signed the treaty on 19 March 1968 and ratified it on November 12, 1973; independent Belarus succeeded to the treaty).

7. See Roy Allison, *Russia and the Post-2014 International Legal Order: Revisionism and Realpolitik*, 93 INT'L AFF. 519, 519 (2017) (arguing that western governments view Russia's actions as an "affront to the ideal of rule-governed international order").

8. See Ukaz Prezidenta Rossiiskoi Federatsii [Presidential Decree of the Russian Federation], 'O Strategii natsional'noi bezopasnosti Rossiiskoi Federatsii' [National Security Strategy of the Russian Federation], 2015, No. 683, <http://static.kremlin.ru/media/events/files/ru/18iXkr8XLAtxeilX7JK3XXy6Y0AsHD5v.pdf>; MINISTRY OF FOREIGN AFFAIRS OF RUSS. FED'N, FOREIGN POLICY CONCEPT OF THE RUSSIAN FEDERATION (APPROVED BY PRESIDENT OF THE RUSSIAN FEDERATION VLADIMIR PUTIN ON NOVEMBER 30, 2016), (Dec. 1, 2016) [hereinafter RUSSIAN FOREIGN POLICY CONCEPT], https://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/Cp-tlCk6BZ29/content/id/2542248 (expressing Russia's support of various in-

question then naturally arises as to why Moscow has been behind the *de facto* territorial amputations of Georgia and Ukraine, while simultaneously not only denying any wrongdoing under international law, but also affirming that it is, in fact, *enforcing* international law (both within the context of Georgia's 2008 attempt to regain control over South Ossetia, and the 2014 'unconstitutional coup d'état',⁹ as Moscow sees it, in Ukraine). Would it not be more astute for Moscow to admit that it is violating the right to territorial integrity of its neighboring countries, for whatever historical or political reasons and grievances, rather than attempt to claim that it is a protector of international law, regionally and globally? Is Russia's official pronouncement of its devotion and principled adherence to international law mere deception and propaganda?

I suggest that these dynamics evince more than the story of Russia as a predictable violator of international law vis-à-vis other post-Soviet States and even Russian citizens. Moscow's actions are intentional and reasoned. The current circumstances indicate a clash between two, substantially different understandings of the applicable international law in the region, and its (desired) future evolution. Countries like Georgia and Ukraine rightly invoke 'universal international law,' which recognizes equal rights to all sovereign states (the veto power of the permanent members of the U.N. Security Council (UNSC) being perhaps the best-known exception). Georgia and Ukraine insist that in 1991 they became such sovereign states, and as such, are free to choose where they belong.¹⁰ This

ternational legal institutions and the UN Charter); MINISTRY OF FOREIGN AFFAIRS OF RUSS. FED'N, THE DECLARATION OF THE RUSSIAN FEDERATION AND THE PEOPLE'S REPUBLIC OF CHINA ON THE PROMOTION OF INTERNATIONAL LAW, (June 1, 2016), https://www.mid.ru/en/foreign_policy/position_word_order/-/asset_publisher/6S4RuXfeYIKr/content/id/2331698 ("The Russian Federation and the People's Republic of China reiterate their full commitment to the principles of international law . . .").

9. See Reuters Staff, *Putin Laments West's Support of 'Coup d'Etat' in Ukraine*, REUTERS (June 17, 2016), <https://www.reuters.com/article/russia-forum-putin-ukraine-idUSR4N18R07A>.

10. See, e.g., THE USE OF FORCE AGAINST UKRAINE AND INTERNATIONAL LAW: JUS AD BELLUM, JUS IN BELLO, JUS POST BELLUM (Sergey Sayapin & Evhen Tsybulenko eds., 2019) (describing the Ukrainian concept of its rights and status under international law); See also Statement of the Ministry of Foreign Affairs of Georgia, Gov't of Georgia (Aug. 8, 2008) (on file at <https://reliefweb.int/report/georgia/statement-ministry-foreign-affairs-georgia-1>).

should hold true, they argue, if they wish to join a military alliance of which Russia is not a member, and even if, according to Moscow, any such 'alien' military alliance extending into the post-Soviet region would, by definition, be directed against Russia. Contemporary Georgia and Ukraine also adhere, at least aspirationally, if not always in actual accomplishments, to the concept that modern statehood implies democracy, respect for the rule of law, and human rights. From these states' perspectives, the current Russian regime places obstacles in the way of implementing this brand of international law and ideal of statehood in the post-Soviet Eurasian region.¹¹

Moreover, individuals and institutions who criticize the governments in Russia and Belarus for their systematic violations of human rights proceed from the assumption that human rights, as established under international law, are indeed universal; Russian (or Belarusian) 'exceptionalism' is no excuse. Regarding Russia, Moscow's membership in the Council of Europe and its human rights protection system strengthens the case for upholding human rights (the judicially expressed, European understanding of human rights should be binding).

However, Moscow perceives international law, statehood, and human rights somewhat differently. Moscow's official stance is that international law has a strong national and regional component which is often underestimated or even ignored in the contemporary, Western-dominated universalist discourse on norms, rights, and violations under international law.¹² Within Russian geopolitical thought what is referred to as universal international law in Washington, Brussels, and Berlin, is considered to be the Western, hegemonic understanding of international law, with the West dictating its further direction and development. From Russia's historical per-

11. Although Russia is the main large State to use the denomination of 'Eurasia' for its regional integration efforts, there is a distinction between 'post-Soviet Eurasia' and 'Eurasia' as a whole, including essentially all continental Asia as well. *See generally*, BRUNO MAÇÃES, *THE DAWN OF EURASIA: ON THE TRAIL OF THE NEW WORLD ORDER* (2018) (exploring differing conceptions of Eurasian integration).

12. *See Foreign Policy Concept of the Russian Federation*, MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION (Dec. 1, 2016), https://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptICk6BZ29/content/id/2542248.

spective, when Empires disintegrate, as the Soviet Union did in 1991, they deserve a special ‘post-imperial regime’ treatment under international law. Moreover, for the Russian Federation, the largest territorial state in the world, human rights and democracy also have a disruptive potential and could lead to the degradation of state authority and eventually, calls for self-determination and secession when the state can no longer exercise sovereign power in the traditional sense. Additionally, from Moscow’s perspective the West is hypocritical in lecturing Russia and other post-Soviet countries on universal human rights while the U.S. has not solved its own deep problems with racial equality and Western Europe has not sufficiently addressed its colonial history.¹³

The aim of the present article is to expose the reasoning behind Moscow’s vision of international law. Moscow’s vision clashes with the idea of a universal international law, at least as it is understood and promoted by the West. This article seeks to illuminate the reasons for this divergence. This article occasionally adopts the ‘voice’ of the ‘Russian representative’—emphasizing a realist perspective for reasons of external image, propaganda, etc. Therefore, the article may appear to represent the perspective of a *Russlandversteher* (one ‘understands’ Russia, not just intellectually, but also justifies it morally or emotionally) though that is not the intention of this article. Simultaneously, the article aims to understand the rationales of major non-Western powers for their conceptualizations of international law and various legal policies. Often, the articulated reasons for state behavior are not necessarily their true motives. The currently imprisoned Russian opposition leader, Alexey Navalny, in his recent blockbuster film on ‘Putin’s castle’ in Gelendzhik, characterized President Putin’s approach with the maxim: “We say one thing and do another!”¹⁴ This article argues that this morally questionable tactic is not alien to many states’ approach to foreign policy and applications of international law. In this sense, the article attempts to

13. See ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005) (explaining the colonial history of international law).

14. Alexei Navalny, *Putin’s Palace. History of World’s Largest Bribe*, YOUTUBE (Jan. 19, 2021), <https://www.youtube.com/watch?v=IPAnwilMncl>.

elucidate the actual thinking behind Russian international legal policies here, is also realist in nature.

'Russia' in this analysis means primarily the current Russian government, but also includes circles of experts in international legal academia that support the government's approach, mostly for notions of imperial identity and nostalgia. Within the opposition (civil society and academia) there also exists a different Russia, one with different, liberal, views. However, as states are the primary subjects of international law, the main interest of this article is the government and the intellectually crafted worldview that supports the governmental policies discussed.

II. RUSSIA, UNIVERSALITY AND REGIONALISM IN INTERNATIONAL LAW

The history of international law is not solely universal, but regional. When Europeans in the nineteenth and early twentieth centuries wrote treatises about 'the history of international law,' they mostly wrote the histories of international law in Europe. One of the foremost Russian historians of international law, Baron Taube (1869–1961), has demonstrated how during the Middle Ages, Orthodox Europe formed a separate family of nations which was not, at the time, seen as part of the West European, normative community: *Respublica Christiana*.¹⁵ However, from Peter the Great to the Russian Revolution of 1917, Russia was viewed as a great European power and occasionally contributed significantly to the understanding of international law in Europe. In the twentieth century, the Soviet government once again strengthened the regional dimension of its understanding of international law. In the 1920s, the Soviets claimed a break from the bourgeois capitalist international law in the West.¹⁶ During the Cold War, the Soviets attempted to

15. Michel de Taube, *Études sur le développement historique du droit international dans l'Europe orientale* [Studies on the Historical Development of International Law in Eastern Europe], 11 R.C.A.D.I. 341, 413 (1926); see also Michel de Taube, *L'apport de Byzance au développement du droit international occidental* [The Contribution of Byzantium to the Development of Western International Law], 67 R.C.A.D.I. 233 (1939) (exploring the development of international law in Christian Europe).

16. See EVGENIJ A. KOROWIN, *DAS VÖLKERRECHT DER ÜBERGANGSZEIT: GRUNDLAGEN DER VÖLKERRECHTLICHEN BEZIEHUNGEN DER UNION DER SOWJETREPUBLIKEN* [TRANSITIONAL INTERNATIONAL LAW: FOUNDATIONS OF INTERNA-

consolidate 'socialist international law' as exceptionalist, regional international law in East Central Europe and other states where Communists were in power, such as Cuba and Vietnam.¹⁷ One of the Soviet era's most representative scholarly works on international law, a six-volume course edited in Moscow at the Institute of State and Law of the Soviet Academy of Sciences, had a special volume dedicated to regional international law in socialist countries led by the Soviet Union.¹⁸

During the 1990s when post-Soviet Russia was weak, it seemed that the Western discourse on international law became global. However, after the Kosovo intervention in 1999, the Iraq War in 2003, and NATO's Eastern enlargement in 2004, Russia returned to an exceptionalist and civilizational interpretation of international law which emphasized the role of regional power centers and multi-polarity, rather than far-reaching universality. Post-Soviet Russia does not deny the existence or value of universal international law, but sees it embodied in the principles of state sovereignty, territorial integrity, non-intervention, and normative neutrality towards different forms of government and expressions of people's will. The West tends to dismiss these principles as obstacles to the realization of international law based on genuine democracy and human rights, rather than as core principles of international law.

