

CONNECTIONS

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Central Asian Stances on the Ukraine Crisis: Treading a Fine Line?

Emilbek Dzhuraev *

Introduction

For over a year now, the crisis in and over Ukraine has been a stable fixture among the top issues of concern and deliberation internationally. The subject has become a point of polarized debate, with most contributions favoring one side or the other between the collective “West” and Russia. Similar to most trending debates, especially those as divided as this, the discussion has tended to simplify the issue by lumping everything into singular categories, be they “Russian imperialism,” “American conspiracy,” “Ukrainian fascism,” or “the new Cold War.” However, the matter is far more complex.

This essay offers a mostly non-aligned analytical overview of the positions of five Central Asian countries on the subject. What these countries’ stances elicit is the complexity of the problem and the many-sided effects and challenges the involved and surrounding parties need to face, where it is far from obvious why a country takes this or that stance, or—even more tellingly—why it appears to vacillate. From such an overview, a number of more general conceptual rewards can be derived.

One is the level and character of agency in foreign policymaking by small states, such as the Central Asian five. Both their differences and similarities underscore the fact that a non-trivial level of agency is still left with and exercised by small states even when they seem to be seriously under the domination of a major power.¹ A second point is the fact of structural constraints for multi-vectoralism. All of these countries have at various times claimed to be in pursuit of multi-vector foreign policies, not necessarily having much to show for it. As this paper indicates, robust multi-vector relations—especially in the high-risk and geopolitically sensitive positions in which these states find themselves—require requisite prospects for sustained relations with a plurality of genuinely interested partners.² The third observation is about the place of uncertainty in international relations and for foreign policymaking. Uncertainty, such as that emerging in the wake of the Ukraine crisis, is the condition under which countries—especially the

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¹ An argument suggested by Alexander Cooley, *Great Games, Local Rules* (Oxford: Oxford University Press, 2012).

² This is also a thought that occurs in various works. See Shahrbanou Tadjbakhsh, *Central Asia and Afghanistan: Insulation on the Silk Road between Eurasia and the Heart of Asia* (Oslo: PRIO, 2012) for an analysis of the Central Asian stances on another problem spot – Afghanistan.

smaller states such as those in Central Asia—are able to venture into exerting greater degrees of agency while also facing greater levels of risk of miscalculation and suffering its consequences. The uncertainty about further developments—especially in regard to how Russia will fare—has been difficult for the Central Asian capitals, and the different instances of hedging, daring, speaking out, or keeping silent have shown how, in their different ways, these states have coped with and used the condition of uncertainty.

It is worth pausing here to briefly ask why anyone should care about the foreign policy stances of the Central Asian states on the Ukraine crisis. Besides the possibility that one may be interested in Central Asian politics in general, in which case the Ukraine situation could be an edifying matter to consider, there are three reasons that can stand as justifications. One reason is the significantly increased importance of these countries and of the region as a whole for Russia, one of the primary parties in the crisis. A second reason is the presence of some fears, not entirely unlikely, that some of Ukraine's ills could migrate to (or repeat themselves in) the Central Asian countries.³ A third reason to think about the Central Asian perspectives is because these countries are caught in the center of broad and longer-term developments on the international stage, and over the Eurasian landmass more specifically, and therefore it is worth understanding the views of these countries.⁴

One more point of consideration is in order before proceeding further. In speaking about “the crisis in Ukraine,” one must remember that the crisis is a complex one consisting of several parts, each with a slightly different relevance from the others. To proceed in a chronological order, the first component of the crisis is the Euromaidan and the political destabilization in which it resulted. The second component is the crisis in Crimea which—for the moment—ended with its annexation by Russia. The third component is the de facto war—incompletely ceased since the Minsk II agreement of February 2015—in the eastern Ukrainian regions of Donetsk and Lughansk, or the Donbass region. The fourth component is the crisis on the international stage, most concretely expressed in the sanctions and embargoes between Russia and the West.⁵ Keep-

³ For the authoritarian regimes of Central Asia, Ukraine's example of Maidan-style protest politics is an irritant, but an even more disturbing thought concerns the possibility that secessionist moods could be sparked in certain parts of northern Kazakhstan. Perceptions about the latter count, even if, upon closer consideration, it may not be very likely (see Andrey Makarychev, “PONARS memo,” forthcoming).

