

Working Paper:

A reversal of positions rather than of law: Protracted contestation over the status of Kosovo, South Ossetia and Abkhazia

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Introduction

The contradictory positions that the United States and Russia adopted over the status of Kosovo, South Ossetia and Abkhazia seem to show international law's negligible influence on great power politics (Müllerson, 2009; Ryngaert and Sobrie, 2011). Even though their inconsistent interpretations weakened individual norms, I find that their arguments reveal respect for international law rather than disregard.

Kosovo, South Ossetia and Abkhazia declared independence within short succession in 2008. The US and most European states accepted Kosovo's claim to independence and framed Kosovo as a *sui generis* or special case that requires an exception to the right to territorial integrity and sovereignty. Russia, Serbia and many other states disagreed with this assessment and emphasized Serbia's territorial integrity and sovereignty. Half a year later, after a short war between Russia and Georgia in August 2008, South Ossetia and Abkhazia announced their independence from Georgia. Russia was quick to recognize these territories as states and framed this decision as necessary due to Georgian aggression and atrocities towards these people, effectively invoking a right to remedial self-determination. Now, the US, the EU and most other states insisted on Georgia's territorial integrity and sovereignty and rejected South Ossetia's and Abkhazia's claims to independence. Because the US and Russia reversed their stance in two similar situations in a short timeframe, some see these reactions as a textbook example of hypocrisy and great power politics. Why can states interpret international law in contradictory ways in similar situations? What effect does such hypocrisy have on international law?

Norms of international law are often ambiguous or in tension with each other, which gives rise to debates over their application (Sandholtz, 2008; Krook and True, 2012; O'Mahoney, 2014). The contradictory application of "state sovereignty" and the "right to self-determination"

weakened these norms by increasing ambiguity. A fine-grained analysis of the justificatory discourse shows that states nevertheless paid respect to international law. The US's careful framing of Kosovo's independence as a *sui generis* case acknowledges that setting a precedent could lead to unwanted future obligations. Similarly, Russia's reliance on legal arguments—sometimes very detailed ones—to justify its recognition of South Ossetia and Abkhazia indicates that Russia considers international law a persuasive tool of argumentation. Thus, international law shapes and constrains behavior, even when states behave hypocritically and try to carve out exceptions for themselves or unduly twist its terms.

Furthermore, I find that contradictory positions and protracted contestation are sustainable when states receive sufficient social support for their respective interpretations: when states have the backing of their in-group—states with a similar identity—or their interpretations only receive muted criticism, they can mitigate the social and material costs of disagreements on norm implementation. Such social support allows states to avoid “rhetorical entrapment”, namely having to accept unwanted obligations because of their prior norm interpretations to prevent the social and material costs of appearing hypocritical (Johnstone, 2011: 210–11; Krebs and Jackson, 2007: 44–47; Schimmelfennig, 2001: 64). Crucial European states joined the US in accepting Kosovo's independence claim because of the special nature of the case. This mitigated the social and material costs of dissent from Russia and other out-group members. Russia, on the other hand, only received lackluster support from its in-group, if at all, for invoking remedial self-determination to justify its recognition of South Ossetia and Abkhazia as independent states. However, domestic support and out-group members toning down their criticism over time rendered this norm interpretation sustainable.

Thus, like other deliberation scholars, I find that joint membership in a community adds strength to arguments and that justificatory discourse matters. However, scholars so far have either treated all members of the interpretive community as equally important or narrowly focused on regional groupings. Thus, they have trouble explaining why the reactions of some actors are more influential than those of others for a state's ability to engage in contestation. Scholars also tend to focus on positions rather than on arguments, and on the effect of contestation on individual norms rather than on international law as a whole. By overlooking argumentation strategies, scholars risk underestimating international law's impact on state behavior. This article shows that differentiating between different audience members and legal argumentation strategies allows us to better explain international law's influence on decision-

making and the limits of rhetorical entrapment. I rely on content analysis of official documents such as press releases, on interviews with diplomats and findings of the secondary literature in my case study analysis.

This article proceeds as follows. First, I provide an overview of discursive approaches to contestation and change. I explain why it is necessary to differentiate between different arguments and audiences, and I specify observable implications of exceptionalism, generally applicable norm change and in-group/out-group reactions. I then provide background information on the contested norms and on Kosovo's, South Ossetia's and Abkhazia's independence claims. I also discuss the implications of the protracted contestation that we see in these cases. Third, I rely on case study analysis to show that social support from crucial in-group members or muted criticism has made these contradictory positions so persistent. Further, the case study analysis illustrates my argument that the US's exceptionalism and Russia's quasi-legal arguments show respect for international law rather than disregard. The last section concludes that even when it seems that powerful states twist the law, discourse analysis can show that international law still shapes and constrains state behavior.

Theorizing “rhetorical escape”

Discursive approaches to norm contestation and change

Norm scholars first focused on explaining how norms affect state behavior in anarchical international relations. To do so, they often treated norms as relatively static and clear. Finnemore and Sikkink (1998: 895), for instance, argue that once established and internalized “norms acquire a taken-for-granted quality and are no longer a matter of broad public debate.” They thus cannot explain why established legal norms such as the prohibition of torture (Keating, 2014), or the right to self-defense (Brunnée and Toope, 2019) continue to be contested.

Norm scholars are now challenging the assumption of clear and static norm meaning, pointing to ambiguities and tensions in the international legal framework that give rise to debate (Sandholtz, 2008; Krook and True, 2012; O'Mahoney, 2014; Deitelhoff and Zimmermann, 2018). Understandings of norms differ because their application to a specific situation can raise

questions about which norm applies, and, if a certain norm applies, what it means (Sandholtz, 2008: 102–104). Norm implementation and contestation leave their mark, making a norm “weaker or stronger, more clear or less, more specific or less, more qualified by exceptions or less, but it cannot remain unchanged” (Ibid.: 110). As Krook and True (2012: 104) put it, norms are “processes” rather than “things”. To examine this process that elucidates different (or shared) understandings of what norms or “standards of appropriate behavior” (Finnemore and Sikkink, 1998: 891) mean, scholars examine the justificatory discourse that surrounds their application (Johnstone, 2011; Bower, 2015; Brunnée and Toope, 2019).¹ The arguments reflect what actors understand under abstract norms such as “sovereignty” and “self-determination”, and whether their understandings converge or diverge. As state consent is necessary to develop international law further, the interpretations of states are particularly insightful (Bederman, 2010: 34-35).