Today, Russia's bottom line doctrine of international law and relations suggests that Russia, and to a certain extent most post-Soviet States, are different from the West culturally, historically, morally, normatively, and constitutionally.¹⁹ They are

TIONAL LEGAL RELATIONS OF THE SOVIET UNION] (I. Robinson-Kaunas trans., Walther Rothschild 1929).

17. See THEODOR SCHWEISFURTH, *SOZIALISTISCHES VÖLKERRECHT?: DARSTELLUNG, ANALYSE, WERTUNG DER SOWJETMARXISTISCHEN THEORIE VOM VÖLKERRECHT NEUEN TYPUS* [SOCIALIST INTERNATIONAL LAW?: PRESENTATION, ANALYSIS, EVALUATION OF THE SOVIET MARXIST THEORY OF THE NEW TYPE OF INTERNATIONAL LAW] (1979).

18. *KURS MEZHDUNARODNOGO PRAVA V SHESTI TOMAKH, VOL VI, MEZHDUNARODNOE PRAVO V OTNOSHENIYAKH MEZH DU SOTSIALISTICHESKIMI STRANAMI* [COURSE OF INTERNATIONAL LAW IN 6 VOLUMES, VOL VI, INTERNATIONAL LAW IN RELATIONS BETWEEN SOCIALIST COUNTRIES] (Viktor M. Chikvadze ed., 1973).

19. See, e.g., *RUSSIAN FOREIGN POLICY CONCEPT*, *supra* note 6, ¶ 4 ("Cultural and civilizational diversity of the world and the existence of multiple development models have been clearer than ever."); *id.* at 5 ("Tensions are

unique and have the right to remain so. Moscow has rejected certain aspects of the universal understanding of international law as primarily Western, especially if they emphasize democracy and human rights. These ideas and principles, or the way they have been invoked by the West, are seen as potential threats to the political stability and even the territorial integrity of Russia, as well as the domestic control of military and security matters in former territories of the Russian Empire. Moscow often views the West's focus on human rights and democracy as a disingenuous means to promote regime change and undermine state sovereignty. In Moscow's understanding of international law the Russian Federation is still a great power and has, for historical, geographical, cultural, linguistic, and even religious reasons, special rights and prerogatives in the post-Soviet space. This can be considered the doctrine of Russian hegemony in the post-Soviet space. According to this doctrine, the West, when acting within post-Soviet Eurasia, is arrogantly trying to dictate and promote normative standards in cultures and regions that are unfamiliar to it.

Carl Schmitt (1888-1985), the German constitutional and international law scholar, wrote succinctly in his history of international law as seen from the perspective of Europe: "*Alles Recht ist recht nur am rechten Ort*"²⁰, and this seems to capture also Moscow's thinking of international law as spatial order in its own former Empire. Thus, in Moscow's eyes, Russia may only be considered a norm-breaker in Georgia (or in Russia vis-à-vis its own opposition and civil society) within the Western vision of universal international law, a vision which Moscow has accepted only with significant reservations. From Russia's

rising due to disparities in global development, the widening prosperity gap between States and growing competition for resources, access to markets and control over transport arteries. This competition involves not only human, research and technological capabilities, but has been increasingly gaining a civilizational dimension in the form of dueling values. . . . The attempts made by western powers to maintain their positions in the world, including by imposing their point of view on global processes and conducting a policy to contain alternative centres of power, leads to a greater instability in international relations and growing turbulence on the global and regional levels.").

20. In English, "All law is right only in the right place." See CARL SCHMITT, *DER NOMOS DER ERDE IM VÖLKERRECHT DES JUS PUBLICUM EUROPAEUM*, [THE NOMOS OF THE EARTH IN INTERNATIONAL LAW OF JUS PUBLICUM EUROPAEUM] (5th ed. 2011).

viewpoint, universal international law is meritorious in principle, but Moscow maintains a competing understanding of what constitutes universal international law and its most fundamental principles.²¹ Moscow believes international law should be based on ‘traditional’ principles, state sovereignty and non-intervention. Moscow sees itself as norm-holder and norm-creator in the post-Soviet region, and aims for greater political neutrality and inclusiveness within the recently designated ‘Eurasia.’ Eurasian international law then is Russia’s post-Soviet and post-imperial regional integration law. Academic interest in this new brand of law is growing in Russia and other Eurasian countries.²²

21. The Russian government has explained how it sees universal international law, especially at the U.N. level, and indicated—between the lines—which powers threaten it and how. *See id.* ¶ 24 (referring to the importance of “ensuring strict observance of the key provisions and principles of the UN Charter, including those pertaining to the outcomes of the Second World War . . .”). Interestingly, even after the disintegration of the Soviet Union, the text of the U.N. Charter continues to refer to the “Union of Soviet Socialist Republics” as permanent member of the Security Council. *E.g.*, U.N. Charter art. 23, ¶ 1, June 26, 1945, 59 Stat. 1031, T.S. No. 993 [hereinafter U.N. Charter]. Some *de facto* borders of the Soviet Union—for example in the Baltic States or Moldavia (Bessarabia)—were also an ‘outcome’ of World War II. The Russian government seems to believe that under the “outcomes of the Second World War” discourse other nations should not incriminate the Soviet Union of any illegal actions before and after World War II. However, this stance is in contrast with the Polish and Baltic criticisms of the aggressive nature of the Molotov-Ribbentrop Pact of 1939. For further exemplification of the Russian government’s view on universal international law, see RUSSIAN FOREIGN POLICY CONCEPT, *supra* note 6, ¶ 26 (“Russia intends to . . . counter attempts by some States or groups of States to revise the generally accepted principles of international law . . . [and] counter politically motivated and self-interested attempts by some States to arbitrarily interpret the fundamental international legal norms and principles such as non-use of force or threat of force, peaceful settlement of international disputes, respect for sovereignty and territorial integrity of States, right of peoples to self-determination; counter attempts to represent violations of international law as ‘creative’ application of such norms . . .”).

22. *See, e.g.*, T.N. Neshataeva, *O problemnykh voprosakh deistvia reshenii organov EAES v natsional'nykh pravoporiadkakh gosudarstv-chlenov* [On Ambiguous Effects of the Eurasian Economic Union Bodies’ Decisions within National Legal Systems of the Member States], RUSSIAN Y.B. INT’L L. 2016, at 80 (2017); L.I. Volova, *Napravlenia sovershenstvovaniya prava Evraziiskogo Ekonomicheskogo Soiuza* [Directions for the Improving of the Law of the Eurasian Economic Union], RUSSIAN Y.B. INT’L L. 2016, at 94 (2017); L.I. Volova, *Pravovoi status regional'nykh integratsionnykh ob'edinenii* [Legal Status of the Regional Integration

Some Eurasian regional norms and principles are written and articulated formally in international treaties and national, especially Russian policy documents.²³ Other central norms are not formally articulated. They are *po poniatiam* (understanding something ‘from the air’ rather than through formalized rules). They can be understood through negation—for example, unlike the European Union, post-Soviet Russia has not acted as active promoter of democratic standards and human rights norms in its relations with other states in the post-Soviet space.²⁴ Thus, the normative clash in post-Soviet Eurasia is also about universal (in Russia’s interpretation, Western-dominated) versus Russian regional or ‘civilizational’ understandings of international law. Moscow sees defining international law as a struggle on a global scale. In the post-Soviet space, Russia is ardently advocating for its own regional conception of international law and world order to prevail against Western universalism. If Moscow’s understanding of regional order cannot achieve *de jure* recognition beyond its post-Soviet sphere of influence, it is minimally satisfied with a *de facto* imposition of its world order. Repeatedly, when Russia’s actions have been deemed illegal by the international

Organizations], RUSSIAN Y.B. INT’L L. 2012, at 96 (2013); V.V. Svinarev, *Mezhdunarodnaia integratsia: pravovoi opyt Evropeiskogo Soiuz a i perspektivy ego primeneniia na Evraziiskom prostranstve* [International Integration: Legal Experience of the European Union and the Prospect of Its Application in the Eurasian Space], RUSSIAN Y.B. INT’L L. 2012, at 238 (2013); E.G. Moiseev, *SNG i EvrAzES: istoria i sovremennost* [CIS and Eurasian Economic Community: History and Contemporary Times], RUSSIAN Y.B. INT’L L. 2011, at 93 (2012).

23. See, e.g., Charter of the Commonwealth of Independent States (with declaration and decisions), 22 Jan. 1993, <https://treaties.un.org/doc/Publication/UNTS/Volume%201819/volume-1819-I-31139-English.pdf> (creating a framework among certain post-Soviet states for managing collective economic and security issues); see generally RUSSIAN FOREIGN POLICY CONCEPT, *supra* note 6, pt. IV (regional foreign policy priorities) (emphasizing the importance of the CIS, Union State with Belarus, Eurasian Economic Union, and Collective Security Treaty Organization to Russia’s foreign policy).

24. For example, a collection of articles on Russian-Uzbek relations, dedicated to the 10th anniversary of the treaty on allied relationships and sponsored by the Russian embassy in Tashkent, bypasses such normative questions entirely and focuses on the common history and economic interests of the two countries instead. In a way, this reflects Moscow’s respect for sovereignty of such new States born in 1991. ROSSIA-UZBEKISTAN: DOROGA K SOIUZNICHESKIM OTNOSHENIAM [RUSSIA-UZBEKISTAN: ROAD TO ALLIED RELATIONS] (Yu. S. Flygin ed., 2016).

community (spearheaded by the West) Russia has nevertheless placed ‘boots on the ground.’ Law is a result of both legitimacy and power. In this sense, *die normative Kraft des Faktischen*—the normative power of facts—matters too, not just the formal (non-) recognition of developments by other states.