⁴ If one such long-term and far-reaching development concerns the disconcerting likely scenarios in Afghanistan, the other—increasingly salient in current discussions—is China's economic Silk Road belt launched by China westward across Central Asia and toward Europe. See Scott Kennedy and David A. Parker, “Building China's ‘One Belt, One Road’,” *Center for Strategic & International Studies*, 3 April 2015, <http://csis.org/publication/building-chinas-one-belt-one-road>.

⁵ An extended analysis of the Ukrainian crisis ought to consider further aspects, such as the crisis of public international law, the crisis of the nation-state and the concept of self-determination, the crisis of diplomacy, the hollowing of sovereignty, the crisis of opposition politics and free speech in Russia, and the crisis of deliberation on the world stage, to name just a few.

ing these several elements of the crisis in mind has some significance for an accurate overview of the Central Asian countries' behavior on the matter.

An Overview of the Central Asian Countries' Behavior

There has been some variation among the five post-Soviet Central Asian countries' approaches to the crisis in Ukraine. The variation, of course, is mostly of degrees and not so much of substance—all five are generally aligned with Russia—but the differences are nonetheless very informative for understanding the behavior of each. A quick overview of the concrete postures and actions of each country is in order, to be followed by some general remarks.

Kazakhstan has clearly been the most actively engaged among the five countries. Commenting on the early stages of the crisis, President Nursultan Nazarbayev maintained that the roots of the upheaval lay in the poor socio-economic situation in the country—and not so much on the “Europe vs. Russia” choice—and that the main failure of Ukraine's government was being preoccupied with politics and neglecting economic development. Being mostly silent on the question of who bears the responsibility for the Donbass crisis, the Kazakh government has actively called for a diplomatic solution, with Nazarbayev offering his middleman services (competing with President Alexander Lukashenko of Belarus), and offering to host any negotiations to resolve the crisis. Kazakhstan has also recognized the Crimean referendum—to underscore, the “fact of the referendum”—which over time has meant the only meaningful thing it could, albeit tacitly: recognition of the validity and legitimacy of the referendum. However, Astana abstained from the UN General Assembly vote on the resolution that effectively found the referendum illegitimate and invalid.⁶ Not least importantly, Nazarbayev, back to back with Lukashenko, paid a blitz visit to Kiev to meet with President Petro Poroshenko and reaffirmed his commitment to cooperation between the two countries. The visit was seen as a mild but clear signal of independence from Moscow.

Kyrgyzstan's position on the crisis has been notable in one aspect: it was the only country among the five to congratulate Ukraine, almost immediately after ex-president Viktor Yanukovich's flight, on the occasion of its second revolution and the ousting of a corrupt regime. Furthermore, in formal statements from its foreign ministry, the country both recognized the legitimacy of the new interim government in Kiev and refused to grant recognition to the de facto deposed Yanukovich (who continued to claim his legitimate mandate long after being ousted). All three motions were the opposite of Moscow's position at the time. Quite likely induced by Moscow's disapproval, Bishkek became mostly silent, only issuing a statement recognizing the results of the referendum in Crimea as “objective reality” following the March 16 balloting. Bishkek became somewhat more active in the more recent period, when President Almazbek Atambayev made the Ukraine crisis a prominent point of discussions in meetings with European

⁶ “General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region,” United Nations: Meetings Coverage and Press Releases, 27 March 2014, available at <http://www.un.org/press/en/2014/ga11493.doc.htm>.

leaders in his late March 2015 tour, calling for a political solution to the crisis (in eastern Ukraine) and the need to end sanctions. He reiterated that Kyrgyzstan, based on its own experience in 2010, sympathized with the Ukrainian Maidan, but he also dutifully noted that the referendum in Crimea was a fact that must be recognized because it reflected the true majority choice. Kyrgyzstan, rumored to have been one of several countries “threatened” by Russia in case of a wrong vote in the UN, abstained from the vote.⁷

The distinction of being the least actively engaged on the subject of Ukraine would go to Tajikistan. President Emomali Rahmon has avoided such engagement beyond pro forma declarations and signing multilateral statements, such as the Shanghai Cooperation Organization (SCO) statement supporting Russia that was adopted at the SCO summit in September 2014 in Dushanbe. Heavily dependent on Russia in many ways and caught in a highly difficult geopolitical position, Tajikistan is generally not known to venture into activism on international issues when they do not pertain to the country directly, and this time has not been an exception. When it comes to a headcount, it is safe to count Dushanbe among Moscow’s friends – like Kyrgyzstan. It chose to abstain from the UN vote on Crimea (as opposed to voting “no”) – a move that indicates neither of these countries is comfortable fully siding with Russia, for various possible reasons.

