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Janus-Faced Human Security Discourse: EU and Russia Talking Past Each Other in Kosovo and the Caucasus?

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JANUS-FACED HUMAN SECURITY DISCOURSE: EU AND RUSSIA TALKING PAST EACH OTHER IN KOSOVO AND THE CAUCASUS[1]

ABSTRACT

This paper examines the interpretations of the EU and Russia of the events in Kosovo (1999/2008) and the Caucasus (2008) and how they were presented to the public. Although the parties' perspectives were diametrically opposed in each of the cases, we will argue that across both of the cases, Russia and the EU were following the same 'scenarios'. They were either professing the 'responsibility to protect' or the 'obligation to refrain', using essentially the same logics of argumentation to legitimate their behaviour. Concomitant to such behaviour is the blurring of the common understanding of these norms and their application in practice. In this light it seems that the conflict between Russia and the EU in these cases was not so much between principally opposed neighbours over the meaning and nature of international norms, but between similar neighbours over each-other's behaviour in their backyards.

1. INTRODUCTION

De facto states are a chronic source of unresolved international disagreements and tensions and it is well known that the positions of the EU and Russia with regard to such cases in their vicinity have been conflictual to say the least. This conflict has been most prominent in the cases of Kosovo and the Caucasus (Abkhazia and South-Ossetia). The aim of this paper is to provide an additional and mostly unaddressed facet to the analysis of these conflicts by focussing not on the fact of conflict as such, but on the discursive content of conflict and what it reveals about the behaviour of the EU and Russia. We thus argue that both the EU and Russia use concepts such as 'human security'/'sovereignty' (what makes a case important?), 'responsibility to protect'/'obligation to refrain' (in what ways should the situation be resolved?) and 'remedial secession'/unilateral secession (what would or would not be the justified outcome?) not just instrumentally, which has been partially (especially in the case of Russia) suggested by previous research, but instrumentally in a rather similar way depending on the context. We will argue that on a more abstract level they are both following the same 'scenarios' – either professing the responsibility to protect, which overrules sovereignty and justifies remedial secession or emphasising the obligation to refrain, which emphasises sovereignty and sees secession as unilateral and illegitimate. Thus, they are not only blurring the common understanding of these terms and the rules of their application in

1 This is a working version especially adopted for the EU-Russia Papers and does not include many of the elements and detail of the planned final version.

practice, but also, at least across the cases under observation, implicitly further establish such instrumentality as the norm. What follows in specific cases, however, is a dialogue of the deaf, talking past each other, a discursive practice where the explicit content and conflict of discourse hides the willingness to take opposite positions at other times and geopolitical regions when it is presumably deemed necessary.

Although not being a state or even a state-like entity, the EU deserves equal analytical standing next to and together with Russia, because of its nascent hard-power role and a partially overlapping neighbourhood of heightened interest of both actors. Shepherd[2] argues that the Kosovo war in 1999 "acted as a decisive catalyst in the development of the EU's international security role", thus enhancing the EU's hard power, which culminated in the launch of European Security and Defence Policy (ESDP) and development of military capacity. At the same time, the EU's largest civilian mission, EULEX-Kosovo (European Union Rule of Law Mission in Kosovo) from 2008 has got manifest soft power elements, which are meant to strengthen local institutions through advice, training and monitoring, and thus contributing to peace-making and post-conflict stabilisation. Even if the EU internal divisions remain – five member states still do not recognise Kosovo's controversial independence and almost the same number of other member states demonstrate an uncompromised nature in their relations with Russia, thus condemning EU's attempts to accommodate with Russia's 'occupying power interests' in the Caucasus – it is possible to notice emerging common EU positions, although vaguely defined.

The paper will focus on two cases – Kosovo on the one hand and Abkhazia and South Ossetia on the other. Setting aside the final argument of whether the situations in these cases were the same, we maintain that they were similar in broad terms – an intra-state regional conflict with an ethnic dimension, which has resulted in *de facto* statehood striving for *de jure* recognition. The analysis will begin with a general overview of the cases and the related international developments. Thereafter, we move on to opening up the role of the concepts of sovereignty, territorial integrity, human rights and security, the responsibility to protect (R2P) and secession in international relations. What follows is an analysis of how Russia and the EU presented and legitimated their positions and actions with regard to the two cases and in relation to these concepts. On the whole these separate angles enable us to set the stage for the bigger question of what these cases tell us about how different references to international norms are used in political discourse for different aims and how the behaviours of Russia and the EU relate to each other in this regard.

2 Shepherd, A. (2009), "A milestone in the history of the EU': Kosovo and the EU's international role', *International Affairs*, vol. 85, no. 3, p. 513.