A view of norms as discursive processes does not, however, connote that norm meaning is so malleable as to render norms incapable of giving behavioral guidance.² The “dual quality” of norms as both structuring and constructed (Wiener, 2004: 191) provides some boundaries: Debate constructs norm meaning, but what is being said also provides a reference point for future debates, and thus structures contestation going forward. As scholars of “rhetorical action” (Schimmelfennig, 2001), “rhetorical coercion” (Krebs and Jackson, 2007) or “strategic argumentation” (Bower, 2015) show, the risk of “rhetorical entrapment” can even pave the way for consensus: as states value their reputation as good community members or reliable cooperation partners, they do not want to be seen as inconsistently applying community standards such as international law. Hence, prior interpretations and commitments can “entrap” states into accepting unwanted interpretations in the future. However, as the ongoing debates over the status of Kosovo, South Ossetia and Abkhazia show, rhetorical entrapment does not always work. The recognition of Kosovo’s statehood has neither entrapped the US and European states to recognize South Ossetia’s and Abkhazia’s statehood (and later Crimea’s) nor Russia to uphold the sovereignty and territorial integrity of the motherlands. Furthermore, their prior commitment to the well-established territorial integrity and sovereignty norms has prevented neither dispute party from recognizing the statehood of these contested territories.

¹ However, see Stimmer and Wisken (2019) on why actions can matter more than words.

² For an opposite view of norms as contested “all the way down”, see Niemann and Schillinger, 2017.

While rhetoric scholars offer a few hypotheses for the conditions under which states can avoid rhetorical entrapment, a detailed analysis of “rhetorical escape” is missing. As rhetorical entrapment implies widespread agreement on a norm interpretation, these scholars have treated the opinions of all states as similarly important. As I will illustrate, differentiating between different audience members, and acknowledging that the support of some states is more important than of others, helps us to understand what makes contestation sustainable.

As the duration and impact of contestation varies, scholars have started to theorize how contestation affects the robustness of international norms. They argue that protracted contestation weakens norms as it increases imprecision and uncertainty over how to apply a norm in similar situations. Deitelhoff and Zimmermann (2018: 7) distinguish between “validity” contestation, which challenges the core meaning of a norm, and “applicatory” contestation, over the correct application of a norm. They (2019: 8) find that while validity contestation is weakening *per se*, applicatory contestation is only weakening when it becomes permanent and there is no renewed consensus or compromise over a long time. Stimmer (2019) distinguishes between frame contestation over the applicable norm, and claim contestation over the behavior it requires. She argues that contestation over both the frame and claim, and thus a “norm impasse”, is most weakening. Such disagreements give the least guidance on what appropriate behavior looks like in a given situation. Hence, the protracted applicatory contestation or norm impasse over the status of Kosovo, South Ossetia and Abkhazia have weakened the norms of “sovereignty” and “self-determination”. These unresolved disputes have increased uncertainty over where one norm frame ends and another begins, and over when independence claims and recognitions of statehood are appropriate.

Thus, the protracted contestation over the status of these territories weakened these norms. However, a narrow focus on the effect of contestation on individual norms does not capture the implications for international law as a whole. The dominant interpretation of these (non)recognition disputes is that they expose the limits of international law. Realists charge the US and Russia with hypocrisy and cite their contradictory positions as evidence that international law does not influence state behavior. Müllerson (2009: 3-5), for instance, argues that references to the uniqueness of a case mask considerations of power and self-interest and expose the limits of international law. Borgen (2009: 25) also concludes from the *sui generis* argument that the “US seems to try to duck the issue of legality when the law does not suit its purpose.” However, he sees Russia's stronger reliance on legal arguments as an indicator for

the strategic value of international law. Even international lawyers see a reason for pessimism: Ryngaert and Sobrie (2011: 481) conclude that international law only played a minor role in determining the status of Kosovo, South Ossetia and Abkhazia because states were seriously divided on recognition.

However, I find that a more fine-grained analysis of the arguments that states used reveals respect rather than disregard of the institution of international law. My analysis of statements of senior politicians and diplomats and of interviews with decision-makers indicates that they take international law seriously and that international law has structured the debate. Rather than disregard, the US's careful framing of the Kosovo case as a *sui generis* case shows awareness that setting a precedent could lead to unwanted future obligations. Similarly, Russia uses legal arguments to justify its recognition of South Ossetia and Abkhazia, even if they are of questionable quality. Russia's use of (quasi-)legal language indicates that Russia considers international law a persuasive tool of argumentation. Regardless of the motivations behind these arguments, they indicate that there is a social expectation to use legal justifications, which shapes and constrains debates over norm implementation.

Disaggregating justificatory discourse and audience reactions

Justificatory Discourse

We can distinguish between states who portray their norm interpretation as a generally applicable precedent and those who prefer to engage in exceptionalism to avoid making long-term commitments.

When a norm interpretation becomes widely accepted, states can set a *generally applicable precedent*. Following Finnemore and Sikkink (1998: 901), a tipping point of one-third of states has to consent, including “critical states (...) without which the achievement of the substantive norm goal is compromised”. In norm contestation, actors are critical when their institutional position makes their norm interpretations decisive for the achievement of the substantive norm goal (Barnett and Duvall, 2005: 51–52; Busby, 2007: 254.). In security disputes such as secession conflicts, the five permanent United Nations Security Council (UNSC) members (P5) are critical. Their affirmative vote or abstention is necessary for meaningful statehood.

Social acceptance not only avoids reputational costs for deviating from the law but also bears the potential to impress ideas on others and to influence their future actions. This legitimizing quality comes from norms' function as "standards of appropriate behavior". The state with the winning interpretation has the chance to cement its preferences and to hold others to account in the future (Krisch, 2005). Thus, the acceptance of a new interpretation can be a source of influence and power. Ikenberry and Kupchan (1990) and Krisch (2005) argue that norm-setting has always been an important tool in the hegemon's quest for influence.

Russia relied on this argumentative strategy. Russia's interpretations of the right to self-determination and the prerequisites for recognition were not couched as exceptions but as generally applicable interpretations. Furthermore, regardless of the quality of the legal arguments that decision-makers bring forward, by using the language of the law, states recognize its influence and that there is a social expectation to provide legal justifications.

However, norm-setting also comes with a cost: if the state seeks to deviate from its interpretation in the future, it faces social costs for acting "inappropriately" that can diminish standing and cooperation from others. Thus, even the most powerful state may be forced to bring its behavior in line with its prior normative commitments. Precisely because of this risk of future entrapment, states sometimes try to carve out exceptions for themselves. We see *exceptionalism* when an actor seeks to keep the generally agreed-on consensus interpretation intact but also to engage in a practice that others may consider prohibited under the norm. States sometimes engage in exceptionalism because they want other norm addressees to still be bound by the consensus interpretation. Rubinfeld (2004) sees such exceptionalism at the heart of the US's attitude towards international law, particularly human rights.

Thus, we see exceptionalism when states publicly affirm that a norm interpretation is an exception to a rule and communicate the intent to prevent a redefinition of the existing consensus. US ambassador to the UN, Zalmay Khalilzad, amongst others, framed Kosovo as a unique or *sui generis* case. He stated that "[w]e have not, do not and will not accept the Kosovo example as a precedent for any other conflict or dispute" (UNSC Doc. S/PV.5839, 2008: 19). Similarly, to justify its abstention from UNSC Resolution 1973, China relied on exceptionalism: China referred to the "special circumstances" to explain its agreement to a no-fly zone over Libya, while emphasizing its general prioritization of sovereignty and territorial integrity (UNSC Doc. S/PV.6498, 2011: 10).