Turkmenistan’s relative comfort in being mostly absent from any discussion of Ukraine is afforded by the country’s principle of “positive neutrality” in foreign policy. President Gurbanguly Berdymukhamedov has not gone on record defending Russia in any aspect of the crisis, nor has he offered pro-Western views. Turkmenistan has, however, been open to and engaged with Kiev directly. Most recently, the Turkmen vice-prime minister (and minister of foreign affairs) visited Kiev, meeting with Poroshenko and engaging in discussions of bilateral trade including, potentially, the supply of Turkmen natural gas to Ukraine. Turkmenistan also avoided signing a joint CIS statement calling for lifting Western sanctions against Russia during a ministerial meeting in Bishkek in early April 2015, when the statement had to go as a Collective Security Treaty Organization (CSTO) motion due to Ukraine’s opposition to it in the CIS meeting. Like the Kazakh and Uzbek delegations, the Turkmen UN delegation voted to abstain from the UN Crimea resolution vote.

With the third abstention in the UN General Assembly, Uzbekistan may be the most independent (from Moscow) in its position on Ukraine, relative to the other four regional countries. With independence having become the catchall ideological cornerstone of the country, Uzbekistan’s foreign policy pivot in its most recent version has been one that turned askance at, though certainly not away from, Russia. Its most important recent disengagement has been abandoning its CSTO membership amid Moscow’s advances since mid-2012 (after Vladimir Putin’s return to presidency) toward foreign policy “harmonization” among the organization’s members. President Islam Karimov and the

⁷ Louis Charbonneau, “Exclusive: Russia Threatened Countries ahead of the U.N. Vote on Ukraine: Envoys,” *Reuters*, 29 March 2014, available at <http://www.reuters.com/article/2014/03/29/us-ukraine-crisis-un-idUSBREA2R20O20140329>. The report quotes a Russian diplomat responding to allegations thus: “We never threaten anyone. We just explain the situation.”

Uzbek foreign ministry have reiterated on several occasions that Uzbekistan stood unequivocally for the principle of the territorial integrity of states – a clear disapproval of the Crimean secession and its annexation by Russia, yet have never said so explicitly. Nevertheless, Uzbekistan is by no means anti-Russian or pro-Western in its stance, and has offered its token of moral support. In a notably friendly gesture toward Putin during the Dushanbe SCO summit, Karimov called for the need for clear understanding of Russia’s centuries-old stake in Ukraine and of the brotherly ties between the peoples of the two countries. In a December 2014 visit by Putin to Tashkent, it was notable that the question of the Ukraine crisis was virtually unmentioned.

This quick overview of the activities and positions of the five countries in regard to the Ukraine crisis makes it possible to draw several light generalizations.

First, there is a moderate but undeniable level of diversity among these countries’ positions on Ukraine. All five are supportive of the Russian side of the crisis to various degrees, but are indicative of various relevant considerations at play and, potentially, could be helpful in thinking about possible developments in the near future.

Second, for all countries except Kyrgyzstan, the first component of the crisis—the Euromaidan—was an unwelcome event about which they either remarked critically, saw as evidence of socio-economic failures of Ukraine’s government (as opposed to political/democratic reasons), or tended to quietly overlook.

Third, all countries have effectively—even if only through the backdoor—recognized the “reunification” of Crimea with Russia as a legitimate occurrence. Even though publicly none of the countries has offered unequivocal recognition of its legitimacy, they have done so by increasingly rendering Crimea a non-issue in their interaction with Moscow. Despite its references to the sanctity of territorial integrity, even Uzbekistan has let it go and has not raised it as an issue with Russia.