2. KOSOVO AND THE CAUCASUS: THE STATE OF PLAY BETWEEN THE EU AND RUSSIA

2.1. Kosovo

On 24 March 1999, NATO began a bombing campaign over Yugoslavia. Operation Allied Force (OAF) did not have UN Security Council authorization to launch a humanitarian intervention, nor did allied forces seek legal justification for the action. UN Security Council Resolution 1244 of 10 June 1999, which formed a legal basis for the international administration, reaffirmed the commitment of all UN Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia while *de facto* separating Prishtina from Belgrade's control. Although the International Commission on the Balkans[3] supported the view that the international community and the EU, in particular, should retain 'ultimate supervisory authority', the failed status negotiations over the Ahtisaari Plan paved the way for a unilateral declaration of Kosovo's independence in 18 February 2008.

Serbia has so far considered Kosovo's independence illegal on the basis of the UN Charter, the Constitution of Serbia, the Helsinki Final Act, UNSCR 1244 (including previous resolutions) and the Badinter Commission[4]. Russia, but also Brazil, China, India and Indonesia have sided with Serbia and objected to anything more than limited autonomy for Kosovo within Serbia. In addition, five EU members – Cyprus, Greece, Romania, Slovakia and Spain – have stubbornly refused to recognize Kosovo. Serbia referred the matter to the International Court, which on 22 July 2010 ruled that, in general, international law contains no applicable prohibition of declarations of independence, as mere statements do not violate international law unless stated otherwise by the UN Security Council[5].

To date, in 2012, those 89 UN member states, which have recognized Kosovo's independence, acted according to last resort, in the faith that "international law *should* (authors' emphasis) recognize only a remedial right to secede (when it is the last resort against serious injustices), but not a general right of self-determination that includes the right to secede for all peoples or nations"[6]. True, when the decision was made to launch OAF, there were references to humanitarian disaster. However, "the killings by the Milosevic regime were numbered then in the hundreds, not the

3 International Commission on the Balkans (2005), *The Balkans in Europe's Future*, http://goo.gl/1ELb6.

4 National Assembly of the Republic of Serbia (2008), 'Decision of the National Assembly of the Republic of Serbia regarding the Confirmation of the Decision of the Government of the Republic of Serbia regarding the Abolition of Illegal Acts of the Provisional Institutions of Self-Government in Kosovo and Metohia in regards to the unilateral Declaration of Independence, 18 February 2008', http://goo.gl/Q6I3L.

5 Ker-Lindsay, J. (2011), 'Between 'Pragmatism' and 'Constitutionalism': EU-Russian Dynamics and Differences During the Kosovo Status Process', *Journal of Contemporary European Research*, vol. 7, no. 2, pp. 175–194.

6 Buchanan, A. (2004), *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford: Oxford University Press, p. 331.

thousands"[7]. Moreover, the Kosovo Serb atrocities were always noticed and often exaggerated while crimes of the Kosovo Liberation Army (KLA), which qualified as a terrorist organization, were usually silenced[8]. Last but not least, under current international law, there is no clear right to remedial secession[9], and its practical implementation becomes questionable even more so years after the human rights abuses have ended, and where there is no longer a threat to the community[10].

2.2. The Caucasus: Abkhazia and South Ossetia

A mirror image to the Balkan events occurred in the Caucasus where Russia unlike ex-Yugoslavia won the war against secessionist rebels (Chechens) in 1999. From then on, Russia was no longer fearful of supporting secessionism in other states[11]. Since 2000, Russia began to gradually ease sanctions imposed on Abkhazia in 1996 and which were implied satisfying Georgia's inviolable sovereignty and territorial integrity claims at that time. In addition to opening up the borders for trade and travel, Russia began to issue passports for the citizens of Abkhazia and South Ossetia, and pay retirement pensions and other social allowances to their naturalized citizens, which could be used later on as a claim to protect the life and dignity of Russian citizens wherever they are. Many in the EU considered this position as inconsistent with international law[12].

During the night of 7–8 August 2008, Georgia launched a large-scale military offensive Operation Clear Field against South Ossetia in an attempt to reclaim the territory. Russia reacted by deploying military units in South Ossetia, launching air strikes against Georgian forces in South Ossetia, Kodori Valley (Abkhazia) and in Georgia proper. The large-scale Russian military involvement in Georgia in 2008 can be seen as an analogue to the NATO led intervention in ex-Yugoslavia in 1999. Moscow justified its intervention in Georgia – undertaken without UN Security Council backing – as being based on the 'responsibility to protect' in the face of alleged Georgian atrocities[13]. The violation of Georgian state sovereignty, in other words, was legitimated with reference to the principle of humanitarian

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7 Quoted in O'Connell, M. (2000), 'The UN, NATO, and International Law After Kosovo', *Human Rights Quarterly*, vol. 22, no. 1, p. 80.

8 Müllerson, R. (2009), 'Precedents in the Mountains: On the Parallels and Uniqueness of the Cases of Kosovo, South Ossetia and Abkhazia', *Chinese Journal of International Law*, vol. 8, no. 1, pp. 2–25.

9 Summers, J. (2010), 'Relativizing Sovereignty: Remedial Secession and Humanitarian Intervention in International Law', *St Antony's International Review*, vol. 6, no. 1.