Certain norms and principles of international law may have their own regional interpretation and character in post-Soviet Eurasia. For dispute settlement and state responsibility, for example, many identify a preference for ‘political’ rather than judicial means. Suing another country in an international court of arbitration is understood as a sign of animosity, rather than the advancement of international law.²⁵ During the Cold War, the Soviet Union promoted the concept of ‘socialist international law’. When the Soviet military intervened in Czechoslovakia in 1968, they argued the so-called *Brezhnev doctrine*, namely that Moscow had the right to intervene if the survival of a socialist government was existentially threatened due to machinations of surrounding capitalist powers.²⁶ This doctrine is difficult to harmonize with the general prohibition on the use of force under universal international law.²⁷ Usually, its enactment was accompanied by an invitation to intervene, though invitations were dubious at best and often fake.²⁸ Mos-

25. See, e.g., MINISTRY OF FOREIGN AFFAIRS OF RUSS. FED’N, THE DECLARATION OF THE RUSSIAN FEDERATION AND THE PEOPLE’S REPUBLIC OF CHINA ON THE PROMOTION OF INTERNATIONAL LAW, ¶ 5 (June 25, 2016), https://www.mid.ru/en/foreign_policy/position_word_order/-/asset_publisher/6S4RuXfeYIKr/content/id/2331698 (“[A]ll means of settlement of disputes should serve the goal of resolving disputes in a peaceful manner This applies equally to all types and stages of dispute settlement, including political and diplomatic means when they serve as pre-requisite to the use of other mechanisms of dispute settlement. It is crucial for the maintenance of international legal order that all dispute settlement means and mechanisms are based on consent and used in good faith and in the spirit of cooperation, and their purposes shall not be undermined by abusive practices.”).

26. See generally Theodor Schweisfurth, *Breschnjew-Doktrin als Norm des Völkerrechts? [Brezhnev Doctrine as Norm of International Law?]*, 21 AUßENPOLITIK 523 (1970) (discussing the Brezhnev Doctrine in the context of international law).

27. See U.N. Charter art 2, ¶ 4 (establishing the prohibition of the threat and use of force).

28. See generally GEORG NOLTE, EINGREIFEN AUF EINLADUNG: ZUR VÖLKERRECHTLICHEN ZULÄSSIGKEIT DES EINSATZES FREMDER TRUPPEN IM INTERNEN KONFLIKT AUF EINLADUNG DER REGIERUNG [INTERVENTION BY INVITATION: ON THE ADMISSIBILITY UNDER INTERNATIONAL LAW OF THE USE OF FOREIGN

cow has utilized this strategy since it started the Soviet-Finnish Winter War in 1939.²⁹

In the post-Soviet period, the role of Moscow as a regional norm-creator and holder has diminished considerably compared to its 'socialist international law' of the Cold War era. However, to the extent that the Russian claim to regional normative leadership continues to exist, Moscow promotes geopolitical loyalty to Russia as a great power, a strong conception of state sovereignty, and criticizes pro-Western interpretations of human rights and democracy as impermissible interventions into the internal affairs of the affected states. The rationale seems to be that Western democracy and extensive individual rights are not fully suitable for post-Soviet Eurasian countries. Moreover, in countries where these principles have become a reality, they have led to a geopolitical, and often cultural, rupture with Russia as an anti-model of Western, individualized values. It appears that skepticism regarding the full-scale acceptance of what are perceived as Western rather than universal values and their consequences for international law and domestic governance is also widespread among the political elites of some Central Asian States.³⁰

Until very recently, the political and academic discourse on international law has been, almost exclusively, universalist. However, regional and national frameworks have been on the rise.³¹ At the United Nations, no state would officially suggest

TROOPS IN AN INTERNAL CONFLICT AT THE INVITATION OF THE GOVERNMENT] (1999) (discussing international legal problems related to 'intervention by invitation').

29. When the Soviet Union attacked Finland in 1939, it said that it had been invited by a Finnish Communist government, the Terijoki government, that had itself just recently formed. The other well-known historical examples of invitations are Czechoslovakia in 1968 and Ukraine (Crimea) in February 2014. For the latter, Moscow *inter alia* referred to the claimed invitation by President Yanukovich.

30. See ALEXANDER COOLEY, GREAT GAMES, LOCAL RULES: THE NEW GREAT POWER CONTEST IN CENTRAL ASIA 9–10 (2012) (exploring the process of "norm localization" in Central Asian states); SHOSHANA KELLER, RUSSIA AND CENTRAL ASIA: COEXISTENCE, CONQUEST, CONVERGENCE 247–50 (2019) (discussing the slow adoption of Western norms).

31. See, e.g., ANTHEA ROBERTS, IS INTERNATIONAL LAW INTERNATIONAL? 279–82 (2017) (arguing that 2016 accelerated a shift to "multipolarity"); see generally 4 SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW (Mariano J. Aznar & Mary E. Footer, eds., 2012). There is also a recent tendency to unapologetically emphasize national accents, trajectories in, and

that there are independent U.S., Chinese, European, Russian, African, etc. variants of international law. When the international community discusses state responsibility, reservations to treaties, types of jurisdiction and immunity, diplomatic protection or immunity, or any other institute of international law, it assumes that these are universal doctrines with universal applicability.³² At the same time, significant civilizational and regional differences linger under the surface.³³ Historians point out that the origins of international law were primarily regional and civilizational.³⁴ Likely, Europe and China had their own versions of international law and order before the 20th century, both assuming that their version was the ‘correct’ and potentially universally applicable one.³⁵ Britain’s famous Macartney Embassy to China in 1793 and the debate about kowtow, for example, was also a clash between the European and Chinese understandings of what constituted international law.³⁶

In the twentieth century, the regional component of international law did not disappear. In Latin America, the Chilean jurist Alejandro Alvarez repeatedly suggested that the region had its own regional understanding of certain norms and

contributions to international law. *See, e.g.*, BRITISH INFLUENCES ON INTERNATIONAL LAW, 1915–2015, at 3 (Robert McCorquodale & Jean-Pierre Gauci eds., 2016) (British); EUROPEAN INTERNATIONAL LAW TRADITIONS 1 (Peter Hilpold ed., 2019) (European); JAN WOUTERS, CEDRIC RYNGAERT, TOM RUYSS & GEERT DE BAERE, INTERNATIONAL LAW: A EUROPEAN PERSPECTIVE 1–4 (2018) (focusing on European influence but the authors emphasize that they do not want to put forward a ‘provincial’ European perspective on international law).

32. *See e.g.*, Dire Tladi (Special Rapporteur), *Fourth Rep. on Peremptory Norms of General International Law* (jus cogens), ¶¶ 21–47, U.N. Doc. A/CN.4/727 (Jan. 31, 2019) (rejecting the notion of regional, as opposed to universal, *jus cogens*).

33. *See* Anu Bradford & Eric A. Posner, *Universal Exceptionalism in International Law*, 52 HARV. INT’L L. J. 1, 5–8 (2011) (arguing that the United States is not unique among nations in having an “exceptionalism approach to international law”).

34. *See, e.g.*, YASUAKI ONUMA, A TRANSCIVILIZATIONAL PERSPECTIVE ON INTERNATIONAL LAW 282 (2010) (noting the lack of shared normative consciousness for the globalization of European international law).

35. *See* Yasuaki Onuma, *When Was the Law of International Society Born?*, 2 J. HIST. INT’L L. 1, 11–66 (2000) (exploring the history of the Sinocentric tribute system in East Asia as regional normative order).

36. *Id.* at 27.

aspects of international law.³⁷ Claims related to geopolitical spheres of influence have also been implicitly associated with international law. For example, in the 19th century, the U.S. claimed that South America was in its sphere of influence, rather than in the European sphere.³⁸ Thus, when post-Soviet Russia emphasizes the importance of the U.N. Charter in the context of the 'correct interpretation of international law,' it also emphasizes the role of the UNSC permanent members with their special regional rights and prerogatives. Although the U.N. Charter does not, of course, refer to this concept explicitly, the permanent members of the UNSC continue to be great powers in their regions. During the Yalta conference of 1945, the Soviet leader Joseph Stalin, one of the most influential brokers of the post-1945 international legal order, seemed to assume that the permanent position in the UNSC was accompanied by a geographic sphere of influence.³⁹

The twentieth century was a time of dissolution for the European Empires. However, some territorial disputes from this era have remained: the United Kingdom continues to have international legal and political debates concerning the sovereignty of the Falkland (Malvinas) Islands, Gibraltar, and the Chagos Archipelago.⁴⁰ When accepting the jurisdiction of the International Court of Justice (ICJ) under the 'optional clause' of the ICJ Statute,⁴¹ the U.K. (currently the only permanent member of the UNSC to have accepted the ICJ's compulsory jurisdiction under the optional clause) excluded the

37. See Alejandro Alvarez, *Latin America and International Law*, 3 AM. J. INT'L L. 269, 343 (1909) (highlighting "conferences" and the resulting principles enunciated by Latin American states as an example of international fraternity); *Asylum Case (Colom./Peru)*, Judgment, 1950 I.C.J. Rep. 266, 276 (Nov. 20) (discussing the Colombian government's invocation of "American international law"); *id.* at 293 (Alvarez, J., dissenting) (advocating for the recognition of "American international law").

38. See generally ALEJANDRO ALVAREZ, *THE MONROE DOCTRINE: ITS IMPORTANCE IN THE INTERNATIONAL LIFE OF THE STATES OF THE NEW WORLD* (1924) (examining the doctrine's influence after 100 years).

39. SERHII PLOKHY, *YALTA: THE PRICE OF PEACE* (2010).

40. See *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 I.C.J. Rep. 95, ¶¶ 183 (Feb. 25) (ruling that "decolonization of Mauritius was not lawfully completed" and that the UK is under an "obligation to bring to an end its administration of the Chagos Archipelago").

41. Statute of the International Court of Justice art. 36, ¶ 2, June 26, 1945, 59 Stat. 1055, T.S. No. 993.

ICJ's jurisdiction over debates with other members of the Commonwealth, i.e., former constitutive parts of the British Empire.⁴² This suggests that in London's view, parts of the former British Empire deserve a special regime for the resolution of disputes amongst themselves.