Fourth, the main focus in reference to the crisis in Ukraine has been the crisis in the eastern Ukrainian regions. Uzbekistan’s call on respect for territorial integrity may be interpreted as applying to this component of the crisis. None of the countries have ventured to specifically place responsibility for the conflict on any party, and all of them—when occasions have demanded—have spoken of the need to settle the conflict peacefully, refraining from violence, and resorting to diplomacy. Kazakhstan has been the most active here, with Nazarbayev positioning himself as a mediator and offering that Astana hosts negotiations.

Fifth, while the international repercussions of the Ukraine crisis, the fourth component, have of course touched on Central Asia, they have not been a major or sustained question in their observable foreign policy postures. The sanctions on Russia and Russia’s embargo on Western goods have affected the region in rather immediate ways, and they have called for an end to these measures. However, it is possible that precisely this aspect of the crisis—its international effects, such as the exchanges of sanctions and generally the world’s division into two camps—lies beneath the noticeable maneuverings of the five countries on the subject.

Sixth, these countries’ positions on the Ukraine question can indeed be viewed as five cases of maneuvering or hedging on a sensitive matter vis-à-vis their close relations

with Russia. Admittedly, one could typically forego the present analysis—as is often done—and just say that Central Asia is effectively a dependent bandwagoner of Russia on the world stage. As the case is now emerging, that would be a premature foreclosure of an edifying analysis, as these states’ bandwagoning after Russia is far from uniform, and even the weakest client-states—Kyrgyzstan and Tajikistan—have resisted embracing Russia’s case entirely.

The Determinants of Central Asian Stances on Ukraine: What Are the Stakes?

The last point above leads to the broader question of what determines Central Asia’s behavior on the matter. Why is it not sufficient to dismiss Central Asian states as merely loyal clients of Russia? The brief overviews of each country’s case and light generalizations across them provide some basis to venture toward some answers to the question. The question can and should also be posed more broadly: what considerations and circumstances led the Central Asian states to hold their specific lines of policy and rhetoric? The following are proposed as a set of inferences from the record outlined above and some generally available observations about Central Asian politics. In the absence of more in-depth and inside information, these propositions are the best that may be put forth at the moment.

There may be, and probably are, many factors at play that have shaped and will continue to shape the five countries’ positions on the Ukraine crisis. Some of them, such as psychological factors affecting the relevant leaders’ thinking, are very difficult to glean and yet certainly have something to do with the matter. Apart from those unknowns, there seem to be at least four major factors involved and, although they are interrelated in various ways, each is a separate factor that deserves examination.

The first, and certainly the strongest factor that has defined much of the region’s posture on Ukraine, is the states’ close relationship with Russia. All five countries have significant ties to Russia, though these vary in intensity. It is important to consider that these relationships are not one-dimensional but complex, and, ultimately, based on pragmatic, “business-only” considerations on each side, rather than on feelings of eternal brotherhood or other unconditional allegiances. On the subject of Ukraine, at least three facets of the importance of these relationships are noteworthy.

One way in which these relations have factored into the equation may be referred to as the “wins and losses” of aligning with versus opposing Russia. Some balance exists between the gains each country hopes to achieve and risks or threats it wants to fend off in holding a position on Ukraine in the face of Russian partnership, as Russia is clearly in a position to quickly and significantly affect the fortunes of these countries. Hence, the more “immune” a country is to such influence (or the more it perceives itself immune), the freer that country has been to express views at variance with Russia’s—e.g. Uzbekistan and Kyrgyzstan—albeit in the broader context all five would be classed as aligned with Russia.

The second aspect of the “Russia factor” is an extension of the first, if not its opposite: the unease among all Central Asian countries of being bound up with Russia too

tightly. If the first consideration has effectively been a “pull” factor for alignment with Russia, this second consideration may be seen as the “push” aspect of the Russia factor. None of these countries, for example, share the Kremlin’s (or Putin’s, rather) enthusiasm for any neo-Soviet Union. In this respect the Ukraine question, with all its complexity and essential contestability, has given them openings to sound out their differences with Russia here and there, however meek and painless they may be.