While such exceptionalism allows contestants to advance other norms in the future, it also relies on other states accepting the special nature of the case. Otherwise, exceptionalism increases confusion over what legal principles apply. Other states may portray the *sui generis* case as an example of a new trend. As states remain divided over Kosovo's statehood and the special nature of the case, the US's exceptionalism did not gain sufficient traction. As a result, uncertainty over the relationship between sovereignty and self-determination increased and weakened these norms.

Nevertheless, exceptionalism shows respect for international law: by phrasing an action as an exception to a generally applicable rule, states acknowledge the risk of setting unwanted precedents, and thus international law's influence on state behavior. This insight refines our understanding of international law. Deitelhoff and Zimmermann (2018; 2019) and Stimmer (2019) focus on the effect of contestation on the robustness of individual norms. They have not yet examined what different types of arguments reveal about the robustness of international law as a whole. And those scholars who characterize international law have not yet fully explored what different argumentation strategies reveal about international law's influence on state behavior. Positivist approaches prioritize the formal status of rules rather than their social acceptance when making judgements about law's validity and influence.³ Brunnée and Toope's (2019: 75) interactional account of international law acknowledges that practices such as interpretation, argumentation and justification are "what makes, maintains, changes and destroys international law." However, they (2010) mainly focus on identifying which international norms constitute law by applying Lon Fuller's criteria of legality. They have little to say about the attitudes to international law that the arguments that states bring forward reflect.

To conclude, the US's reliance on exceptionalism and Russia's reliance on quasi-legal arguments shows that there is a general expectation for states to present legal justifications, however solid, for their actions, and that states take this task seriously. The inability of states to reach consensus on the status of Kosovo, South Ossetia and Abkhazia also shows that the better (legal) argument does not always win. The reactions of key audience members can make contestation sustainable.

³ For a similar criticism, see Brunnée and Toope, 2019: 74-75.

Audience reactions

Rhetoric scholars agree that rhetorical entrapment only works when states form part of a community of values or in-group (Johnston, 2008: 497; Krebs and Jackson, 2007: 56; Schimmelfennig, 2001: 62-63). In-group members share values (Schimmelfennig, 2001: 62-63) or expectations about acceptable arguments (Krebs and Jackson, 2007: 56) that they can use to (de)legitimize norm interpretations. Therefore, these scholars concentrate on disputes within in-groups. However, international law consists of a shared set of values that actors can mobilize (Johnstone, 2011). Furthermore, many instances of contestation occur across different communities of values which should be included in the analysis.

Hence, Johnstone (2011: 33-54) broadens the analysis and, drawing on Stanley Fish, argues that an interpretive community judges the validity of interpretations and thereby refines international law. The interpretive community consists of three concentric circles and its influence depends on its ability to make credible legal judgments and on how unified it is. However, Johnstone does not specify how these circles or audiences interact and whose opinions matter when different elements of the interpretive community favor different interpretations.

Differentiating between communities of values helps identify the limits of rhetorical entrapment. Here, the distinction between states with a different identity (out-group members) and states with a similar identity (in-group members) is an important one. The reactions of in-group members are particularly influential. What Johnston (2008: 79) calls “social influence” is at play here: because of real or imagined group pressure, an actor conforms with the position advocated by the group. This effect derives from identification with the group. Different sociological theories trace the pressure to conform back to the desire to be liked by a similar group, to be consistent with prior commitments, or to the desire to maximize social status and prestige, which publicly affirm the actor’s worth (Ibid.: 80-84). Hence, when in-group members criticize a powerful state’s proposed interpretation, the (cognitive, social or material)

costs of upholding the contested norm interpretation may become too high.⁴ This effect becomes stronger the more ties in-group members share. Simply put, the opinions of allies and friends weigh more heavily than those of adversaries and strangers (Johnston, 2008: 84).

The categories of in-groups and out-groups imply a dichotomy, but relationships are never that clear-cut. It is a theoretical language to talk about separation. While we allocate actors to one group or the other in theory, in reality, there are many blends and combinations in between. Take, for example, the relationship between the US, UK and France (the so-called P3), on one side, and Russia and China on the other. The in-group/out-group language captures that we often see differences between these groups of states. However, if we were studying the relationship between non-governmental organizations and states, we would classify those five states as in-group members. Thus, these two categories are fluid and context-dependent.

International organizations (IOs) are a good indicator of in-group membership: states establish them “to act as a representative or embodiment of a community of states” (Abbott and Snidal, 1998: 24). This effect is strongest for IOs that are selective in their membership criteria. Selective membership criteria imply that those who participate in the organization have to share similar values and goals. Hence, a regional organization such as the EU is a tighter-knit in-group than the UN, which has almost universal membership. Therefore, rhetoric scholars in IR who focus on disputes within in-groups cite regional organizations as the venue where rhetorical coercion works best (Krebs and Jackson, 2007: 56) or focus their analysis on contestation within regional organizations (Schimmelfennig, 2001). Hence, we can identify in-group members as members of institutions with selective membership criteria in the subject-area under contention. Those members with the greatest decision-making privileges matter most. Treating institutions as proxy for in-groups acknowledges the important role they play in norm contestation. Institutions are a forum for debate and keep records of prior justifications. They thus provide “information about the degree to which actors are behaving in ways consistent with this shared understanding” (Johnston, 2008: 86) of a norm.

The two secession disputes involve security considerations and took place in the Balkans and Caucasus, and thus in the vicinity of Russia. Therefore, regional security organizations are a good indicator for the countries of Russia’s in-group whose opinions matter most in the debates

⁴ For an explanation of what causes in-group support, see author xxx.

over the status of Kosovo, South Ossetia and Abkhazia. I treat the members of Eurasian security organizations, the Collective Security Treaty Organization (CSTO) and the Shanghai Cooperation Organization (SCO), as Russia's core in-group.⁵ The Commonwealth of Independent States (CIS) is also of importance to Russia as these former Soviet Republics do not form part of the EU: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, and Uzbekistan. The membership of all three organizations overlaps, further indicating the close relations between these countries. The reactions of Eurasian security organizations, and thus of Russia's in-group affected Russia's ability to uphold its norm interpretations. These states were reluctant to recognize the statehood of all three territories. However, their criticism of Russia's recognition of South Ossetia's and Abkhazia's statehood was muted, making it easier for Russia to shoulder the social costs of their dissent.

Given that in-group and out-group membership is fluid and context-dependent, institutional membership is one way to measure in-group membership, but not the only one. Another indicator is whether countries have a shared culture or history, as shared values and experiences lead to greater identification with others. The relationship between the US and Western Europe serves as an example.

When it comes to the P5 UNSC members, the US, UK and France share a similar culture, history and values and often work in tandem. Dissent from Russia and China weighs less heavily for P3 states than disagreement among themselves as there are less material, ideational and social ties. The P3, for instance, launched strikes against Islamic State targets in Syria even though out-group members Russia and China disagreed with their claim that UNSC Resolution 2249 authorized these strikes. However, US President Barack Obama refrained from military action against Syria to enforce his red line on chemical weapons use when the British Parliament did not approve British troop contributions.