10 Vidmar, J. (2010), 'Remedial Secession in International Law: Theory and (Lack of) Practice', *St Antony's International Review*, vol. 6, no. 1.

11 Popescu, N. (2006), 'Outsourcing *De Facto* Statehood: Russian and the Secessionist Entities in Georgia and Moldova', *CEPS Policy Brief*, no. 109, http://goo.gl/M5oMe.

12 Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG) (2009), 'Report', http://goo.gl/NWS28.

13 Averre, D. (2009), 'From Pristina to Tskhinvali: The Legacy of Operation Allied Force in Russia's Relations with the West', *International Affairs*, vol. 85, no. 3, p. 590.

intervention. Russia appealed also to international law in recognizing what it sees as the more justified claims of Abkhazia/South Ossetia to independence.

As of 2011, only six states have recognized Abkhazia and five states have recognized South Ossetia as sovereign states, respectively. This has been condemned by the EU, NATO, OSCE, and the European Council due to the violation of Georgia's territorial integrity. On 12 August 2008, Georgia instituted proceedings against the Russian Federation at the ICJ, accusing Russia of three interventions between 1990 and 2008 in violation of the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), but the case was dismissed on the basis of jurisdiction on 1 April, 2011 (see The Hague Justice Portal, Georgia v. Russia case begins at ICJ, 8 September 2008[14]; ICJ dismisses Georgia's case against Russia, 1 April 2011[15]).

2.3. The EU and Russia: Blurring International Norms?

Debates over *de facto* states are essentially debates over sovereignty. The concept of a sovereign state includes a common personality that carries certain rights and duties, and where the authority of this personality is confirmed by an act of recognition[16]. Recognition, however, is subject to a pre-existing right for "specific peoples who were deemed to be entitled to state sovereignty; the populations who dwelled within the inherited boundaries of non-self-governing and trust territories"[17] and thus unilateral secession is illegitimate. Sovereignty currently entails both a right and an obligation – "a right to engage in international activity"[18], but also the idea that sovereign statehood entails a responsibility to protect (R2P) populations from grave violations of human rights, which received its clearest expression by the International Commission on Intervention and State Sovereignty (ICISS) in 2001[19]. A state is supposed to be responsible and accountable to its own people and also to the society of states for the protection of its population; in cases where the state fails its sovereign responsibility to protect, the responsibility shifts to the international society[20].

This creates an inevitable conflict with the principles of territorial integrity and non-interference. The territorial integrity principle has been largely fixed in stone

14 *The Hague Justice Portal* (2008), 'Georgia v. Russia case begins at ICJ', http://goo.gl/KTGC8.

15 *The Hague Justice Portal* (2011), 'ICJ dismisses Georgia's case against Russia', http://goo.gl/vKkRs.

16 Bain, W. (2003), 'The Political Theory of Trusteeship and the Twilight of International Equality', *International Relations*, vol. 17, no. 1, pp. 59–77.

17 Fabry, M. (2008), 'Secession and State Recognition in International Relations and Law', in Pavkovic, A. and Radan, P. (eds.) (2008), *On the Way to Statehood: Secession and Globalisation*, Aldershot: Ashgate, pp. 58–59.

18 Jackson, R. (1999), 'Introduction: Sovereignty at the Millennium', in Jackson, R. (ed.) (1999), *Sovereignty at the Millenium*, Oxford: Blackwell Publishers, p. 3.

19 Glanville, L. (2011), 'The Antecedents of 'Sovereignty as Responsibility", *European Journal of International Relations*, vol. 17, no. 2, pp. 233–255.

20 International Commission on Intervention and State Sovereignty (2001), *The Responsibility to Protect*, Ottawa: International Development Research Centre.

during the decolonization era. The Helsinki Final Act[21] affirmed the principles of inviolability of frontiers and territorial integrity of states. The Charter of Paris[22] extended it to intrastate relations, reaffirming "the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of states". The Document of the Copenhagen Meeting[23] goes even further: it stipulates that persons belonging to national minorities do not have "any right to engage in any activity or perform any action in contravention of … the principle of territorial integrity of states". Any detachment of a territory from a sovereign state leading to the creation of a new state on that territory is, according to Radan[24], a case of secession.

A counter argument outlines two broad ethical approaches to the question of secessionism (for more about this, see Headley[25]). The 'just cause' approach argues that, although there is no universal moral argument for secessionism, in particular cases (to redress past wrongs, stop present wrongs, or prevent future wrongs) secessionism should be supported. The self-determination approach argues for a universal principle for self-determination as independence given certain provisions. This has created situations where the sovereignty of states has been transcended by parts of the international 'community' in practice. The concept of 'new wars' portrays conflicts emerging in the non-Western state as the product of domestic or internal problems which are exacerbated by greedy elites with no political legitimacy, and where external intervention is justified by enforcing international or 'cosmopolitan' norms and laws[26]. Rather than war in a more conventional understanding, there are crimes and human rights abuses to be dealt carefully; rather than armed conflict undertaken by Western powers, there is policing and law enforcement, which stands above international politics[27].