A third consideration in which the “Russia factor” has played a role is the possibility—even if remotely—of repetition of the crisis in Ukraine in the Central Asian states’ own turfs. At least four components of the “Ukraine crisis” have been pointed out above, and each of these four could, at least hypothetically, take place independently of the other three. To prevent their own version of Maidan, Crimea, Donbass, and/or the sanctions from coming their way, the Central Asian states have had to calibrate their proximity/distance to Russia’s position on Ukraine. Being too closely aligned with Russia could facilitate the contagion with one virus, but being too far could lead to contagion by another of the three threats. The threat perception regarding each of the four components of the Ukraine crisis may be different for each Central Asian country, but ultimately all of them feel vulnerable to contagion in some way or another.

The second major determinant of the Central Asian positions on the crisis is the miniscule level of Ukraine’s own importance to these countries, juxtaposed with the overwhelming influence of Russia. None of the five countries in the region have, up to the present point, had any significant economic, political, or other relations with Ukraine. In shaping the Central Asian positions on the crisis, this factor works more as the way of easing the detachment of these countries from needing to genuinely consider Ukraine’s end of the stick; one might say that they are unencumbered in this respect. Thus, this condition allows a country to avoid feeling compelled to speak up on the various aspects of the crisis, to sound clearly pro-Russian in some aspects without concern for hurting its relations with Ukraine, and to take a more critical stance only when a matter of principle touches directly on the country’s own concerns (i.e., regardless of Ukraine), such as the question of territorial integrity or legitimacy of the “revolutionary” government.

A third determinant of the Central Asian stances on this crisis is the fact that they want to have good, fruitful relations with the world beyond Russia and Ukraine. In this regard, the Ukraine crisis has created an atmosphere of relatively (messy) indeterminacy and polyvalence and, hence, a moment rich with opportunity to open doors to some third countries (and thereby also easing up Russia’s tight embrace). How a country (its government, its leader) speaks on Ukraine—and even *that* it speaks up about Ukraine at all—is what determines the level and direction of the doors opening up to the country. Kazakhstan’s active mediation efforts have been a case in point. Kyrgyzstan’s president recently took a tour of Europe – a reception he would probably not have enjoyed, had it not taken place in the shadow of the Ukraine situation.

The fourth determining circumstance is, in a way, the obverse of the third: the Central Asian countries’ actual relations (with variation, to be sure) with the world outside Russia are not very strong. In response to the preceding passage, one may ask: if these

countries truly desire stronger relations with the rest of the world—and especially with Western countries—why did they not simply more wholeheartedly embrace the Western positions, or at least feel free to lead independent policies without constant glances at Russia? The reason, somewhat similar to Ukraine itself, is that the Western countries never came close to the level of intensity of transactions that Russia has had with Central Asia. Given such an unequal balance, it would be a risky gamble for these countries to brace for a full-blown pro-Western (and pro-Kiev) position on the crisis.⁸

There are directions other than the West; there is of course China – that other giant with whom the Central Asian countries can and do have intensifying relations. The issue with China vis-à-vis the Ukraine crisis is that China’s own position has not been very easy to read. Undoubtedly, some of the more daring moments of Central Asian remarks on Ukraine, such as Uzbekistan’s reminders about territorial integrity, owe to the perception that China would concur, and it is there to balance Russia’s weight in the region. That said, the Central Asian countries continue to have significant inhibitions regarding close partnership with China. Thus, this desired but far from granted strong relationship with the rest of the world largely explains the Central Asian countries’ hesitation and hedging remarks on Ukraine.

These determinants—“the Russia factor,” “the Ukraine (non-)factor,” the want of third-party relations, and the weakness of third-party relations at the moment—have arguably been some of the most definitive factors shaping and shaking up the stances of these countries on this complex crisis. As noted above, these are not exclusive and exhaustive explanatory factors; yet, neither are they strictly separable. The actual moment of decision at any point is probably the effect of a combination of these and some other considerations. Among such likely other considerations, one may raise the question of the personalities of some of the presidents, the question of whether the societies’ prevailing views have any influence, or the question of specific institutions’ influences, be it the CSTO, the SCO, the CIS, or others. But lest this exercise become an unwieldy and endless enumeration of possible and proximate factors, if one sticks somewhat strictly to the question of these countries’ stances on the Ukraine crisis (and not their broader foreign policy lines as such), and takes their hitherto observed activities in this regard as the basis of analysis, then it seems that the combination of these four factors goes a good distance to explain the matter.