Hence, the US sought to secure the support of European states, and thus of key in-group members, for its interpretation of the events in Kosovo and Georgia. Because of greater social and materials ties, their consent lowered the costs of dissent from critical out-group members.

⁵ The SCO comprised Russia, China, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan in 2008. Pakistan and India joined in 2017. The CSTO members are Russia, Kazakhstan, Armenia, Kyrgyzstan, Tajikistan and Belarus.

On the other hand, when in-groups do not openly support a state's norm interpretation, the interpretation becomes difficult to uphold. Keating finds that once European states started to criticize the Bush administration's attempts to reinterpret the prohibition of torture after 9/11, these interpretations became less sustainable (Keating, 2014). In-group dissent inflicts more shame or reputational costs due to stronger (cognitive, social and material) ties with in-group members that give their opinions weight.

However, there are mitigating factors: when dissent is muted and domestic audiences are supportive, in-group dissent is easier to shoulder. Public criticism is necessary to quell unwanted obligations under international law. Thus, we see consensus on a norm interpretation, both when states voice support and when they remain silent (Thirlway, 2014: 103). There are, of course, gradations between silence and agreement. When other states object loudly to an interpretation, the shaming effect and reputational costs are stronger than when the criticism is relatively subdued. Clear and open criticism implies strong feelings that international law was unduly twisted. Vague criticism reflects more ambivalence and thus can be more easily discarded without fearing adverse consequences for social standing and cooperation. In-group members did not endorse Russia's recognition of South Ossetia and Abkhazia based on arguments of remedial self-determination, but their criticism was very muted. This made the dissent more manageable.

The same applies to the reactions of out-group members. Clear criticism from out-group members is less influential than criticism from in-group members because the relationship is not as significant. However, when out-group members' criticism weakens over time or is very muted, it can somewhat mitigate lack of support from a state's in-group, particularly if in-group dissent is muted, too. Russia could also uphold its recognition of South Ossetia's and Abkhazia's independence because the US and EU member states soon toned down their criticism. Lastly, domestic preferences count. Robert Putnam (1988) has portrayed treaty-negotiations as a two-level game of international and domestic factors, whereby strong domestic limitations on what negotiators can agree to can strengthen their international bargaining positions.

If in-group/out-group considerations matter, then we should see special efforts by the US and Russia to gain the support of their respective in-groups, namely European countries and

member states of Eurasian security organizations. Further, we would expect efforts to prevent the other's in-group from endorsing unwanted norm interpretations.

The disputes over the status of Kosovo, South Ossetia and Abkhazia

I will now provide a brief overview of the contested norms and of the events that led to the contested independence claims before engaging in a fine-grained analysis of the contestants' positions.

Contested norms

Legal ambiguities facilitated this norm contestation. Sovereignty is the guiding principle of international relations (Hurd, 1999: 393). This right to self-governance and territorial integrity of each state is well-established and enshrined in Article 2 of the UN Charter. Similarly, the right to self-determination features in the UN Charter and human rights treaties. Since Woodrow Wilson proposed the right to self-determination after the First World War, who holds this right and what it entails has been subject of debate. In the 1960s, it has become clear that it extends to secessionist claims of colonies (Borgen, 2009: 6–10), but its relationship to minority rights is more complicated. Given the right to territorial integrity of states, minorities primarily have the right to internal self-determination and thus to minority rights within a state. However, in case of repeated and extreme human rights violations, the Friendly Relations Declaration, which the International Court of Justice (ICJ) recognizes as customary international law, is often interpreted as giving minorities the right to external self-determination and thus to remedial secession (Müllerson, 2009: 18–21; Ryngaert and Sobrie, 2011: 485–487). However, state practice has so far not supported such a right to “remedial self-determination” and the framers of the Friendly Relations Declaration may not have intended to give rise to it (Weller, 2009: 272–275). What triggers this right to remedial secession, for example what threshold of abuse has to be reached, is not well-defined. This is the subject of much debate among lawyers and politicians as the secessionist claims of Kosovo, South Ossetia and Abkhazia illustrate.

Historical Overview

All three territories share a similar history: they are regions with large ethnic minority populations. During the Soviet era, Kosovo, South Ossetia and Abkhazia were granted significant autonomy. After the break-up of the Soviet Union, Serbia and Georgia scaled back those entitlements to self-governance, which led to tensions, and eventually declarations of independence.

Kosovo

In 1998, the Serbian government starts to commit large scale atrocities against Kosovar Albanians, which a NATO air campaign eventually halted. The UNSC subsequently vested a UN mission, the United Nations Mission in Kosovo (UNMIK), rather than Serbia with the authority to govern Kosovo in the interim and set out a framework for the gradual delegation of power and status negotiations (UNSC S/RES/1244, 1999). The negotiations over Kosovo's statehood remained inconclusive. The UNSC failed to adopt a resolution endorsing UN Special Envoy Martti Ahtisaari's plan for Kosovo's independence after a period of international supervision. Further attempts to find a solution by the Troika (a US, Russian and EU negotiator) failed on 10 December 2007 because "neither side was willing to yield on the basic question of sovereignty" (UNSC Doc. S/2007/723, 2007: 4). Shortly after, on February 17, 2008, the Assembly of Kosovo proclaimed "Kosovo to be an independent and sovereign state" and to "accept fully the obligations for Kosovo contained in the Ahtisaari Plan" (Republic of Kosovo, 2008: para. 1 and 3). The parliament only vaguely referenced self-determination by justifying independence as "[a]nswering the call of the people to build a society that honours human dignity and affirms the pride and purpose of its citizens" (Ibid.: 1). Within a month, the US and most European states, including France and the UK, accepted Kosovo's statehood. When doing so, they framed Kosovo as a "*sui generis*" (Council of the European Union, 2008a: 7; Sawers (UK): UNSC Doc. S/PV.5839, 2008: 14), "special" (Rice 2008) or "unique" (Khalilzad (US): UNSC Doc. S/PV.5839, 2008: 18) case, referring to the human rights abuses and UNMIK administration. The US and EU were also quick to point out that this *sui generis* case does not set a precedent or call into question the principles of sovereignty and territorial integrity (Khalilzad: UNSC Doc. S/PV.5839, 2008: 19; Council of the European Union, 2008a: 7).

However, Serbia, Russia and China disagreed with this interpretation. Russia, the staunchest opponent within the UNSC, stated that it “continues to recognize the Republic of Serbia within its internationally recognized borders” and considers the declaration of independence “a blatant breach” and “illegal act” that “is an open violation of the Republic of Serbia’s sovereignty” (Churkin (Russia): UNSC Doc S/PV.5839, 2008: 6). Hence, the dispute parties reached an impasse: whether Kosovo belongs to Serbia or is an independent state, and whether its declaration of independence violates Serbia’s sovereignty and territorial integrity or not due to its uniqueness remains contested.