This introduces a new perspective of who could legitimately wage war, and over what issues it is legitimate to go to war. For instance, changed international power relations and changed political sensibilities have meant that "today there is much less of a divide between how states are treated internationally and what

21 Conference on Security and Co-operation in Europe (1975), 'Final Act', http://goo.gl/5GzBz.

22 'The Charter of Paris for a New Europe' (1990), http://goo.gl/6K7ZM.

23 'Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE' (1990), http://goo.gl/ETraR.

24 Radan, P. (2008), 'Secession: A Word in Search of a Meaning', in Pavkovic, A. and Radan, P. (eds.) (2008), op.cit., pp. 17–32.

25 Headley, J. (2008), 'The Way Opened, the Way Blocked: Assessing the Contrasting Fates of Chechnya and Kosovo', in Pavkovic, A. and Radan, P. (eds.) (2008), op.cit., pp. 85–99.

26 Kaldor, M. (1998), *New and Old Wars: Organized Violence in a Global Era*, London: Polity Press.

27 Colombo, A. (2004), 'Asymmetrical Warfare or Asymmetrical Society? The Changing Form of War and the Collapse of International Society', in Gobbicchi, A. (ed.) (2004), *Globalization, Armed Conflicts and Security*, Rome: Cemiss-Rubbettino, pp. 111–27.

they do domestically"[28]. This has quite often led to a reinterpretation of the formal restrictions of the UN Charter "while increasingly giving free reign to self-selected 'coalitions of the willing' to set their own conditions on when and how interventions should take place and be formally brought to an end"[29]. Similar trends occur within the EU, which has increasingly promoted the export of freedom, democracy and good governance to the neighbourhood. A Human Security Doctrine for Europe[30] reads that "it should contribute to the protection of every individual human being and not focus only on the defence of the Union's borders, as was the security approach of nation-states". It grants the right to decide, which states are failing or denying rights to their subjects and which people deserve support or intervention in their name.

Kosovo and the Caucasus are excellent examples of such trends and tendencies as described above. Perhaps it is a valid claim that the Kosovo war became a landmark of following the events where the West began to define basic human rights as universal principles that transcended sovereignty as an ontological given and inviolable[31]. There is also a good reason to believe that the Kosovo war was a crucial part of two on-going shifts: "first that the actors going to war are states acting in alliance – and in the name of humanity; second, that war is legitimized less by reference to the safeguarding of state citizens and their well-being, and more in terms of infringements of human rights"[32]. This all has legitimized intervention independently of the consensus-building mechanisms of the UN, and has enabled to bypass traditional interstate mechanisms of international law[33]. Imposing 'good governance' and providing 'human security' inevitably means limitations to the sovereignty practices of ex-Yugoslavia/present day Serbia. Apparently, Russia felt fewer constraints to directly intervene in Georgia's internal affairs, waging war and occupying a significant part of territories in the name of human rights protection.

Turning to the context of the cases observed in the current paper, these conflicts have opened up the stage for a geopolitical drama where Russia's power-political aspirations over its would-be sphere of influence collide with the views of Normative Power Europe[34] and its expanding sphere of democracy, security

28 Chandler, D. (2006), 'Back to the Future? The Limits of Neo-Wilsonian Ideals of Exporting Democracy', *Review of International Studies*, vol. 32, no. 3, p. 477.

29 Holsti, K. J. (1996), *The State, War, and the State of War*, Cambridge: Cambridge University Press and Chesterman S. (2002), *Just War or Just Peace? Humanitarian Intervention and International Law*, Oxford: Oxford University Press, both quoted in Chandler, D. (2006), op. cit., p. 485.

30 Study Group on Europe's Security Capabilities (2004), 'A Human Security Doctrine for Europe', http://goo.gl/Ocsov.

31 Medvedev, S. (2002) 'Kosovo: A European *fin de siecle*', in Ham, P. v. and Medvedev, S. (eds.) (2002), *Mapping European Security after Kosovo*, Manchester: Manchester University Press, pp. 15–31.

32 Neumann, I. (2002), 'Kosovo and the End of the Legitimate Warring State', in Ham, P. v. and Medvedev, S. (eds.) (2002), op. cit., p. 66.

33 Chandler (2006), op. cit.

34 Manners, I. (2002), 'Normative Power Europe: A Contradiction in Terms', *Journal of Common Market Studies*, vol. 40, no. 2, pp. 235–258.

and prosperity. Steps taken by the EU to further its own vision for the European continent have led to a challenge of Moscow's dominance both in the Balkans and in the Caucasus[35]. No matter how we interpret NATO's and Russia's actions within the existing legal framing – they seem to at the same time reinforce sovereignty and make international law a fundamentally discursive practice. The letter and the spirit of the basic principles of international law appear to weigh much less today given that a legal interpretation of the norms is widely permissive, and that operational language, while employing the same terminology, still ends up talking past each other.