Conclusion

This article has offered an attempt at analyzing and drawing some general observations about the five Central Asian countries’ stances on the ongoing Ukraine crisis. As such, this paper is not an engagement in judgment as to which party bears the greatest responsibility for the situation. Instead, it is an exercise in considering some important

⁸ One may note in passing that precisely these drastically imbalanced ties with Russia made Kyrgyzstan’s joining of the Eurasian Economic Union a foregone deal – as President Atambayev reiterated a few times in interviews, Kyrgyzstan “had no other choice.”

aftermaths of the crisis (though it is not yet over) for presumably non-primary parties to it.

The crisis in Ukraine has caused a major shakeup of the international arena. It has cast many principles, relationships, and priorities into a state of indeterminacy. What the eventual spoils of the conflict will be for a country has become a matter of a rather pronounced level of contingency, fate, or—as Machiavelli would prefer—“fortuna.” In such a situation, able statesmen cherish the possible opportunities but also proceed with prudence. For all countries touched by the Ukraine crisis in some way or another, this has been a time to proceed with extraordinary prudence while also looking for windows open to prudent daring. The Central Asian governments have, in their somewhat differing ways, found themselves touched precisely such: in the midst of close relations with some of the major parties in the conflict, in bringing their own interests and liabilities to the situation they appear to have acted both with prudence and with a safe level of daring. This may be called the “pragmatism” of the foreign policies of the Central Asian states.

Based on the analysis, one general conclusion is that none of the Central Asian countries could afford themselves a position entirely opposed to Russia’s. All have close ties with Russia, all of them share significant interests with Russia, and all of them have non-trivial reasons to fear reprisals from Russia for opposing it.

More interestingly, there are differences among the five countries. They are in many ways very different countries, and their differences on Ukraine, accordingly, need to be taken seriously. One general point to consider is that the differences between the countries’ positions are reflective of the differing levels of their attachment to Russia (enthusiastic or compelled), differing sorts of foreign policy ambitions they have, and different perceptions of their own vulnerabilities that may be affected by their policy stances on Ukraine.

This last point leads to one further, final conclusion. If, for a moment, the language of dichotomy—pro-Western versus pro-Russian—is to be allowed, it seems warranted to say that the more pro-Russian positions by these countries seem to be less the reflection of their “genuine,” considered positions; conversely, their more “pro-West” (or Russia-critical) positions appear to be more notable and genuinely important. Put otherwise, aligning closely with Russia on the Ukraine crisis is something these countries are likely to do by default, and such stances have little credibility. Taking positions that are opposed to that of Russia, on the other hand, is something these countries would be doing as a result of careful consideration and a degree of daring, and therefore such stances would carry a much higher level of credibility. These sorts of generalizations are very important and require critical revisiting as the situation develops.

Strategic Implications of the War in Ukraine for the Post-Soviet Space: A View from Central Asia

Farkhod Tolipov *

Introduction

The ongoing war in Ukraine is shaking the foundation of the already fragile Commonwealth of Independent States (CIS). After the separation of South Ossetia and Abkhazia from Georgia and the splitting of Pridnestrovye from Moldova, Russia's annexation of Crimea and keeping Ukraine in a lasting crisis by tactics that "take on attrition," Russia not only has fallen under international economic sanctions but also aroused suspicions about its neo-imperial syndrome among post-Soviet friends on Russia's perimeter. Not only has the international community condemned Russia's actions in Ukraine, but the intra-Commonwealth community has also been painfully strained by these actions.

Paradoxically and ironically, such dramatic events are unfolding simultaneously with seemingly integrationist undertakings regarding the assemblage of the Euro-Asian Economic Union (EAEU). Both the war in Ukraine and creation of the EAEU have revealed the invalidity of the CIS and displayed the start of a new stage of restructuring and reformatting of what has been known as the post-Soviet space. How this space will be re-configured will have global geopolitical implications, as these processes are taking place on one sixth of the Earth – the vast geographical area that Tsarist Russia and the Soviets once proudly ascribed to themselves.