The United Nations General Assembly (UNGA) referred the question of the legality of Kosovo’s unilateral declaration of independence to the International Court of Justice (ICJ) (UNGA Doc. A/RES/63/3, 2008). The Court refrained from issuing a verdict on Kosovo’s secession based on a technicality. The ICJ (2010) interpreted the UNGA’s question as requesting an opinion on whether the *act* of declaring independence rather than independence itself was legal. As a result, both sides continue to argue over the legality of Kosovo’s independence.

This protracted contestation increases normative uncertainty in similar situations and thus weakens these norms, but it also affects Kosovo’s ability to enter into relations with other states. As of today, roughly half of all states—104—have recognized Kosovo’s statehood.⁶ Due to Russia’s veto power and willingness to block Kosovo’s UN membership, Kosovo’s ability to function as a member of the international community is limited.⁷

South Ossetia and Abkhazia

After Kosovo’s declaration of independence, South Ossetia and Abkhazia’s calls for independence grew stronger. After the break-up of the Soviet Union, a civil war within Georgia erupted. With Russian support, South Ossetia and Abkhazia have effectively been separated from Georgia since 1992 and 1993. Russia has held a military presence in both regions (Borgen

⁶ Note that reports of the number of recognitions differ. In a parliamentary question, the European Parliament reports 104 recognitions, European Parliament (2018), whereas the Ministry of Foreign Affairs of the Republic of Kosovo (2019) reports 116.

⁷ MEP Dominique Bilde writes to the Commission: “Incidentally, Kosovo is still finding admission to leading international organisations difficult; its application to join Interpol was refused on 20 November 2018.” European Parliament (2018).

2009: 4-5). In 2008, tensions between Georgia and South Ossetia and Abkhazia culminated in a war between Russia and Georgia in August 2008. Both Georgia and South Ossetia claim that the other side fired the first shot. Russian military forces made in-roads into Georgia and came within close distance of the Georgian capital, Tbilisi, before withdrawing after a cease-fire was brokered (Ibid.: 5-6). South Ossetian and Abkhazian leaders and demonstrators appealed to Russian President Medvedev and the Federal Assembly to recognize their territories' independence and statehood. On August 26, 2008, Medvedev signed decrees that recognize Abkhazia and South Ossetia as independent states (Churkin: UNSC Doc. S/PV.5969, 2008: 6-7).

Russia referred to the Friendly Relations Declaration and the right to self-determination, stating that “in accordance with the Declaration, every State must refrain from any violent actions that might deprive people of their right to self-determination, freedom and independence” (Ibid.: 9). Georgian President “Saakashvili left them with no other choice but to provide for their own security and to seek to exercise the right to self-determination as independent States” (Ibid.: 8).

Georgia, the US, European countries and many others condemned this recognition and “Russia’s disregard for Georgia’s territorial integrity.”⁸ While countries such as Belarus initially expressed support for Russia’s position (RIA Novosti, 2008b), currently only five states formally recognize South Ossetia’s and Abkhazia’s statehood (TASS Russian News Agency, 2018). However, Russia’s backing of South Ossetia and Abkhazia’s statehood *de facto* limits Georgia’s reach over these territories, whereas the low number of recognitions limits South Ossetia’s and Abkhazia’s ability to function as members of the international community.

Hence, again, the dispute parties have reached an impasse, but the positions are reversed compared to Kosovo: now the US and Europe emphasize territorial integrity and sovereignty and reject independence, whereas Russia supports secession with an explicit reference to the right to self-determination.

⁸ Wolff (United States): UNSC Doc. S/PV.5969, 2008: 14, but see also Sawers (United Kingdom): 11 and Lacroix (France): 9.

The justificatory discourse

Kosovo

Deliberation scholars who believe in the power of the better (legal) argument (Risse, 2000; Sandholtz, 2008; Johnstone, 2011; Bower, 2015) may have expected that states show more deference to the well-established principles of sovereignty and territorial integrity. The US' and European countries' exceptionalism shows more deference to sovereignty and territorial integrity than might appear at first sight, as it was designed to prevent future commitments that would undermine those rights. Russia's reaction, in turn, illustrates the lasting impact of legal arguments and that setting unwanted precedents is difficult to avoid.

When it became clear that no consensus on the Ahtisaari Plan could be reached and the Troika negotiations failed, preparations for Kosovo declaring independence unilaterally ensued. According to a US diplomat, the US sought to clarify its general commitment to sovereignty and territorial integrity and that Kosovo was not a precedent as the US benefits from small minority regions not breaking away from countries (Interview with US diplomat, New York, 6 October 2017). Other states also had concerns that Kosovo's independence could be cited as a precedent elsewhere (New York Times, 2008; Khalilzad: UNSC Doc. S/PV.5839, 2008: 18). As there is a general concern that secessions lead to tensions and instability, the international community "has built a legal regime that disfavors secession" (Borgen, 2009: 27).

Thus, the US placed great effort into developing the argument that Kosovo was a special case due to the ethnic cleansing, UNSC Resolution 1244 that created a UN administration in the country and the UN-led state talks on Kosovo's independence. When the State Department officially recognized Kosovo's statehood, US Secretary of State Condoleezza Rice (2008) stated:

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

Furthermore, the US Department of State (n.d.) set up a website that lays out the arguments why the "United States considers Kosovo to be a special case that should not be seen as a precedent for other situations."

The US diplomat explains that it was a serious task to come up with the *sui generis* argument and to get the message across: “we spent a lot of time focusing on the no-precedent argument, it was a big mantra – I remember dreaming of it” (Interview with US diplomat, New York, 6 October 2017). European states also repeated this mantra: in the UNSC meeting on Kosovo’s declaration of independence, the UK stated that “the unique circumstances of the violent break-up of the former Yugoslavia and the unprecedented United Nations administration of Kosovo make this a *sui generis* case” (Sawers: UNSC Doc. S/PV.5839, 2008: 14). France also urged others to “recall that this is a unique situation” (Ripert: Ibid.: 20). Furthermore, the Council of the European Union (2008a) described Kosovo as a *sui generis* case. Key governments such as the US helped in drafting Kosovo’s Declaration of Independence (Weller, 2009: 231), which noticeably reiterates that “Kosovo is a special case arising from Yugoslavia’s non-consensual breakup and is not a precedent for any other situation” (The Republic of Kosovo, 2008: 1).

The care and effort that the US put into this argument show how seriously it takes international law. The US was aware of the risk of supporting Kosovo’s independence claim: it could set an unwanted precedent that triggers secession movements elsewhere. Hence, the US and European states sought to avoid entrapment by laying out the reasons why they considered Kosovo to be a *sui generis* case. Rather than ignorance, this strategy shows respect for the law. The US and European states did not wish to put the general applicability of the principles of territorial integrity and sovereignty into question.