Divergences and conflicts in foreign policy discourse and interpretations thereof between Russia and the West have been researched to some extent, also with regard to the cases of Kosovo and the Caucasus. Some of those highlight similar articulations despite the apparent conflict and confrontation, while others oppose Russia and the West as is often the custom. For instance, Averre[36] notes the rhetorical parallel between Western 'responsibility to protect in Kosovo' and Russian 'responsibility to protect in South Ossetia' and concludes that the cases of Kosovo and the Caucasus combined have blurred the basic principles of international law. Toal[37] points out that many elements of the public discourse of international relations, like the concepts of 'humanitarian intervention' or 'responsibility to protect', were used instrumentally by Russia to justify its actions, similar to the latter's interpretation of Western actions with regard to Kosovo. Dittmer and Parr[38] have compared the ways in which US newspapers legitimated (or undermined) sovereignty claims by Kosovo and South Ossetia during their respective conflicts, and Ker-Lindsay[39] has demonstrated a discrepancy of motives that US and Russia set in practice during the UN sponsored status process and the events leading up to Kosovo's unilateral declaration of independence. In the light of Western backed Kosovo's unilateral declaration of independence and Russia's unconditional support for Abkhazian/South Ossetian sovereign statehood, it raises questions of whether international norms of sovereignty and territorial integrity have changed and led to any systemic-level shifts?

35 See e.g. Kobzova J., Popescu, N. and Wilson, A. (2011), 'Russia and EU's Competitive Neighbourhood', in Astrov, A. (ed.) (2011), *The Great Power (mis)Management : The Russian-Georgian War and Its Implications for Global Political Order*, Aldershot: Ashgate, pp. 79–102.

36 Averre (2009), op. cit.

37 Toal, G. (2009), 'Russia's Kosovo: A Critical Geopolitics of the August War over South Ossetia', *Eurasian Geography and Economics*, vol. 49, pp. 670–705.

38 Dittmer, J. and Parr, D. A. (2011), 'Mediating Sovereignty: A Comparative Latent Semantic Analysis of US Newspapers and Conflicts in Kosovo and South Ossetia', *Media, War and Conflict*, vol. 4, no. 2, pp. 124–141.

39 Ker-Lindsay, J. (2011), op. cit.

3. ANALYSING THE POSITIONS OF THE EU AND RUSSIA

Following the above mentioned conclusions and in the light of the analysis to follow, it might seem that disagreement over *de facto* states has increasingly become a latent negotiation over a set of conflicting and contested principles: human rights and security versus sovereignty and territorial integrity; the responsibility to protect versus the obligation to refrain from intervention; the legitimacy of remedial secession versus the illegitimacy of unilateral secession. There is no institutionalised and functional mechanism for reducing these conceptual oppositions in practice and for determining the uncontroversial application of these principles in specific situations. Consensus on application is the exception. This does not preclude action on the basis of these principles, their use as legitimisation for one's behaviour. Therefore, conflict with regard to their interpretation, the articulation of them with specific situations and actions, is inevitable and the key is in understanding how and when these principles vis-à-vis one another and the empirical reality are articulated together. The cases of Kosovo on the one hand and Abkhazia/South Ossetia on the other provide an excellent pair for the analysis of such 'negotiation' as across them and the perspectives of the EU and Russia, the same set of concepts or principles is applied. Looking at these cases together gives the possibility to draw an additional layer of observation across them and thus will enable to uncover logics of behaviour, which might otherwise be overlooked.

The following will look at how the EU and Russia publicly presented and interpreted the situations in question with the focus on such elements of international discourse as human security/territorial integrity and sovereignty, the responsibility to protect/obligation to refrain from intervention and how these elements articulated one way or another in specific cases were either used to justify the legitimacy of remedial secession or the illegitimacy of unilateral secession. The core for the analysis will consist in examining how the situations in question were presented in the official public discourse of the EU and Russia. The analysis will thus draw on the highest-level official statements and documents of both parties – predominantly presidential statements in the case of Russia and conclusions of European Council meetings in the case of the European Union. The general timeframe for the analysis begins after the 1999 intervention in Kosovo and ends in the aftermath of the 2008 intervention in Georgia. Needless to say, positions can change over time, but this analysis will not try to emphasise the possible dynamics of discourse, which are mentioned only passingly, but rather on the 'end-results' from around Kosovo's declaration of independence to the aftermath of the Georgia-Russia conflict as this represents the end-point to where the discourses of the parties evolved with regard to these two cases.

Such a focus as a whole will enable to outline how the parties themselves presented interpretations of the situations (or at least wanted the public to see them) and articulated the mentioned principles with their behaviour and the behaviour of other parties. The analysis will start by outlining how both parties

generally understood or interpreted the nature of the cases in the Balkans and the Caucasus. Thereafter, we will turn to the contested principles of international behaviour – we will look at how the EU and Russia articulated the principles of human security, territorial integrity, the responsibility to protect and the obligation to refrain in relation to one another. We will show how different articulations of these principles in relation to the events of the two cases essentially constitute either the acknowledgement of the legitimacy of remedial secession or the illegitimacy of unilateral succession. The analysis will conclude with arguing for the structural 'equivalence' of the discourses of Russia and the EU across both of the cases.