When empires disintegrate, the most logical means for a continuation of former ties is a regional integration mechanism that maintains state sovereignty and independence while simultaneously transferring some components of authority to said regional integration mechanisms. This has been the most remarkable in post-World War II Europe, which has seen the creation of organizations such as the 'supranational' European Union, which currently has twenty-seven member States. This is also the case in human rights bodies, such as the Council of Europe, which has a much larger membership of forty-seven states, including states from post-Soviet space such as Russia, Armenia, Azerbaijan, Georgia, Moldova and Ukraine.

Overall, the precarious position of post-Soviet Russia towards contemporary *jus publicum Europaeum* becomes evident: it has been only partly integrated into post-Cold War European regional international law. Moscow has been a member of the Council of Europe since 1996. European human rights norms and standards have been binding on Russia since 1998 when it ratified the European Convention on Human Rights.⁴³ However, the doors of other European regional integration organizations have remained closed to Russia, though Russia has not yet vocalized an aspiration to join them. The E.U.-Russia foundational treaty (Partnership Agreement) has not been renewed since 1997.⁴⁴ After Russia's annexation of Crimea in 2014, E.U. sanctions have been in force against the Russian

42. Government of Great Britain and Northern Ireland, *Declarations recognizing the jurisdiction of the Court as compulsory*, I.C.J., ¶ 1(ii) (Feb. 22, 2017), <https://www.icj-cij.org/en/declarations/gb>.

43. See generally *RUSSIA AND THE COUNCIL OF EUROPE: 10 YEARS AFTER* (Katrijn Malfliet & Stephan Parmentier eds., 2010) (evaluating the first decade of Russia's membership); *RUSSIA AND THE EUROPEAN COURT OF HUMAN RIGHTS: THE STRASBOURG EFFECT* (Lauri Mälksoo & Wolfgang Benedek eds., 2017) (evaluating the first twenty years of Russia's membership).

44. Agreement on Partnership and Cooperation, 1997 O.J. (L 327) 3.

Federation and a number of its citizens.⁴⁵ In 2004, NATO, which is politically led by the United States and includes most West European nations, incorporated states that were formerly *de facto* part of the Soviet Union (the Baltic States) and members of the Warsaw Pact⁴⁶ (the Vysegrad countries). Russia has expressed its deep dissatisfaction with the inclusion of former Soviet republics in NATO. Moscow's military actions against Georgia in 2008 and Ukraine in 2014 have primarily been understood as stunting the possibility of these countries joining NATO (and the EU) in the foreseeable future.⁴⁷ The Russian intervention in Ukraine in 2014 was accompanied by a disputable proposition in the political rhetoric that association with the European Union, let alone membership in the E.U., would inevitably lead to membership in NATO as well.

Realizing that its engagement with European regional international law will be limited and mostly constrained to the field of human rights in the Council of Europe, Russia has recently made significant steps to advance its own regional integration organizations in the post-Soviet space. The Commonwealth of Independent States (CIS) has existed since 1991 and the Collective Security Treaty Organization (the Russian-led collective defense organization) has existed since 1992.⁴⁸ Legal scholars and political scientists give special attention to integration processes in post-Soviet Eurasia.⁴⁹ At least one influ-

45. See *Russia*, EU SANCTIONS MAP, sanctionsmap.eu (select Russia on map; then follow "Info") (last update reflected Dec. 16, 2020) (enumerating sectoral restrictive measures).

46. See RONALD D. ASMUS, *OPENING NATO'S DOOR: HOW THE ALLIANCE MADE ITSELF FOR A NEW ERA* (2004).

47. See Reuters Staff, *Putin Says Annexation of Crimea Partly a Response to NATO Enlargement*, REUTERS (May 17, 2014), <https://www.reuters.com/article/us-russia-putin-nato-idUSBREA3G22A20140417>.

48. On legal and political foundations of these organizations, see, for example, VLADIMIR A. TROITSKII, *FORMY EKONOMICHESKOI INTEGRATSII GOSUDARSTV-UCHASTNIKOV SODRUZHESTVA NEZAVISSIMYKH GOSUDARSTV* [FORMS OF ECONOMIC INTEGRATION OF THE STATES OF THE COMMONWEALTH OF INDEPENDENT STATES] 133–35 (2008) (CIS); ANATOLIY A. ROZANOV & ELENA A. DOVGAN, *COLLECTIVE SECURITY TREATY ORGANIZATION 2002–2009*, at 67–68 (2010).

49. See, e.g., ANASTASSIA V. OBYDENKOVA & ALEXANDER LIBMAN, *AUTHORITARIAN REGIONALISM IN THE WORLD OF INTERNATIONAL ORGANIZATIONS: GLOBAL PERSPECTIVE & THE EURASIAN ENIGMA* 120–255 (2019) (exploring three regional organizations in Eurasia); ALIAKSEI KAZHARSKI, *EURASIAN INTEGRATION AND THE RUSSIAN WORLD: REGIONALISM AS AN IDENTITARY ENTERPRISE*

ential academic journal in Moscow, *Evraziiskii Iuridicheskii Zhurnal*,⁵⁰ publishes and actively promotes research on this topic. Perhaps most significant for the future is the Eurasian Economic Union (EEU), which was established on May 29, 2014. The EEU was founded by Russia, Belarus, and Kazakhstan and later joined by Armenia and Kyrgyzstan. In many ways, the EEU is informed by Western European experiences after World War II, namely that economic integration is the precondition for deeper political integration. Russia has also made efforts to ensure that the EEU is formally based on sovereign equality of its member States. For example, the main court of the organization, the Court of the Eurasian Economic Union, is based in Minsk, the capital of Belarus. However, Russian ideologues and writers on the far-right have expressed aspirations for Eurasian integration to become a Russian ‘Empire-lite:’ a way to maintain Russian influence and presence in its former imperial space.⁵¹

Russia is a normative trend-setter in this group of Eurasian countries. All EEU member States have struggled with democracy and most have had authoritarian, or at least strongly presidential constitutionalist, tendencies. Some have made considerably more progress with democracy than others (Armenia and Kyrgyzstan), but they too have now faced considerable setbacks. Although Russia is a member of the Council of Europe, its central message in post-Soviet space has often been that Russia will do it their own way. In particular, it has associ-

129–57 (2019) (discussing Eurasian economic regionalism); INTEGRATSIONNYE PROTSESSY I PRAVVOE OBESPECHENIE NATSIONAL’NOI BEZOPASNOSTI V EVROPEJSKO-AZIATSKOM REGIONE [INTEGRATION PROCESSES AND THE LEGAL SUPPORT OF NATIONAL SECURITY IN THE EURO-ASIA REGION] 11 (Viktor D. Peravalov ed., 2012) (making the link between the need for regional integration and the security needs of Russia and other post-Soviet countries).

50. EVRAZIISKII IURIDISCHESKII ZHURNAL [EURASIAN LAW JOURNAL], <https://eurasialaw.ru/>.

51. See, e.g., ALEKSANDR DUGIN, EVRAZIISKII REVANSH ROSSII [EURASIAN REVENGE OF RUSSIA] 8 (asserting that in the multipolar world borders will no longer be between countries but civilizations) (2014); ALEKSANDR DUGIN, PROEKT ‘EVRAZIA’ [PROJECT ‘EURASIA’] 345 (2004) (presenting Russians as imperial people); FOND ISTORICHESKOI PERSPEKTIVY, ‘I VREMIA SOBIRAT’ KAMNI. . . ‘EVRAZIISKAIA INTEGRATSIA SEGODNIA.’ 20 LET POSLE RASPADA SSSSR, [FOUNDATION OF HISTORICAL PERSPECTIVE, ‘AND TIME TO GATHER STONES. . .’ EURASIAN INTEGRATION TODAY, 20 YEARS AFTER THE DISSOLUTION OF THE SOVIET UNION] (2012).

ated 'too much democracy' in post-Soviet space with chaos and anarchy, and has built its policies on assumptions that a 'strong hand' is needed to govern of post-Soviet States. In post-Soviet Eurasia's cooperation efforts, geopolitical loyalty to Moscow has been much more important than advancing democracy, human rights, and the "Western" understanding of the rule of law.

Having now been a party to the European human rights protection system for more than twenty years, the Russian government has increasingly expressed reservations to what it sees as the extensive, liberal, and predominantly Western understanding of human rights. On July 1, 2020, Russia adopted constitutional amendments which give priority to constitutional identity and the country's sovereign interests over its international legal obligations.⁵² If an international treaty body or court issues a decision that is not in correspondence with the Russian Constitution (according to the Russian Constitutional Court), it will not be implemented in Russia.⁵³ Extensive human rights threaten the authoritarian or strongly presidential models of governance, and undermine the concept of an 'elected Tsar' or a strong national leader beyond state authority. President Putin has occasionally acted as, and has been branded, a modern Russian Tsar. His authority comes from a 'higher' source than democratic legitimacy.⁵⁴ In reality, his authority (though questioned by segments of Russian society by 2021) comes from a historical pattern that Russia and the Soviet Union have 'always' held the ideal of a strong national leader, a Tsar or secretary general.

At the U.N. Human Rights Council (UNHRC), Russia has promoted the idea that human rights must be defined and protected in light of traditional values.⁵⁵ Many other post-So-

52. KONSTITUTSIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] (including the 2020 amendments, with text of amendments found at <http://duma.gov.ru/news/48953/>).

53. Lauri Mälksoo, *International Law and the 2020 Amendments to the Russian Constitution*, 115 AM. J. INT'L L. 78, 86–87 (2021).

54. This type of 'divine' legitimacy is illustrated by what a Russian clergy man reassuringly tells a local corrupt governor in Andrey Zvyagintsev's movie *Leviathan*. LEVIATHAN (Fox 2014) ("All power emanates from the God.").