The *sui generis* frame has the advantage that it holds the potential for consistency: in similar situations, the US and European states can still advance “territorial integrity” and “sovereignty”. When accused of double standards, they can refer to the historical contingencies that in their view made Kosovo a *sui generis* case. However, historical and legal intricacies take effort to explain to key audiences. There is little that prevents others from drawing analogies in similar situations and from using Kosovo as a pretext or precedent for their recognitions of independence. Three days before Kosovo’s declaration of independence, on 14 February 2008, Russian President Vladimir Putin (2008) stated:

We think that to support a unilateral declaration of independence by Kosovo is amoral and against the law... there has been a de facto independent Republic of Northern Cyprus for 40 years now. Why don’t you recognise it? Are you Europeans not ashamed to apply double standards in settling one and the same issue in different

parts of the world? Here in this region we have Abkhazia, South Ossetia and Trans-Dniester that exist as independent states. We are always being told that Kosovo is a special case. This is all lies. There is nothing so special about Kosovo and everyone knows this full well.

Putin's statement and Russia's recognition of South Ossetia and Abkhazia half a year later indicates the difficulty of preventing unwanted precedents. The *sui generis* argument did not convince everyone. Russia rejected Kosovo's independence and insisted on Serbia's territorial integrity and sovereignty, and half of the world has not recognized Kosovo's statehood. Hence, this norm contestation has reduced clarity over the norms governing secessionist conflicts. This uncertainty weakens these norms. However, the *sui generis* argument shows respect for international law and awareness of the risk of rhetorical entrapment. Despite being the most materially powerful country in the world, the US could not sway everyone's opinion; but gathering the support from European countries was sufficient to avoid entrapment and to engage in contestation.

South Ossetia and Abkhazia

Six months later, when Russia recognized South Ossetia and Abkhazia, we see a reversal of sides: This time, the US, European countries, and most others, emphasized Georgia's territorial integrity and sovereignty and rejected independence, whereas Russia and four other countries have recognized these territories. However, Russia, unlike the US and others, did not rely on exceptionalism but framed the case as one of "remedial self-determination".

To examine Russia's justificatory discourse, I searched and analyzed the official publications of the President of Russia, compiled by the Kremlin, and coded the arguments that Russia used.⁹ An analysis of these press releases and interviews indicates that Russia mostly relied on the "remedial self-determination" frame. This argument was not exceptionalist in nature but could have the effect of setting a precedent if others accepted it. However, Russia's legal arguments are not as canonical as Russian decision-makers presented them to be. Hence, while Russia may have deemed these interpretations popular with domestic audiences, they were not well suited to convincing other states.

⁹ See <http://en.kremlin.ru/search> (English Translations). Keywords: South Ossetia | Abkhazia | Georgia. Timeframe: 01.08.2006-01.08.2010. The vertical dash guarantees that at least one of the search terms figures in the document. The search generated 99 publications with 237 hits.

Russia's argumentation strategy is sometimes portrayed as also relying on a *sui generis* argument (Toal, 2017: 188), or as showing more deference to the law than the US in the Kosovo case (Borgen, 2009). However, a detailed analysis of Russian statements indicates that neither is the case. Russian President Dmitry Medvedev rarely drew comparisons to Kosovo or framed South Ossetia and Abkhazia as *sui generis* cases. The *CNN* Interview that Toal quotes is an exception. There Medvedev (2008a) stated: "Our colleagues said more than once that Kosovo was a *causus sui generis*, a special case. But in that case, we can also say that South Ossetia and Abkhazia are also *sui generis*." However, when explaining to the reporter why Russia's different responses to both conflicts did not indicate "double standards", Medvedev (2008a) pointed to differences between both cases. He couched his argument in terms that suggest a promotion of the right to "remedial self-determination":

But in this particular case, in our opinion, the situation existed for 17 years, during which ethnic cleansing was conducted and cases of genocide took place, both in the early 90s and now it has happened again. So, the situation in this particular case is quite different and therefore we believe that under the UN Charter, the Declaration of 1970 and the Helsinki Act of 1975 we have every legal ground to recognize the independence of these two republics.

Remedial self-determination is the idea that when we see a severe lack of representation or repression of a territorially defined segment of the population, this group has the right to secede (Weller, 2009: 272). Some see this right supported by the Friendly Relations Declaration of 1970, to which Medvedev refers, amongst others. However, as Weller (2009: 272-275) argues, state practice so far has not supported this right and it is questionable whether the framers of the Friendly Relations Declaration intended to establish it.

Even though this argument does not rest well on factual and legal terms, Russia put it front, right and center. Time and again, Russia portrayed Georgia's actions as leaving South Ossetia and Abkhazia with no other choice but to seek independence:

We have tried repeatedly over these last 17 years to preserve Georgia's territorial integrity... This has not achieved results. In August, the Saakashvili regime launched an unprecedented new, insolent and bloody aggression. By doing so he ended hopes for a unified state in which Georgians, Ossetians and Abkhazians could live together. In this situation, to protect these people's interests and give them the chance to realise their right to self-determination, we made this decision in accordance with international law and the UN Charter (Medvedev, 2008b).¹⁰

¹⁰ See also Churkin: UNSC Doc. S/PV.5969, 2008: 8.

Furthermore, Medvedev (2008e) argued that “[w]e have recognised these two new subjects of international law. From the point of view of international law, these two subjects now exist.” Here too, Russia couches its argument in legal terms, despite little support for this legal interpretation. Scholars debate whether recognition is a constitutive element of statehood or a declaratory one with the reality probably lying somewhere in the middle: a state needs to be able to enter into relations with other states but also display the three main elements of statehood—defined territory, population and government—to be able to function as a state (Bederman, 2010: 57). Under neither of these theories is the recognition of a state by one other state what brings a state into existence.

While Borgen (2009: 25) concedes that Russia’s arguments tend to be quasi-legal, he nevertheless concludes that unlike the US’s *sui generis* argument on Kosovo, Russia “maintains rhetoric that shows its concern for the norms of international law.” Since Russia used controversial legal concepts at best, this use of quasi-legal rhetoric is better understood as giving the appearance of taking international law seriously than as actual deference. However, this rhetoric shows that Russia considers references to international law as an argumentation strategy that has the potential to convince key audiences. Otherwise decision-makers would not engage in that kind of discourse.

Russia’s use of legalistic discourse also shows that there is an expectation for states to justify their actions in legal terms. This expectation can generate acceptance of the law or law-abidance, but it does not automatically do so. The reactions of other states are crucial. Most other states were not convinced as the low number of recognitions of South Ossetia and Abkhazia show. They rejected the Russian frame of “remedial self-determination”. The US and EU emphasize Georgia’s “independence, sovereignty and territorial integrity recognised by international law, the Final Act of the Helsinki Conference on Security and Cooperation in Europe and UNSC resolutions” (Council of the European Union, 2008b).¹¹

Despite Russia’s use of weak legal arguments as well as its insistence on territorial integrity and sovereignty six months earlier in Kosovo, we do not see entrapment. The reactions of key audiences, particularly domestic support and muted out-group criticism, made Russia’s

¹¹ The US similarly emphasizes Georgia’s sovereignty. See testimony by US Assistant Secretary of State for European and Eurasian Affairs Daniel Fried (2008).

argumentation strategy sustainable. This suggests that Russia's argumentation strategy may not have been intended to convince other states or to set a precedent, given its secessionist conflicts. Instead, the quasi-legal rhetoric may have been directed towards domestic audiences.