4. RUSSIAN AND EUROPEAN UNION ARTICULATIONS OF KOSOVO AND THE CAUCASUS

The EU unanimously views Kosovo as a 'European problem', given its geographical location and EU membership prospects[40], and Abkhazia/South Ossetia as 'occupied territories' of independent Georgia where Russia has installed puppet regimes. Russia sees Kosovo as a place where Islamic extremist and terrorist organizations (Kosovo Liberation Army) have gained a foothold for insurgency against the constitutional (international) order[41] and treats the Caucasus as its backyard within the post-Soviet space where foreign powers should have no say in terms of expanding hegemonic values (democracy, human rights, rule of law) or arranging colourful revolutions. This sets the background for understanding the way Russia and the EU interpreted and presented the cases under observation below.

4.1. Human Security

One of the essential elements in the discourses of the EU and Russia, both in the Balkans and in the Caucasus, was either the acknowledgement or (implicit) denial of problems of human rights and security. This can be seen as the foundation, on which the rest of the elements of the discourses significantly rely on and thus is considered here first.

With regard to the EU and Kosovo, already the UNSCR 1244 adopted in June 1999 emphasised the need to "resolve the grave humanitarian situation in Kosovo" and recognized the role of the EU in the "economic development and stabilization of the region"[42]. The EU's declared commitment to the resolution with the emphasis on the rebuilding of Kosovo on the basis of UNSCR 1244 continued up to Kosovo's declaration of independence with the accent on issues such as for

40 Noucheva, G. (2008), 'Policies towards Kosovo, 1999–2007: Imperialistic Intended', in Tocci, N. (ed.) (2008), 'European Union as a Normative Foreign Policy Actor', *CEPS Working Document*, no. 281, pp. 15–18, http://goo.gl/0ScHq.

41 Colin, G. (2004), 'Russian Foreign Policy Discourse during the Kosovo Crisis: Internal Struggles and the Political *Imaginaire*', *Questions de Recherche / Research in Question*, no. 12, http://goo.gl/jkIlR.

42 United Nations Security Council (1999), 'Resolution 1244', http://goo.gl/lTzFR.

example "peaceful future for all peoples" and "rights for all peoples"[43], "commitment of the EU to a stable future for a secure, democratic, prosperous and multi-ethnic Kosovo"[44], "protection of all the communities in Kosovo" and "full respect for human rights".[45] The question of maintaining the territorial integrity of Serbia, which was also established in UNSCR 1244, was mentioned prominently only in the beginning of the period[46] and this issue subsequently faded out of EU discourse.

The need to protect human rights was also stressed by Russia in the case of Abkhazia and South Ossetia in relation to the Georgia-Russia conflict in 2008 and its aftermath. While in the beginning of the 2000s, the Russian rhetorical emphasis was on the sovereignty and territorial integrity of Georgia[47], this shifted in parallel with Georgia forging closer ties to the West and the concomitant antagonisation of Russia, culminating in Russia's intervention in August 2008. It started with the emphasis on the need to take into account all the interests of the people living on Georgian territory[48] and acknowledging the possible contradiction between such interests and the principles of integrity.[49] As the situation on the ground and the discourse developed, Georgia began to be depicted by Russia as a threat to the stability of the region: "The situation is developing against the background of a sharp, inadequate militarisation in Georgia that poses a threat to stability and security in the Caucasus. In practice, preparations are being made to resolve the Georgian-Abkhazian and Georgian-Ossetian conflicts by force".[50] After the intervention, Russia justified its actions in terms of the absolute necessity to protect human rights: "our decisions were designed to prevent genocide, the extermination of peoples, and to help them get back on their feet again".[51] Thus, in the end, the question of protecting human rights was close to the core of Russia's discourse.

4.2. Territorial Integrity

While Russia in the case of the Caucasus and the EU in the case of Kosovo put a significant emphasis on the protection of human rights, then with regard to territorial integrity the sides were reversed (by necessity, when the obligation to protect human rights overrides sovereignty and territorial integrity). If we

43 European Council (1999), 'Berlin European Council 24 and 25 March 1999. Presidency Conclusions', http://goo.gl/PdKDg.

44 European Council (2004), 'Conclusions of the Presidency', http://goo.gl/5uFCs.

45 European Council (2005), 'Presidency Conclusions', http://goo.gl/39lyp.

46 European Council (1999), op. cit.

47 Putin, V. (2003), 'Excerpts from the President's Live Television and Radio Dialogue with the Nation', http://goo.gl/BwTki; Putin, V. (2004a), 'Extracts from the Press Conference Following the Meeting with Ukrainian President Leonid Kuchma', http://goo.gl/OcyEj.