55. On 27 September 2012, the Human Rights Council adopted a resolution "Promoting human rights and fundamental freedoms through a better

viet nations have not been particularly active in the United Nations (only a few of them have served on the UNSC), which may indicate that at least some of them see their interests in global matters and world politics represented by Moscow. The pro-Western countries that have emerged from the former Russian Empire and that have been members of the UNSC, most notably Lithuania (in 2014-2015) and Estonia (in 2020-2021), have clashed with Moscow at the UNSC on the underlying values of world order. Lithuania harshly criticized Russia for its annexation of Crimea in 2014. In 2021, Estonia and Russia disputed over Belarus, and Russia accused Estonia of failing to understand the structural-procedural logic of Arria-Formula meetings at the UNSC and the significance of the principle of non-intervention in international law.⁵⁶

All post-Soviet States, including from Central Asia, have formally supported UNGA pro-democracy resolutions.⁵⁷ Nevertheless, in practice, principles of human rights and democracy have hit their natural limits in a number of post-Soviet Eurasian countries. Russia, as the former imperial leader of the region, has encouraged such departure from these principles. Russia sees Western individual-centered and liberal-normative universalism as a subversion of traditional modes of government and authority in the former Russian Empire.

Post-Soviet Russia has not officially declared that it is building a regional international law in opposition to Western understandings of universal international law. Instead, their ambition is even bigger. What is at stake is international law as a whole, the soul of universal international law, and the hearts and minds of third-party states beyond post-Soviet Eurasia. In early 2021, Russia's foreign minister Sergey Lavrov stated that

understanding of traditional values of humankind: best practices" which was co-sponsored by Russia. The resolution was adopted with 25 votes in favor and 15 against, with 7 abstentions. Almost all Western countries voted against, Russia and Kyrgyzstan voted in favor, and the Republic of Moldova abstained. The Human Rights Council received submissions from the EU (criticizing the approach focusing on traditional values) as well as, among other States, Belarus and Uzbekistan (supporting the approach). Human Rights Council Res. A/HRC/21/L.2 (Sept. 21, 2012).

56. *Russian Diplomat Turns Meeting to Support Belar into An Attack on Estonia*, ERR (Jan. 24, 2021), <https://news.err.ee/1608084259/russian-diplomat-turns-meeting-to-support-belarus-into-an-attack-on-estonia>.

57. See, e.g., G.A. Res. 55/96, at 1 (Feb. 28, 2001) (calling upon States to promote and consolidate democracy).

the West wants to consign “to oblivion the classical forms and norms of international law.”⁵⁸ In this context, Russia appears not to be a norm-breaker, but rather a defender of ‘classical’ international law. While the dispute over the content and direction of universal international law between the West and its main challengers carries on, Russia has managed, through Eurasian integration, to maintain a regime in some post-Soviet States in which its word counts, and in which those states see normative developments in the world more or less as Moscow does.

III. *UTI POSSIDETIS*: A UNIVERSALLY BINDING PRINCIPLE?

Understanding the allocation of territorial sovereignty during and after the disintegration of the Soviet Union will help to understand whether and in what ways universal international law applies to conflicts in post-Soviet Eurasia. This concerns *uti possidetis juris* (hereinafter *uti possidetis*): the principle that when federal states disintegrate, the former internal administrative borders of the federation must remain and become borders of the newly sovereign states. Is this a universal rule under international law? To what extent has it been followed in the post-Soviet space? This is an important inquiry because international law is constituted by states, and states are constituted by physical territory. Thus, the allocation of territorial sovereignty after a breakup of a major state can be seen as one of the most urgent tasks for international law to solve. In the post-Soviet space, there is a paradox between the global stage, where Moscow promotes international law based on state sovereignty and territorial integrity, and the post-Soviet space, where it has allowed exceptions to these principles for at least some states.

The issue of *uti possidetis* necessitates an examination of the history. The Russian design of history and international law perceives of the Russian Empire and Soviet Union as distinct and overall positive achievements, perhaps the biggest achievements that Russia, as a country and civilization, ever

58. Ekaterina Postnikova, ‘*Mirovoi besporiadok: s chem rossiiskaia diplomatiia nachinaet 2021 god*’ [World Disorder: How Russian Diplomacy Begins 2021], IZVESTIYA (Jan. 18, 2021), <https://iz.ru/1113058/ekaterina-postnikova/mirovoi-besporiadok-s-chem-rossiiskaia-diplomatiia-nachinaet-2021-god>.

managed.⁵⁹ Several of Russia's 2020 constitutional amendments can also be understood through this lens. It is a patriotic sentiment to maintain pride in the historical Russian Empire and the Soviet Union. In Western Europe, it is at least politically correct to point out the moral and economic issues of past Empires. The prevailing feeling is to avoid being openly nostalgic about the imperial and colonial past of the European Empires. There is an acute awareness of the cruelty of the colonial era (the crimes that imperial Germany committed against the Herero in today's Namibia in 1904-1908,⁶⁰ British atrocities in India,⁶¹ or crimes committed during Belgian King Leopold's rule in Congo during the late 19th century⁶² as examples).

The prevailing view in Russia is that the Russian Empire has little in common with the negative policies and experiences of those bygone Western and Central European Empires.⁶³ First, it is understood that the Russian Empire expanded territorially in an organic way, and in order to defend its legitimate geopolitical interests. In the process of expanding, the Russian Empire created relationships of protection with smaller neighboring entities, with some elements of vassal relations initially. Thus, the Baltic German nobility in Estonia accepted Russian sovereignty during the Great Nordic War in 1710 yet maintained certain autonomy within the Russian Empire.⁶⁴ Georgia was initially accommodated as a vassal

59. See Vladimir Putin, *A New Integration Project for Eurasia: The Future in the Making*, IZVESTIA (Oct. 3, 2011), English translation available at <https://russiaeu.ru/en/news/article-prime-minister-vladimir-putin-new-integration-project-eurasia-future-making-izvestia-3-> (.emphasizing that for President Putin, post-Soviet Eurasian integration is not meant as revival of the USSR).

60. See generally Reuters Staff, *German Minister Calls Colonial-Era Killings in Namibia 'Genocide'*, REUTERS (Sept. 2, 2019), <https://www.reuters.com/article/us-germany-namibia-idUSKCN1VN1DM>.

61. See generally Mihir Bose, *Amritsar, 100 Years On, Remains an Atrocity Britain Cannot Be Allowed to Forget*, THE GUARDIAN (Apr. 12, 2019), <https://www.theguardian.com/commentisfree/2019/apr/12/britain-amritsar-massacre-centenary-1919-india>.

62. See generally ADAM HOCHSCHILD, *KING LEOPOLD'S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA* (2006).

63. See generally DOMINIC LIEVEN, *EMPIRE: THE RUSSIAN EMPIRE AND ITS RIVALS* (2002) (gives a historical comparison of the British, Ottoman, Habsburg, and, of course, Russian Empires).

64. See DIE BALTISCHEN KAPITULATIONEN VON 1710: KONTEXT, WIRKUNGEN, INTERPRETATIONEN [THE BALTIC CAPITULATIONS OF 1710: CONTEXT, IMPACT,

state in 1783 and was later annexed by the Russian Empire in the early nineteenth century.⁶⁵ Russia, as a Christian power, annexed smaller European territories and states that were also primarily inhabited by Christians.

Of course, several major Muslim-inhabited territories were annexed through military campaigns in the Caucasus and Central Asia during the nineteenth century. Nineteenth century Russian international lawyers, such as Fyodor Martens (1845-1909), drew direct parallels between England's colonial project in India and Russia's in Central Asia.⁶⁶ Russia positioned itself vis-à-vis these territories as the more civilized and cultured power.⁶⁷ The prevailing Russian narrative today emphasizes the overall positive aspects of the civilizing mission of the Russian Empire, and later the Soviet Union.⁶⁸ In a number of places in post-Soviet Eurasia, nostalgia for the Soviet Union and its socio-economic arrangements is shared by important segments of the local population, though finding inspiration in Central Asian history of statehood before the Russian Empire has become popular as well.⁶⁹ Thus, it is still acceptable to

INTERPRETATIONS] 1–16 (Karsten Brüggemann et al. eds., 2014) (explaining the legal context and peculiarities of the Russian takeover of Baltic provinces that previously belonged to Sweden).

65. See OTFRIED NIPPOLD, *LA GÉORGIE DU POINT DE VUE DU DROIT INTERNATIONAL [GEORGIA FROM THE PERSPECTIVE OF INTERNATIONAL LAW]* 61–78 (1920) (discussing the Treaty of Georgievsk of 1783 and the annexation act of 1801); see generally LEVAN ALEKSIDZE, *INTERNATIONAL LAW AND GEORGIA (FROM ANTIQUITY TO PRESENT), SELECTED PAPERS PUBLISHED IN 1957–2012* (2012) (examining Georgia's struggles since its independence).

66. Fyodor Martens, *La Russie et L'Angleterre dans L'Asie Centrale [Russia and England in Central Asia]*, 11 *REVUE DE DROIT INTERNATIONAL ET DE LÉGISLATION COMPARÉE* 227–301 (1879).

67. See ROMAN Y. POCHKAEV, *GOSUDARSTVO I PRAVO TSENTRAL'NOI AZII GLAZAMI ROSSIISKIKH I ZAPADNYKH PUTESHESTVENNIKOV XVIII-NACHALA XX V. [STATE AND LAW IN CENTRAL ASIA IN THE EYES OF RUSSIAN AND WESTERN TRAVELERS FROM THE 18TH TO THE EARLY 20TH CENTURY]* 231–77 (2019) (exploring in what ways the Russian Empire managed to change the law in Central Asian khanates under its protectorate).

68. See, e.g., *Putin: Soviet Collapse a 'Genuine Tragedy'*, NBC NEWS (Apr. 25, 2005), <https://www.nbcnews.com/id/wbna7632057> (discussing the famous dictum of President Putin in his annual state of the nation address in 2005 that the disintegration of the USSR was the “greatest geopolitical catastrophe of the [twentieth] century”).

69. See Kudratilla Rafikov, *Byt' li Soedinennym Shtatam Evrazii? Razmyshlenia uzbekskogo politologa o regional'noi integratsii [To Be for the United States of Eurasia? Reflections of an Uzbek Political Scientist on Regional Integration]*, KOMMER-

say that the Russian Empire was good, or at least partially so. The Soviet Union vehemently rejected that it had anything to do with imperialism—Empires were elsewhere, in the capitalist West. For Spain and Portugal, France and England, the Empire was overseas; for Russia, it was in all directions from the Eastern, Slavic heartland. Perhaps for this reason, for Russia it is difficult to dismiss the imperial project as something negative, as it is harder to say where the ‘historical Russia’ begins or ends. Today we can see the direct geopolitical repercussions of this imperial dilemma in Georgia, and particularly in Ukraine, as the cradle of Russian Orthodox civilization and *Staraya Rus*.