Audience reactions

Kosovo

American efforts to secure support for Kosovo's independence from European states show that in-group support is important when norm interpretations are contested. Unlike the US and Russia who soon developed their positions on Kosovo, EU member states differed in their views on Kosovo's independence (Ker-Lindsay, 2011: 123). Hence, the US and Russia, next to Kosovo and Serbia, were the main drivers in this episode of norm contestation.

A US diplomat recalls that when it became clear that there was no UNSC consensus on independence, the US invested all its energy in building support among the 'big Europeans': the UK, France, Germany and Italy. Extensive diplomatic meetings ensued to convince EU member states to support Kosovo's independence (Interview with US diplomat, New York, 6 October 2017). Because states like Spain had their own minority regions, a unanimous EU decision was unlikely, but the US secured the big Europeans', and many others', support for Kosovo's independence. As a result, 17 EU member states immediately recognized Kosovo (New York Times, 2008) – a number that has risen to 23 (European Parliament, 2018).

Furthermore, due to the hesitation of countries like Spain, Cyprus and Greece that faced their own secessionist conflicts, the EU adopted a pragmatic approach (Weller, 2009: 233). The Council of the European Union (2008a) emphasized that each EU member state will decide "in accordance with national practice and international law" whether to recognize Kosovo. At the same time, the Council unanimously stated that "Kosovo constitutes a *sui generis* case which does not call into question these principles and resolutions [UN Charter, Helsinki Final Act and principles of sovereignty and territorial integrity]." Hence, the great majority of EU member states, including the biggest countries, backed the US's support for Kosovo's independence. The EU as a whole endorsed the *sui generis* argument.

The US's efforts to convince European states to support Kosovo's independence show that gaining in-group support matters. A senior EU official's statement indicates that the need for in-group support went both ways: "[t]he cake has been baked because the Americans have promised Kosovo independence. And if Washington recognizes Kosovo and European nations do not follow, it will be a disaster" (Bilefsky, 2008).

Similarly, the perceptions of its in-group and domestic audiences influenced Russia's position. As discussed, I consider member states of Eurasian regional or security organizations, CIS, CSTO and SCO, as Russia's in-group members. None of these countries has recognized Kosovo's statehood (Ministry of Foreign Affairs of the Republic of Kosovo, 2019). This in-group support contributes to making Russia's norm interpretation sustainable.

Furthermore, a critical state for Russia in the Security Council, China, emphasized the applicability of sovereignty and territorial integrity as "one of the cardinal principles of contemporary international law, as enshrined in the Charter of the United Nations" (Wang Guangya: UNSC Doc. S/PV/5839, 2008: 8). While China did not condemn Kosovo's independence claim outright, it did not endorse it either and has not recognized Kosovo's statehood (Weller, 2009: 232).

What is more, Moscow was concerned about domestic public opinion (Ker-Lindsay, 2011: 115). As a survey conducted by the independent Levada-Center (2009: 144) indicates, 40% of respondents preferred Russia to take its own line of action, whereas only 29% favored a coordinated solution with Western countries. Furthermore, 51% of respondents were worried that Kosovo's declaration of independence would escalate tensions. Hence, the preferences of its domestic audience and in-group countries in its near abroad facilitated Russia's opposition to the US's norm interpretation.

South Ossetia and Abkhazia

Russia's legalistic arguments may have given the appearance of taking the law seriously, but the reliance on controversial concepts failed to convince many states. Nevertheless, Russia could uphold its norm interpretation because the social costs of disagreement were low: while Russia's in-group did not agree with Russia's interpretation, its criticism was muted; the same applies to Russia's out-group.

Only six other countries, Nicaragua, Venezuela, Nauru, Syria, Tuvalu and Vanuatu have since joined Russia in recognizing South Ossetia and Abkhazia, two of which (Tuvalu and Vanuatu) subsequently withdrew their recognition (TASS Russian News Agency, 2018). Nevertheless, norm contestation continues because the reactions of critical audiences did not inflict social and material costs on Russia that would have made its argument unsustainable.

US and European decision-makers initially urged Russia to reverse its decision to recognize South Ossetia and Abkhazia (RIA Novosti, 2008a; Russia & CIS Diplomatic Panorama, 2008), but Russia did not heed their calls. While Russia's in-group was reluctant to accept Russia's norm interpretation, such lack of in-group support did not create enough pressure to withdraw recognition as their criticism was subtle. The statement of the SCO fell short of Russian expectations (Borgen, 2009: 18; BBC Monitoring Former Soviet Union, 2008b), but it did not directly criticize Russia's argument that remedial self-determination justifies recognition of South Ossetia and Abkhazia. The Shanghai Cooperation Organization (2008) member states emphasized "the unity of a state and its territorial integrity", thereby signaling disagreement with Russia's framing, but also stated that "they support Russia's active role in promoting peace and cooperation in the region". Similarly, the CSTO, another organization composed of Russia's in-group members, lauded the "active role of the Russian Federation in working toward peace and cooperation in the Caucasus" (Radio Free Europe, 2008) and voiced concern over "Georgia's attempt to resolve the conflict in South Ossetia by force" (quoted in Medvedev 2008d). Yet, CSTO did not endorse Russia's framing or recognition of South Ossetia and Abkhazia.

Perhaps since recognitions were not forthcoming to the extent that Russia had hoped, President Medvedev and Foreign Minister Lavrov started to emphasize that "each country makes its own individual decision on recognition" (Medvedev, 2008c) or that "[r]ecognition is an individual move" (BBC Monitoring Former Soviet Union, 2008a). Medvedev (2008c) used the idea that one recognition is sufficient to establish statehood to downplay the significance of the decision of other states: "It is clear that in this situation some countries will agree to the emergence of new states, while others will consider their emergence untimely. But according to international law, a new state becomes a subject of law, as the lawyers say, from the moment it gains recognition from at least one other country."

Most importantly, the efforts that Russia and its opponents went through to gain support from other countries, particularly those in Russia's near abroad, indicate the importance of in-group support. Belarus, a member state of CIS and CSTO, serves as an example. Shortly after Russia's recognition, Belarusian President Lukashenko sent a message to Medvedev that endorsed the "remedial self-determination" argument: "Under the circumstances, Russia had no other moral choice but to support appeals of South Ossetian and Abkhazian peoples on the recognition of their right to self-determination in line with fundamental international documents" (quoted in RIA Novosti, 2008b). The Belarusian ambassador to Moscow added that Belarus would recognize South Ossetia and Abkhazia in the next couple of days (quoted in Ibid.). However, Belarus's recognition still has not been forthcoming.