Actually, the crisis of the CIS began right after its inception in 1991 when, in parallel, the then newly independent five Central Asian states decided to establish their own Commonwealth – CAC. Since then, different smaller commonwealths have coexisted alongside the CIS in the post-Soviet space, steadily undermining the construction of the CIS itself. The longer the war in Ukraine protracts, the more will Russia alienate Ukrainians and the more any integration around and with Russia will replicate the feigned CIS. Lately, Central Asia has been taking an unclear lesson from this geopolitical situation and is making an ambiguous strategic choice.

This paper is devoted to the analysis of these aforementioned three focal points: the implications of the war in Ukraine for the CIS, Russia's fault and the Central Asian countries' reaction.

Crisis in Ukraine and Turbulence in the CIS

In analyzing the ongoing events in Ukraine, two significant facts must be recalled, namely: first, when war began in Ukraine in 2014, this state held the chairmanship of the Commonwealth of Independent States (CIS); second, moreover, Ukraine was a co-

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founder of the CIS in 1991 alongside the Russian Federation and Belarus. It must also be mentioned that the question of Ukraine was the main reason for the disruption of the new Union Treaty process, which lasted from September until December 1991 in Novo-Ogarevo, on the outskirts of Moscow. The fact is that Ukraine did not take part in the process and refrained from joining it. That is the reason Boris Yeltsin's statement that the new Union could not be built without Ukraine, which justified a decision on the dismantlement of the USSR, is telling in and of itself. Paradoxically, the state that did not join the would-be renewed Union suddenly became one of the three founders of the even more vague union – the CIS.

As long as Ukraine remained an indispensable part of the CIS, the issue of its territorial integrity was not challenged and the Russian population in the east of the country did not even think about Novorossia and secession. For almost a quarter of a century, Crimea was believed to be part of the Ukrainian territory. From this perspective, it can be assumed that Kiev's reinforced and explicit pro-European intention was the main geopolitical catalyst of the subsequent tragic course of events. However, Moscow's rhetoric on Ukraine and attempt at self-justification regarding its annexation of Crimea have experienced amazing metamorphoses: from the slogan "We never expose (or hand over) our people [Russians]" to the statement that gifting Crimea to Ukraine by Khrushchev in 1954 was a mistake, and from reference to the referendum and will of the Crimean people "democratically" expressed in March 2014 on rejoining Russia to mentioning the threat from NATO of entering the Black Sea and targeting Sevastopol, and finally to Russia's historical sacralization of Crimea. Such a mixture of tricky arguments cannot but display the degree of (geo)political confusion to which Russia's leadership is prone.

Recently, the leader of the Crimean Tatars, Mustafa Jemilev, commenting on Putin's claim that Crimea is a sacral place for Russia as the location of Prince Vladimir of Kiev's baptizing, pointed out that on the basis of such a vision one could reference that Tatar Khan Devlet I Giray seized Moscow in 1571 and, therefore, the Tatars may have considered Moscow to be a sacral place as well. Yet Tatars, of course, do not. Jemilev argued that strong primitivism could be observed in Russia's politics.¹

Meanwhile, the outbreak of Ukraine's second "Color Revolution" in February 2014 shook not only Ukraine itself but also the foundations of the CIS. The drastic split of Ukraine as a state and a nation amounted to a moment of truth for the entire post-Soviet structure. The rise of anti-Russian nationalism in Ukraine along with Russia's response to annex Crimea revealed not only a persistent Russian neo-imperial stance in the post-Soviet space but also triggered geopolitical concerns among former Soviet countries, including in Central Asia.

Russia has been unable to enlist definite and resolute support for its actions in Ukraine from the CIS states for at least three reasons: first, Moscow could not properly justify the annexation of Crimea and provide persuasive claims on the basis of interna-

¹ See <http://rus.err.ee/v/radio4/f986ab07-3151-4dc2-8766-d6e03c1d91ba> (accessed 22 March 2015).

tional law; second, Russia preferred to use hard power in dealing with the Ukrainian challenge instead of the widely-popularized soft power policy directed to its so-called “near abroad” that Russia itself has recently announced; and third, Russia demonstrated a Cold War, anti-Western pattern of international behavior and thereby increased the implicit pressure on other former Soviet republics cooperating with the West.