48 Putin, V. (2004b), 'Press Conference with Russian and Foreign Media', http://goo.gl/58y0z.

49 Putin, V. (2006a), 'Transcript of the Interactive Webcast with the President of Russia', http://goo.gl/x3HHr.

50 Putin, V. (2006b), 'Written Interview for Mexican Publisher Mario Vazquez Rana', http://goo.gl/pdrR6.

51 Medvedev, D. (2008a), 'Interview with TV Channel Russia Today' http://goo.gl/BA7Ez.

again start from UNSCR 1244, then throughout the period Russia referenced the resolution strictly in relation to the part, where it stated the need to ensure the territorial integrity of Serbia. Indeed, Russia's position with regard to sovereignty as a basic principle of international law to be upheld was unwavering.[52] In this case, it is also peculiar to note that in the context of Kosovo Russia did realize a possible discrepancy between its rhetoric and its actions, which was simply resolved in stating that it did not see Western actions with regard to Kosovo as justified, whereas its intervention in Georgia to protect the people of South Ossetia and Abkhazia was a necessity.[53] Here it should be noted that on the rhetorical level, the EU also implicitly supported the territorial integrity of Serbia in stating that unilateral solutions to the problem of Kosovo were unacceptable[54], but as soon as Kosovo unilaterally declared its independence, it was overwhelmingly supported by the majority of EU member states thus revealing the EU's previous statements about integrity and the necessity of a multilateral solution to be rather hollow.

The EU's support for the territorial integrity of Georgia, on the other hand, was concise, unambiguous and strong. Throughout the period, the position of the EU with regard to Georgia in general and Abkhazia/South Ossetia in particular was remarkably consistent and brief. In the official documents and statements of the EU as much as this question was mentioned (which was relatively seldom), the wording of the phrases repeated itself from instance to instance almost as if copy-pasted from one document to the next – each time, before the conflict in 2008 and after, and with some variations, expressing "full respect for Georgia's sovereignty and territorial integrity". Sometimes this was all that was expressed, sometimes the position was elaborated a bit more. But the meaning was clear and consistent – the principles of sovereignty and territorial integrity of international law are absolute and non-negotiable in the case of Georgia.

4.3. Responsibility to Protect, the Obligation to Refrain and the Problem of Secession

The emphasis either on human rights and the responsibility to protect (and intervene) on the one hand or sovereignty and territorial integrity and the obligation to refrain (from intervention) on the other hand form mutually opposing conceptual chains. If the protection of human rights is seen as not only primary, but also as an international obligation, then sovereignty and territorial integrity are necessarily secondary and when the latter are seen as fundamental, then breaches of human rights must or are likely to be tolerated. In the light of the abovementioned we can clearly see how these (in)compatibilities play themselves out in these two cases

52 Putin, V. (2006a), op. cit., Putin, V. (2007), 'Press Conference following Talks with German Chancellor Angela Merkel', http://goo.gl/q5sjC, Putin, V. (2008a), 'Transcript of Annual Big Press Conference', http://goo.gl/ckcX7.

53 Medvedev, D. (2008a), op. cit. and Medvedev, D. (2008b), 'Interview with CNN', http://goo.gl/MZeKP.

54 E.g. European Council (2005), op. cit.

and are finally related to how both parties interpreted secession in both of the cases.

The groundwork in both cases for declaring the secession legitimate was laid by stating the specificity (*sui generis*) of the cases – i.e. the circumstances in this case and this case only are such that warrant international involvement and recognition of secession. In the case of the EU and Kosovo, this emerged on the agenda during the Ahtisaari-led and European-backed settlement process and its subsequent failure. It is then when Europe began to strongly emphasise that Kosovo is a special case (*sui generis*)[55], thus implying that whatever its outcome, Europe will not consider it to matter in other contexts. As a reaction, Russia was quick to disagree, stating that the situation in Kosovo was potentially comparable to the Caucasus and that Kosovo was not a special case. Russia drew a clear parallel to the Caucasus: "If someone thinks that Kosovo can be granted full independence as a state, then why should the Abkhaz or the South Ossetian peoples not also have the right to statehood".[56] Russia thus made it clear that from its perspective the principles of behaviour that were applied to Kosovo, must be applicable to the Caucasus. As the independence of Kosovo drew nearer, Russia was becoming more and more clear on this point.

If we move on to Kosovo's declaration of independence and its recognition by most EU member states and Russia's recognition of the independence of Abkhazia and South Ossetia, we can see how the final elements in the observed discourses fall into place. Kosovo's declaration of independence seems to have had no immediate effect on the activities of the EU towards Kosovo other than the fact that there was silence on the issue as far as the Council was concerned. The Council formulated no official positions on the issue (most likely to accommodate the position of the few member states who opposed it; the European Parliament, however, has very clearly articulated its support for Kosovo's declaration of independence and has urged all countries to acknowledge it[57]). More important, however, there was no condemnation of the unilateral declaration of independence (something, which was at least rhetorically strictly opposed, before it actually happened). As opposed to the EU, Russia's discourse on the issue did not change after Kosovo's declaration. It still considered Kosovo's unilateral decision unlawful[58] and was opposed to the independence of Kosovo.