Lukashenko faced pressure both from the West and from Russia. He openly accused Russia of blackmail in 2009, saying that Russia made recognition a pre-condition for the receipt of the last \$500 million instalment of a \$2 billion loan (Associated Press, 2009). According to Lukashenko: "While Europe and America have differences on this issue, they acted in concert and have proven to be much stronger than contemporary Russia. You have employed economic and financial levers and personal relations with the leaders of the former Soviet republics so as not to allow South Ossetia's and Abkhazia's consolidated recognition at the present stage" (quoted in Russia & CIS Military Weekly, 2008). In another interview, he talked of threats from the West to cut him off the global financial system if Belarus recognized South Ossetia and Abkhazia (BBC Monitoring Kiev, 2015). Recognition from any country in the former Soviet space would have been very damaging for Georgia's territorial integrity. Giorgi Badridze, Ambassador Extraordinary and Plenipotentiary of Georgia to the UK and Ireland (2007-2009), who was involved in Georgia's "non-recognition" diplomacy, explains:

Any country in former Soviet space, recognizing Russian annexation as independent territories, would have been more damaging compared to the recent recognitions by the rogue regime of Assad or some communist regimes in Latin America. Once one country from the former Soviet Union recognized, or CIS or whatever you call them, then that could have caused a domino effect. Russia would clearly have started acting in order for others to recognize, there would be some kind of economic, political pressures, etc. (Phone Interview with Giorgi Badridze, 11 February 2019).¹²

¹² When Badridze refers to Russian annexation, he means Russian support for South Ossetia's and Abkhazia's independence since 2008.

Georgia and its Western partners were worried that other countries from the former Soviet Union would have followed suit after one country recognized these territories. Hence, all sides pressured Belarus to support their respective stances (Ibid.). This illustrates the importance that the dispute parties attributed to gaining support from critical in- or out-group states for their norm interpretations.

While Russia did not receive explicit support for its interpretation from its in-group, the reactions of other critical audiences contributed to lowering the social and material costs of protracted norm contestation. According to a survey conducted by the independent Levada-Center (2015), 40% of Russian survey respondents considered the recognition of South Ossetia and Abkhazia to have benefited Russia in September 2008, 28% for it to have neither benefited nor harmed Russia and only 15% replied that it harmed Russia. Still, in August 2015, more respondents considered Russia to have benefitted from the recognitions than for the recognitions to have harmed Russia (23% vs. 10%). However, the majority now considered the recognitions not to have had a significant effect (47%). Nevertheless, the very positive response of domestic audiences to the recognitions shortly after the event in 2008 shows that Russia received domestic support for its actions and words.

Perhaps even more importantly, while critical out-group members such as the US and European countries rejected Russia's norm application, they did not follow through on claims that they would suspend cooperation because of Russia's recognition. Efforts by the West to continue cooperation with Russia despite this disagreement reduced the social and material costs of persistent disagreement.

While the EU announced on September 1, 2008, that it would suspend talks on a partnership agreement with Russia in response to Russia's actions in Georgia and recognition of South Ossetia and Abkhazia, it soon changed course. In mid-November, EU leaders announced that they would resume talks with Russia on December 2, 2008 (Goodspeed, 2008). Similarly, US Commerce Secretary Carlos Gutierrez warned Russia before its recognition of South Ossetia and Abkhazia that "Washington's support for Russia's WTO bid could be at stake over the Georgia conflict" (Coleman, 2008). Putin signaled that he questioned the benefits of World Trade Organization (WTO) membership anyway (Ibid.). Roughly half a year later on March 7, 2009, US Foreign Minister Hillary Clinton symbolically pressed the reset button on US-Russia relations with her Russian counterpart (BBC News, 2009). While Georgia continued to block

Russian WTO membership, a Swiss brokered deal on improved access to South Ossetia and Abkhazia paved the way for Russia's WTO membership in late 2011 (BBC News, 2011). Hence, there was little social pressure on Russia to rescind recognition of South Ossetia and Abkhazia. These social dynamics helped Russia to uphold its norm interpretation.

Conclusion

To conclude, even when it appears that states apply international law inconsistently, as has been the case regarding the contestation over the status of Kosovo, South Ossetia and Abkhazia, international law can shape and constrain behavior. While the US and European states supported Kosovo's independence, they rejected South Ossetia's and Abkhazia's independence claims and emphasized Georgia's sovereignty. Russia, on the other hand, rejected Kosovo's independence claim and emphasized Serbia's sovereignty but supported South Ossetia's and Abkhazia's independence. These episodes of norm contestation have become protracted with tangible implications: not only do they increase uncertainty over the situations in which sovereignty or self-determination apply and thus weaken these norms, but the lack of recognition from critical states means that Kosovo, South Ossetia and Abkhazia have trouble joining international organizations, fully participating in international affairs and operating as states.

I have shown that these secessionist conflicts, however, do not indicate disregard but rather respect for international law once we closely examine the main dispute parties' arguments and their implications: the US's careful framing of Kosovo as a *sui generis* case reveals concern of setting an undesirable precedent, namely that the recognition of Kosovo expands the right to self-determination and leads to more secessions. Thus, this framing indicates that the US is aware of the risk of entrapment. Russia, on the other hand, did not engage in exceptionalism but rather invoked contested legal categories such as the right to "remedial self-determination". Even though Russia's interpretations did not rest on the most solid legal grounds, the use of legalistic discourse to justify the recognition of South Ossetia and Abkhazia reveals that Russia considers international law an important tool of persuasion. Hence, the main contestants brought forward arguments that show that they take international law seriously.

We do not see rhetorical entrapment or concessions in these episodes of norm contestation because there was not sufficient social pressure. The US was able to secure the support of most

European states for Kosovo's independence and its *sui generis* framing. Russia, unlike the US, did not receive public support from its in-group, for its recognition of South Ossetia and Abkhazia. In-group countries in the former Soviet space only subtly criticized Russia. However, domestic audiences supported this recognition and the US and EU were soon keen to improve relations and thus toned down their criticism. This allowed Russia to compensate for the lack of clear in-group support and to uphold its contestation and recognition of South Ossetia and Abkhazia even though only four other countries have also recognized these territories as states. Because each side enjoyed sufficient social support for their interpretations, norm contestation has become protracted.

The findings of this article call for more fine-grained discourse analysis of instances of protracted norm contestation and hypocritical application of international law. The justificatory discourse can reveal that international law shapes and constrains state behavior, even when it appears that states applied the law hypocritically. Norm contestation scholars have only just begun to test their theories of the impact of contestation on norm robustness and change empirically. The norm contestation literature is theoretical and self-referential (Wolff and Zimmermann, 2016), and scholars who conduct empirical studies have just begun to study the content of arguments.¹³ This article shows that when we closely examine what states say, we can uncover how international law structures the debate. There is a social expectation to use legal justifications and states are aware of the risk (or potential) to set precedents with their interpretations.

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¹³ See, for example, the special issue based on Deitelhoff and Zimmermann, 2019.

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