The national awakening during the second half of the nineteenth century disrupted the mental unity of the Russian Empire as embodying the emancipation of non-Russian peoples. This led to further development of independent national and ethnic cultures, political consciousness, and demands. The Bolsheviks, as a revolutionary force, gave their support to the principle of national self-determination and in 1917, even conceded that they would accept the secession of such peoples from Russia based on the principle of self-determination.⁷⁰ They eventually did so for the Baltic States in the Soviet Peace Treaties of 1920.⁷¹ Nevertheless, with the exception of the secessions of Poland and Finland, the Soviet Union by and large managed to maintain the traditional borders of the former Russian Empire. The Baltic States of Estonia, Latvia, and Lithuania were independent states during the interwar period and were recognized as such by Soviet Russia in 1920. However, the Soviet Union occupied and annexed them in 1940 during World War II. In 1940, after the conclusion of the Hitler-Stalin Pact (aka Molotov-Ribbentrop Pact) on August 23, 1939,⁷²

SANT (Feb. 9, 2021), <https://www.kommersant.ru/doc/4663087> (exploring the history of Central Asian integration).

70. JOSEPH STALIN & VLADIMIR LENIN, DEKLARATSIYA PRAV NARODOV ROSSIYE [DECLARATION OF THE RIGHTS OF THE PEOPLES OF RUSSIA] (Nov. 15, 1917) (recognizing the right of peoples to self-determination, “even to the point of separation and the formation of an independent state,” while at the same time noting that the ideal was still an “honest and lasting union of the peoples of Russia”).

71. Treaty of Tartu, Soviet Russ.-Est., art. 2, Feb. 2, 1920, 11 L.N.T.S. 30; Treaty of Moscow, Soviet Russ.-Lith., art. 1, July 12, 1920, 3 L.N.T.S. 105; Treaty of Riga, Soviet Russ.-Lat., art. 2, Aug. 11, 1920, 2 L.N.T.S. 195.

72. For the newest historical research on the Pact, see CLAUDIA WEBER, DER PAKT: STALIN, HITLER UND DIE GESCHICHTE EINER MÖRDERISCHEN ALLIANZ

Moscow also took back the former Tsarist territory of Bessarabia from Romania (today's Republic of Moldova). It seems that a central Soviet motivation to conclude the Hitler-Stalin Pact, with its secret protocols, was to take back the formerly lost Tsarist Russian territories. Moscow only failed to reach its goal vis-à-vis Finland, as the latter managed to maintain its independence in the Winter War of 1939–1940, which the Soviets initiated.⁷³ In Poland, the Soviet Union regained, thanks to the Pact with Hitler, considerable territory in today's Belarus and Ukraine, but the borders were still reduced compared to the Tsarist Russian territories, which had even included Warsaw.⁷⁴

In terms of territorial possessions and imperial continuity, the Soviet Union was a renewed Russian Empire. It kept or re-annexed almost all former Tsarist lands, but not without a certain modernizing price for the imperial heartland. In his speeches, President Putin has characterized the Bolshevik make-over of the Russian Empire as a ticking “time bomb” (earlier also “nuclear bomb”) under the building that was historical Russia.⁷⁵ Compared to the Tsarist Empire, more elements of national self-determination and federalism were introduced into the constitutional structure of the country. National Soviet republics were created—besides Soviet Russia, there was Soviet Ukraine, Belarus, Armenia, Azerbaijan, Georgia, Kazakhstan, Uzbekistan, Kirgizia (nowadays: Kyrgyzstan), Tajikistan, and Turkmenistan. Interestingly, even the formal right of Soviet republics to secede from the USSR was included

[THE PACT: STALIN, HITLER AND THE HISTORY OF A MURDEROUS ALLIANCE] 69–72 (2019).

73. See ROBERT EDWARDS, *THE WINTER WAR: RUSSIA'S INVASION OF FINLAND, 1939-1940* (2009).

74. See *The Molotov-Ribbentrop Pact: The Documents*, 35 LITH. Q. J. ARTS AND SCI., Spring 1989, 35, available online at http://www.lituanus.org/1989/89_1_03.htm (giving the original text of the German-Soviet Pact of 1939 and its secret protocols).

75. Artem Girsh, *Putin rasskazal o “mine zamedlennogo deistvia” v Konstitutsii SSSR* [Putin Spoke About the “Time Bomb” in the Constitution of the USSR], *VEDOMOSTI* (July 5, 2020, 2:48 PM), <https://www.vedomosti.ru/politics/news/2020/07/05/833979-putin-rasskazal-o-konstitutsii>; Ivan Sinergieiev, *Vladimir Putin obvinil Vladimira Lenina v razvale SSSR* [Vladimir Putin Accused Vladimir Lenin of the Collapse of the Soviet Union], *KOMMERSANT* (June 21, 2016, 7:59 PM), <https://www.kommersant.ru/doc/2897423>.

in the Soviet Constitutions.⁷⁶ In 1940, the re-annexed Soviet republics of Estonia, Latvia, and Lithuania, as well as Soviet Moldavia (today the Republic of Moldova), were established within the USSR. The Baltic States insist that this occurred illegally under international law and the post-1991 Baltic republics maintained their state continuity with the interwar republics, notwithstanding the Soviet occupation/annexation between the years of 1940–1991.⁷⁷

The level of federalism within the USSR fluctuated over time and continues to be debated by historians and international lawyers.⁷⁸ Some think it was more political fiction than reality, as the country remained a centrally controlled Empire. However, it cannot be denied that the Soviet Union at least formally recognized the right to national self-determination of smaller peoples which were part of the Empire. In some sense, the Soviet drawing and redrawing of internal administrative boundaries in the territory of the former Russian Empire facilitated the development of a new national consciousness in the USSR as an ‘Empire of nations.’⁷⁹ This, of course, with the caveat that class and solidarity of the proletariat were always more important than national self-determination for the Communists. In their view, this solidarity could be fully lived out within the borders of the Soviet Union as a federal but unitary State of the proletariat.⁸⁰

76. However, post-Soviet Russian scholars have admitted that in reality this right did not exist. *See, e.g.*, PETR P. KREMNEV, RASPAD SSSR: MEZHDUNARODNO-PRAVOVYE PROBLEMY [DISINTEGRATION OF THE USSR: INTERNATIONAL LEGAL PROBLEMS] 43 (2005).

77. *See generally* LAURI MÄLKSOO, ILLEGAL ANNEXATION AND STATE CONTINUITY: THE CASE OF THE INCORPORATION OF THE BALTIC STATES BY THE USSR (2003); *See also* INETA ZIEMELE, STATE CONTINUITY AND NATIONALITY: THE BALTIC STATES AND RUSSIA (2005).

78. *See, e.g.*, HENN-JÜRI UIBOPUU, DIE VÖLKERRECHTSSUBJEKTIVITÄT DER UNIONSREPUBLIKEN DER UDSSR [INTERNATIONAL LEGAL PERSONALITY OF THE REPUBLICS OF THE SOVIET UNION] 129 (1975) (focusing on formally distinct legal orders, including constitutions, in Soviet republics).

79. *See generally* FRANCINE HIRSCH, EMPIRE OF NATIONS: ETHNOGRAPHIC KNOWLEDGE & THE MAKING OF THE SOVIET UNION (2014) (describing the formation of the Soviet Union and its republics and the transformation of individual and group identities within those republics).

80. For example, when I attended, as a twelve-year old, the Estonian kids’ and youth song festival in Tallinn in 1987 (major song festivals are an Estonian and Latvian cultural tradition since the 1860s; a cultural import from Germany) the repertoire was a mixture of mostly Estonian songs, but also at

In the early 1990s when the Soviet Union and socialist Yugoslavia disintegrated, it was a widely held international policy that administrative boundaries within former federal states would serve as the borders for new sovereign states. In other words, the borders of independent Kazakhstan or (in Yugoslavia's case) Bosnia-Herzegovina would remain the same as the administrative borders within the earlier federative state. The maxim of *uti possidetis* was first used during the dissolution of the Spanish colonial Empire in South America, and then again when the European Empires lost their colonies in Africa and Asia in the second half of the twentieth century.⁸¹ Exceptions occur when there is consensus between both affected states for secession, such as when South Sudan seceded from Sudan in 2011. The overwhelming rationale for supporting *uti possidetis* as a governing principle for border identification has been international stability—not opening a Pandora's box of arguments regarding historical legitimacy, ethnicity, etc., as this would be a recipe for further conflict and war. However, the question is to what extent *uti possidetis* is a binding international legal principle and a part of customary international law, reflecting both state practice and *opinio juris*. That *uti possidetis* is binding everywhere and in all historical-geographic circumstances when dissolutions of states occur has not been codified in any universally binding treaty nor is it obvious that it is a universally binding customary rule.

Post-Soviet Russia's approach to the principle of *uti possidetis* has been selective. On the one hand, Moscow has not been willing to discuss the legality and legitimacy of the territorial 'pretensions' of its former constitutive parts, such as the Estonian and Latvian claims for their pre-World War II (pre-Soviet annexation) territories, expressed in the early 1990s

least some Russian ones, with a few songs with revolutionary and pro-Soviet messages. In retrospect, this personal experience serves as a small anecdotal illustration of the late Soviet approach to the cultural self-determination of peoples within its borders; there was a certain way of recognizing ethnic identity and allowing it within specific ideological limits.