The perspectives of the parties were seemingly diametrically reversed in the case of the Caucasus. Russia one the one hand made reference to the will of the people of the regions: "You were right in asking if the Ossetians and Abkhazians

55 E.g. Council of the European Union (2007), 'Press release', http://goo.gl/5xs2y.

56 Putin, V. (2006c), 'Transcript of the Press Conference for the Russian and Foreign Media', http://goo.gl/NJm8o.

57 European Parliament (2009), 'European Parliament resolution of 5 February 2009 on Kosovo and the role of the EU', http://goo.gl/N6KZz.

58 Putin, V. (2008b), 'Press Conference following Talks with Prime Minister of Greece Konstantinos Karamanlis', http://goo.gl/lfGMy.

can and want to live within Georgia. This is a question for them to ask of themselves and it is they who will give their own clear answer".[59] On the other hand, it justified its actions in a similar manner as the EU had done in relation to Kosovo by stating that it was a special case and that action was necessary: "So it is natural that every case of recognition of independence is a special one. Kosovo was a special case and so are Ossetia and Abkhazia. And if we talk about the situation there, then it is clear that our decisions were designed to prevent genocide, the extermination of peoples, and to help them get back on their feet again".[60] Russia had clearly modelled its public self-justification with the Western behaviour in relation to Kosovo in mind. The EU, however, remained as laconic as it had been before in relation to the situation in Georgia, with no noticeable difference in its rhetoric: "The Council recalled its conclusions from 13 October 2008 and those of the European Council from 1 September 2008 and reiterated its firm support for the security and stability of Georgia, based on full respect for the principles of independence, sovereignty and territorial integrity recognised by international law, including the Helsinki Final Act of the Conference on Security and Cooperation in Europe and United Nations Security Council resolutions".[61]

5. CONCLUSIONS: EQUIVALENCE ABOVE CONFLICT

Let us now draw the concepts and logics that were opened up above into a decontextualized whole. The logic of rhetoric and behaviour (discourse in the broader sense of the term) of the EU and Russia across these two cases can in a somewhat simplified way be presented as two opposed 'scenarios', each of which was applied by both of the parties across the cases. Scenario 1 represents human rights or human security as the fundamental issue, which it is not only the responsibility of the specific state itself, but also the international community to uphold (responsibility to protect). Violations of human rights thus warrant international intervention, but also implicitly cancel the claims of the culprit to the region or territory in question. Thus, such a situation legitimates remedial secession as a logical conclusion for resolving the situation. Scenario 2 takes the universal principles of sovereignty and territorial integrity as its fundamental basis, which possibly overrule violations of human rights. Thus, in cases of such conflict within states, the international community has the obligation not to intervene (obligation to refrain) and to resolve the situation without essentially dismantling the conflictual entity. Thus, any kind of secession is seen as illegitimate and is represented as unilateral, i.e. among other things without the consent of the culprit state.

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59 Medvedev, D. (2008c), 'Press Statement following Negotiations with French President Nicolas Sarkozy', http://goo.gl/9vSGV.

60 Medvedev, D. (2008a), op. cit.

61 Council of the European Union (2009), 'Press release', http://goo.gl/Vt90p.

These two scenarios share the same structure as they require a similar, if not completely the same, empirical reality for their application: an interstate conflict with a regional dimension, which can possibly be presented in the light of a violation of human rights, a *de facto* statehood of the region and its willingness to separate from the state in question and gain international recognition. If we look back at our analysis, then the EU applied Scenario 1 in the case of Kosovo and Scenario 2 in the case of the Caucasus. For Russia it was the other way around. Hence the apparent conflict in discourse between the parties. Although the positions of Russia and the EU were substantively the opposites of each other in each of the cases separately, they shared a similar logic across both of the cases and were thus equivalent on me more abstract level. On the one hand, when opposing self-determination for regions that had a positive relation to the other party, both Russia and the EU invoked the principles of sovereignty and territorial integrity. On the other hand, when favouring self-determination and secession for regions which they themselves considered favourably, both parties used human rights and the *de facto* situation as the point of reference (either explicitly or implicitly) and tried to prove how the principles of sovereignty and integrity in that specific case would not apply. If we admit that at least to some extent the cases of Kosovo and Abkhazia/South Ossetia were similar, then it is not hard to see how on a discursive level Russia behaved like the EU and the EU like Russia, depending on which case we look at. The logics of argumentation and legitimisation are noticeably similar.

Therefore, we can say that although there was a diametrical opposition between Russia and the EU in each of the cases, this was not opposition between actors who have correspondingly opposing views of international norms and behaviour. Across both of the cases the logics of behaviour were the same. Not only did EU and Russia use reference to the same concepts and norms of international behaviour as was presumably suitable for their broader interests and thus blurred their meaning, but the way they did this was if not the same then at least significantly equivalent. Both used the same argumentation for regions in their vicinity and for regions in the other party's vicinity. The conflict, in the end, therefore, was not so much over the meaning of international norms, but between similar neighbours over each-other's behaviour in their back yards with no high fences blocking the view, or for that matter separating the yards clearly from one another.

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