81. See Luis Ignacio Sánchez Rodríguez, *L'uti possidetis et les effectivités dans les contentieux territoriaux et frontaliers* [*Uti Possidetis and its Effectiveness in Territorial and Border Disputes*], in 263 COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW 149, 179, 199 (1997) (noting the origins of *uti possidetis* and its use in the twentieth century); Malcolm N. Shaw, *The Heritage of States: The Principle of Uti Possidetis Juris Today*, 67 BRIT. Y.B. INT'L L. 75, 97–105 (1997) (describing the development of *uti possidetis*).

and to some extent reflected in their constitutions and state restoration acts.⁸² As far as the territories of the Russian Federation itself are concerned, Moscow has been a strict adherent to the *uti possidetis* principle; nothing in terms of the Russian Federation's territory and borders can be given away, revised, or significantly accommodated. In the 1990s and early 2000s, the Russian government fought successfully against the separation of Chechnya from Russia.⁸³ In 2020, the defense of territorial integrity was also consolidated in Russian constitutional amendments.⁸⁴

However, Moscow has had a somewhat different approach regarding the territories of other former Soviet republics. In these territories, the Soviet Union served as a kind of glue for reconciling various ethnic tensions and rivalries. In the early 1990s, ethnic Armenians in Soviet Azerbaijan's Nagorno-Karabakh region did not want to remain part of sovereign Azerbaijan, and ethnic Russians or Russian-speaking former Soviet citizens in Transnistria did not want to remain part of the Romanian-speaking, independent Republic of Moldova.⁸⁵ Russia, or at least fractions of its government and military, sup-

82. The 1920 Peace Treaties gave Petseri (Pechory) and Jaanilinn (Ivangorod) to Estonia and Abrene to Latvia. In 1944 and 1945, at the late stages of World War II, these territories were administratively given to Russia within the Soviet Union, by Moscow's unilateral decision. For example, § 122 of the Estonian Constitution of 1992 stipulates: "The land border of Estonia is determined by the Tartu Peace Treaty of 2 February 1920 and by other international border agreements." EESTI VABARIIGI PÕHISEADUS [CONSTITUTION] art. 122 (Est.); see also Lauri Mälksoo, *Which Continuity: The Tartu Peace Treaty of 2 February 1920, the Estonian-Russian Border Treaties of 18 May 2005, and the Legal Debate about Estonia's Legal Status in International Law*, 10 *JURIDICA INT'L* 144, 144–149 (2005) (discussing the Estonian constitution and Estonia's borders with Russia).

83. On Chechnya and international legal issues related to it, especially in the 1990s, see THOMAS D. GRANT, *International Law and the Post-Soviet Space I: Essays on Chechnya and the Baltic States* (2019).

84. The newly inserted Article 67, paragraph 2.1 of the Russian Constitution asserts that the Russian Federation ensures the defense of its sovereignty and territorial integrity: "[A]ction . . . directed at alienating parts of state territory as well as calls to such action will not be permitted." The provision contains exceptions for delimitation, demarcation, and re-demarcation of state territory, which will continue to be permitted. KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 67 (Russ.).

85. See TIM POTIER, *CONFLICT IN NAGORNO-KARABAKH, ABKHAZIA AND SOUTH OSSETIA: A LEGAL APPRAISAL* (2001); see also Todd Carney, *Looking for a Solution Under International Law for the Moldova-Transnistria Conflict*, *OPINIO*

ported the separation of these territories from their (former Soviet) republics which also constituted the first exceptions to the *uti possidetis* principle in the post-Soviet space.⁸⁶

In the conflict between post-Soviet Armenia and Azerbaijan over Nagorno-Karabakh,⁸⁷ Russia had no territorial stake in the conflict, but wanted to maintain influence over both ethnic adversaries. Moscow succeeded, because the bloody ethnic rivalry over land also helped discredit the self-determination principle and highlighted the virtues of a pacifying Empire. During the military conflict between Armenia and Azerbaijan in Nagorno-Karabakh in 2020, Russia could act as mediator between both warring parties, one insisting on establishing *uti possidetis*, and another on national self-determination. Both Azerbaijan and Armenia could not in the end 'manage without Russia' in their conflict.⁸⁸

Moscow realized that in the post-Communist world the main geopolitical fault lines would likely be between religions and civilizations again.⁸⁹ In this old and new 'civilizational' contestation, Islamic Azerbaijan would become a proxy of Turkey, and Orthodox Christian Armenia would remain loyal to Russia to a certain extent. Keeping with the 'civilizational' divide, in the early 1990s, factions of the Russian government and military decided to specifically help Armenia (even

JURIS (Mar. 17, 2020), <http://opiniojuris.org/2020/03/17/looking-for-a-solution-under-international-law-for-the-moldova-transnistria-conflict/>.

86. As previously indicated, no country has recognized the independence of the Pridnestrovian Moldavian Republic (PMR) or the Republic of Artsakh in Nagorno Karabakh—but they have existed *de facto* since the early 1990s.

87. For an international legal analysis, see generally OLEKSANDR MEREZHKO, *PROBLEMA NAGORNOGO KARABAKHA I MEZHDUNARODNOE PRAVO* [THE PROBLEM OF NAGORNO KARABAKH AND INTERNATIONAL LAW] (2014). For a historical and political overview, see generally THOMAS DE WAAL, *BLACK GARDEN: ARMENIA AND AZERBAIJAN THROUGH PEACE AND WAR* (2003).

88. See Vladimir Solovev, *Sergey Lavrov proshel po mirnomu poliu* [Sergey Lavrov Walked Across a Peaceful Field], KOMMERSANT (May 12, 2021), <https://www.kommersant.ru/doc/4803180>.

89. See SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* 45 (1993) (distinguishing between Western and Orthodox civilizations); *id.* at 127–30 (discussing implications for Russian and other post-Soviet countries' politics).

though other Russian factions apparently supported the Azeris).⁹⁰

In military conflicts of the early 1990s, Abkhazia and South Ossetia (formerly parts of Soviet Georgia) were separated from the now independent Georgia with military support from Russia. However, before the Georgian military's attempt to regain control over South Ossetia in August 2008, Russia did not officially recognize South Ossetia and Abkhazia as independent states. Rather, it considered them 'disputed territories' where it would maintain its 'peace-keeping' forces (sometimes jokingly characterized as 'piece-keepers').⁹¹

In these cases, Russia took geopolitical advantage of minorities within former, non-Russian, Soviet republics. If self-determination applied and Georgia demanded sovereign statehood at the cost of the Russian/Soviet Empire, perhaps the same claims could be made in Abkhazia and South Ossetia, to Russian/Soviet advantage. Abkhazian resort towns such as Gagra thrive on Soviet nostalgia and welcome Russian tourists.⁹² Formally independent states (or at least so recognized by Russia and a few others⁹³), such territories continue to be part of a Russia-dominated, post-imperial economic and cultural ecosystem.

All of the former Soviet republics that were territorially amputated in this way had something noteworthy in common: either Russia or the local ethnic minority, or both, perceived of the growing nationalism of the local, titular, ethnic minority as 'anti-Russian.' In the Soviet Union, the Russian language

90. See THOMAS DE WAAL, *BLACK GARDEN: ARMENIA AND AZERBAIJAN THROUGH PEACE AND WAR: 10TH YEAR ANNIVERSARY EDITION, REVISED AND UPDATED* (2013).

91. One of the key findings in the Tagliavini report was that Georgia started a large-scale military operation in Tskhinvali, the capital of South Ossetia (its separatist province), in August 2008 to which the Russians, who had 'peacekeepers' deployed to South Ossetia, excessively responded. TAGLIAVINI, *supra* note 2, at 11.

92. See, e.g., Yuri Snegirev, *Kak rossiiskie turisty vstrechaiut Novyi god v Gagrah* [*How Russian Tourists Celebrate the New Year in Gagra*], *ROSSIISKAIA GAZETA* (Oct. 1, 2021), <https://rg.ru/2021/01/10/rossijskie-turisty-vstrechaiut-novyj-god-v-gagrah.html> (detailing the experience and activities of Russian tourists celebrating the New Year in Gagra).

93. Nicaragua and Nauru recognized Abkhazia and South Ossetia in 2009, Venezuela in 2010 and Syria in 2018. Vanuatu recognized only Abkhazia in 2011.

was considered the *lingua franca*. In Soviet Moldavia, the written Romanian language was switched to the Russian alphabet (kirillitsa) and renamed the Moldavian language in order to promote a Moldavian identity distinct from Romania (where Bessarabia belonged during the interwar period).⁹⁴ However, actual linguistic differences with the Romanian language (written in the Latin alphabet) were insignificant. In the late 1980s through the early 1990s, these language policies were, to some extent, reversed and the revival of local, national languages demanded from both native Russian speakers and ethnic minorities (such as the Gagauz in Moldova). In contrast, in Transnistria, the Russian language has remained predominant and the 'Moldavian' (effectively Romanian) language must be written with the Cyrillic alphabet, not in its usual Latin.⁹⁵ The situation was similar in Abkhazia and Georgia, where Georgians implied that in an independent Georgia, the Georgian language would have priority. This sentiment antagonized local minorities who became 'pro-Russian', mainly worried about their potential inferior position 'under' the new 'nationalist' majority. In Transnistria's case, there was the additional argument that, although it was now a part of the Moldavian Soviet Republic, it had not previously been a part of the pre-World War II Romania (known as Bessarabia).⁹⁶ For consideration, when borders are drawn in post-imperial spaces, should the baseline be 1991, or, for instance, 1939?

In Central Asia, new nation states, such as Kazakhstan, gradually adopted nationalist language and identity policies. Several high-ranking Russian politicians have implied that independent Kazakhstan received, via the principle of *uti possidetis*, overly-generous borders from the former Russian Empire and Soviet Union.⁹⁷ Interestingly, Russia has not under-

94. See generally KEITH HITCHINS, A CONCISE HISTORY OF ROMANIA (2014).

95. See *Catan v. Moldova and Russia*, App. Nos. 43370/04, 8252/05 & 18454/06, ¶ 43 (Oct. 19, 2012), <http://hudoc.echr.coe.int/fre?i=001-114082> (highlighting the "law" against using the Latin alphabet as one policy that violated the right to education of children).

96. See generally CHARLES KING, THE MOLDOVANS: ROMANIA, RUSSIA, AND THE POLITICS OF CULTURE (2000).

97. When President Putin advertised Russia's constitutional amendments in 2020, he suggested that when exiting the Soviet Union in 1991, several republics took along "presents from the Russian people" in the form of "traditional Russian historical territories." Asylkhan Mamashuly, "Nyneshnie granitsy i istoria ne dolzhny stat' razmennoi monety". *Slova Putina vyzvali vozmush-*

taken any territorial decimation of Kazakhstan. Russia's apparent restraint could be due to the fact that Kazakhstan has remained loyal to Moscow in international politics. Moscow has not yet perceived countries like Kazakhstan as 'anti-Russian' in the same way that it does countries like the Republic of Moldova (which switched back to its Romanian heritage), pro-Western Georgia, or Ukraine (after President Yanukovich was ousted in early 2014). Some of the elites in the Republic of Moldova played with the idea of rejoining historical Romania (pre-World War II), but Romania has had complex and sometimes antagonistic relations with the Russian Empire and Soviet Union, including during World War II.⁹⁸ For Moscow, this reorganization would have meant that the Republic of Moldova had 'switched geopolitical camps.' The historical Russia Empire, in theory, would not only have formally lost territories, but lost them to the 'opposing camp.' Georgia and Ukraine 'turned their backs' on Russia in terms of its geopolitical narrative, implementing Western-style reforms, engaging in the pro-Western rhetoric of such reforms and ideas, interpreting Russian imperial and Soviet histories in an 'anti-Russian' way, and expressing their future desire to join NATO.⁹⁹ Central Asian States manifest the opposite narrative. Kazakhstan was not just a founding member of the Commonwealth of

shenie ["Current Borders and History Should Not Be a Bargaining Chip." *Putin's Words Sparked Outrage*], RADIO AZATTYK (June 23, 2020), <https://rus.azattyq.org/a/russia-putin-about-lands/30684930.html>. Similarly, Russian State Duma member, Vyacheslav Nikonov, said in effect that Kazakhs historically did not inhabit Northern Kazakhstan and that the territory of the country is a big present from the Soviet Union and Russia. Nikita Mendkovich, *Pereshli granitsy. Kak fraza o sovetskom proshlom mozhet possorit' Rossiю i Kazakhstan* [We Crossed the Borders. How a Phrase About the Soviet Past May Cause a Quarrel between Russia and Kazakhstan], LENTA (Dec. 19, 2020), <https://lenta.ru/articles/2020/12/19/kazah/>.

98. See generally KEITH HITCHINS, *A CONCISE HISTORY OF ROMANIA* (2014) (covering the development of the Romanian state and its interactions with "East and West").

99. These aspirations peaked ahead of NATO's Bucharest Summit in April 2008 when Georgia and Ukraine had hoped to join the NATO Membership Action Plan but did not succeed, even though the Bucharest Summit Declaration states that Ukraine and Georgia "will become members of NATO." *Bucharest Summit Declaration: Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008*, N. ATLANTIC TREATY ORG. ¶ 23 (Apr. 3, 2008), https://www.nato.int/cps/en/natolive/official_texts_8443.htm.

Independent States (CIS) in 1991 (as were most other former Soviet republics, including Ukraine and Georgia), but also of the Eurasian Economic Union (founded in 2014), as well as the Russian-led regional military cooperation organization, the Collective Security Treaty Organization (CSTO). Kazakhstan's President, Nursultan Nazarbayev, even became a major proponent of Eurasianism, the new integration ideology in the post-Soviet space.¹⁰⁰

In Russian literature on international law, scholars have expressed doubts about whether the *uti possidetis* principle is a universal principle of international law.¹⁰¹ The literature acknowledges that the principle was applied as a legally binding in Africa and Asia during the decolonization process, yet scholars question and challenge its unconditional applicability during the dissolution of the former Soviet Union. The scholarly view in Russia corresponds to state practice. In practice, post-Soviet Russia has applied the *uti possidetis* principle selectively. In the cases of Abkhazia and South Ossetia, it has been applied

100. For Eurasianism in history, see generally SERGEY GLEBOV, FROM EMPIRE TO EURASIA: POLITICS, SCHOLARSHIP, AND IDEOLOGY IN RUSSIAN EURASIANISM, 1920s–1930s (2017).

101. See, e.g., MEZHDUNARODNOE PRAVO [INTERNATIONAL LAW] 251 (S.A. Egorov ed., 5th ed. 2014) (“The mentioned principle may not be seen as imperative norm of contemporary international law. . . . Nevertheless, this principle is adopted in practice and widely used as the solution of territorial problems in Africa and Asia, but partly also in the practice of territorial limitations between Russia and other former Soviet republics.”); MEZHDUNARODNOE PRAVO [INTERNATIONAL LAW] 549 (V.I. Kuznetsov & B.R. Tuzmukhamedov eds., 2d ed. 2007) (referring only to *uti possidetis* in the context of Africa and Asia and not the post-Soviet space); MEZHDUNARODNOE PRAVO: TOM 1: OBSHTSHAIA CHAST [1 INTERNATIONAL LAW: GENERAL PART] 219–20 (Anatoly Y. Kapustin ed., 2016) (same); VLADISLAV L. TOLSTYKH, KURS MEZHDUNARODNOGO PRAVA [COURSE OF INTERNATIONAL LAW] 304–05 (2019) (arguing that the application of *uti possidetis* in the cases of the dissolution of the Soviet Union and Yugoslavia proves that using this principle, rather than mitigating conflicts, can fuel them and that an alternative would have been referendums on self-determination and means of dispute settlement). But see MEZHDUNARODNOE PRAVO [INTERNATIONAL LAW] 173 (A.N. Vylegzhanin ed., 2009) (indicating that the Soviet legislation in force in 1990 enabled Abkhazia to raise legitimate claims vis-a-vis Georgia). For further discussion on *uti possidetis*, see Farhad Sabir Oglu Mirzayev, *Sootnoshenie printsipa uti possidetis i prava narodov na samoopredelenie v mezhdunarodnom prave* [Correlation of the Principles of Uti Possidetis and Self-Determination in International Law], 9 EVRAZIISKII IURIDICHESKII ZHURNAL 21–25 (2020).

de jure: adjusting borders to conform with what Russia perceives as historical justice and geopolitical necessity, as well as its preferences for pro-Russian populations. Regarding the dissolution of Yugoslavia, Western international lawyers, such as the Badinter Commission, insisted that *uti possidetis* is binding for emerging states.¹⁰² While Russia has not explicitly stated the opposite, it has acted as if *uti possidetis* was not always legally binding in the post-Soviet space. President Putin once said in an interview that when the Soviet Union disintegrated, some former Soviet republics left Russia “not with what they came with.”¹⁰³ This comment applied to Crimea (the Soviet leader Nikita Khrushchev ‘gave’ Crimea to Soviet Ukraine from Soviet Russia in 1954, while it was within the Soviet Union), but Putin’s comments could easily be extended to other contexts. In the post-Soviet space, Russia has not recognized *uti possidetis* as a universally binding principle of international law and has reserved exclusively for itself the right to make exceptions to this principle, even if the grounds for such exceptions are not recognized by the overwhelming majority of other states. This illustrates the tension between the universalistic concept of international law emphasizing one legal principle or solution, *uti possidetis*, and the exceptionalist approach of a former empire with regard to its former imperial territories.

IV. CONCLUSION

Rather than accept the complete application of *universal international law* and genuine sovereign equality of states, post-Soviet Russia has instead promoted elements of *regional international law* through Russian regional hegemony. Russia has not yet succeeded in doing so for the entirety of the post-Soviet space, but for many members of the EEU and CSTO (the E.U. and NATO of post-Soviet Eurasia, respectively) Russia’s geopolitical supremacy in post-Soviet space is obvious. These

102. See Steven Ratner, *Drawing a Better Line: Uti Possidetis and the Borders of New States*, 90 AM. J. INT’L L. 590, 613–14 (1996) (criticizing both the Badinter Commission’s interpretation as well as its applications of the *uti possidetis* principle).

103. See Artem Girsh, *Putin rasskazal o ‘mine zamedlennogo deistvia’ v Konstitutsii SSSR [Putin Told About the ‘Slow-Impact Mine’ in the Constitution of the USSR]*, VEDOMOSTI (July 5, 2020), <https://www.vedomosti.ru/politics/news/2020/07/05/833979-putin-rasskazal-o-konstitutsii>.

states do not object to Russia's violations of international law on the universal level, despite significant criticism from the West. Regional international law in post-Soviet Eurasia is characterized by struggles around identity and characterizing 'who belongs' and 'who must belong' to the formal and informal arrangements of post-Soviet Eurasia, versus who can 'opt out.' Georgia and Ukraine have experienced the military-territorial implications of resisting the Russian-led regional order. The situation may be the toughest for Ukraine, as even after the annexation of Crimea and the *de facto* detachment of the Donbass region in 2014 certain Russian analysts continue to publicly call for Ukraine's further disintegration.¹⁰⁴ After the universal applicability of the principle of *uti possidetis* has been attacked once, it is easier to create further *de facto* exceptions from it, and then let history decide.

State practice is essential to the creation of international law, and as the saying goes, between equal rights, the more powerful party will prevail. Moscow hopes to enforce its own regional order in post-Soviet Eurasia with its strength, even at the cost of its international reputation. Non-recognition is surely a moral and sometimes logistical and economic burden for post-Soviet Russia, but the determined regional power fervently wants to maintain its historical hegemony and will not be swayed. Russia asks in the face of criticism: what else can they do? Ultimately, the West has significant interests in the post-Soviet space, including business interests, and Russia knows that as the West has imposed sanctions and economic relations have deteriorated, for example NATO's security guarantees in the region do not extend beyond its member States.

The Russian capacity to create, or rather maintain, its desired regional order as a surrogate for its earlier empire has its own limits. It is significant that not even the closest allies of Moscow in the post-Soviet, integrated space have recognized Abkhazia and South Ossetia as sovereign states, nor Crimea as a part of Russia. The governments in Belarus, Kazakhstan, and

104. See, e.g., Alexander A. Khranchikhin, *Poluraspad Ukrainy: Samorazrushenie sosednego gosudarstva neset Rossii tol'ko pol'zu* [*Half-Disintegration of Ukraine: Self-Destruction of the Neighbor Country is Only Beneficial for Russia*], NEZAVISIMAYA GAZETA (Mar. 11, 2021), https://nvo.ng.ru/gpolit/2021-03-11/8_1132_ukraine.html (arguing that Moscow's policy towards Ukraine should be to encourage its collapse into several parts).

beyond are very aware that once they abandon the principle of *uti possidetis*, they too could become victims of Russian territorial adjustments.

The aim of the present article is not to 'justify' Russia's actions under international law, but rather to demonstrate that beyond being violations of international law for the majority of states, Russia is pursuing a strategy of regional, hegemonic international law. Under this vision of international law, Russia possesses a special, historically-justified right to intervene in post-Soviet States and to re-allocate their territories.