For Ukraine, the CIS has since its inception remained a mere convenient framework for multilateral engagement with Russia and other member states because it is a very loose and weak organization. But when six CIS countries established the Collective Security Treaty Organization (CSTO) in 2002, Ukraine again remained aloof, as this quasi-alliance was a stronger integration framework than the CIS. Ukraine has also resisted membership in the Russia-initiated Customs Union and Eurasian Economic Union (EAEU). Despite its role as a co-founder of the CIS, since 1991 Kiev has remained reluctant towards deeper integration with Russia. Ironically, Ukraine took on the CIS chairmanship in January 2014, with the now-overthrown President Yanukovych as chairman.

It should be noted that in such a context, separatism can increasingly become a tendency in some areas of the post-Soviet independent states inhabited by sizable Russian-speaking communities and that fanning these processes has become a brand of Russia’s foreign policy. The secession of South Ossetia and Abkhazia from Georgia in 2008 has so far not led to these two splinter provinces of Georgia joining the Russian Federation, but the secession of Crimea has. Russia has now acquired an additional unfriendly, not to say hostile, neighbor (after Georgia and Moldova). After Crimea’s separation, Ukraine’s European drift will likely take a new and bolder impetus.

Russia’s Fault

Yet in 2003, when then President of Georgia Eduard Shevardnadze decided to close the Russian base in Abkhazia, Russian MP Gennadiy Raykov stated that “Russian peacekeepers are the outpost of peace in the region of Georgian-Abkhazian opposition.” He argued that the “President of Georgia must understand that if the peacekeepers’ mandate is not prolonged he will get a war with Abkhazia,”² and the war between Georgia and Abkhazia really took place.

In the midst of the war in Ukraine, Russian general Leonid Ivashov, while talking about Kyrgyzstan’s entering the EAEU, stated: “We must look closely at what happened with Ukraine, when she tried to move away from Russia and to climb to Europe. Ukraine is ceasing to exist. But Kyrgyzstan is smaller than Ukraine...”³ This is just one of the examples of how today Russia makes cunning efforts in one country to get its loyalty. By and large, with all its action in the post-Soviet space, Russia is creating an impression that it is preoccupied with its own version of the Monroe Doctrine. Indeed,

² “The Departure of Russian Peacekeepers Increases the Risk of Civil War,” *Vesti.Ru*, 14 January 2003, available at <http://buy.auto.vesti.ru/doc.html?id=18604&cid=5> (in Russian).

³ General Ivashov’s Truths, interview to the *Evening Bishkek* newspaper, 24 April 2015, available at http://members.vb.kg/2015/04/24/gost/1_print.html.

Russia as a great power cannot but construct its foreign policy as a power performance. This is normal for a great power. The question is how it utilizes this asset.

The publication, *Russia Direct*, recently noticed that Russia's approach towards political developments in Ukraine in 2013-2014 led to increased negative attitudes in other countries even before the start of fighting in the eastern part of the country. There is hardly any reason to think that the situation improved since then. Further, *Russia Direct* pointed out that "Moreover, the Russian leadership's changed rhetoric, implying that it intends to restore the 'unity of historic Russia' shortly after Crimea was incorporated as part of Russia, also created tensions in relations with some neighboring countries. Russia's soft power was greatly undermined."⁴

Almost a century ago, Russia as a great power was able to unite the former Soviet peoples. In 1991, Russia was able to destroy overnight the state which it once created and disunite those peoples. Is Russia today really a great power, capable of reuniting them? Here, it is important to stress that keeping peoples and countries in the sphere of influence and reunifying them are different tasks requiring different strategies. While the former task is based more on geopolitical tools than normative ones, the latter demands more normative than geopolitical assets.⁵ Soft (normative) power creates attraction; hard (geopolitical) power creates counteraction of the target countries.

So far, the countries on Russia's perimeter are just beholding like spectators how Ukraine is torn to pieces. Their ill-concealed anxieties have so far remained behind some modest statements, which Moscow has issued without any visible sign of attention and understanding. Many analysts have pointed out that Russia does not have a clear-cut strategy in Central Asia, and this is true. But this issue is not a linear one, since the reverse question—that of whether Central Asian countries have a clear-cut strategy with respect to Russia—is also relevant. For Central Asian countries, Russia remains a geopolitical puzzle, and vice versa; for Russia, Central Asia remains a geopolitical puzzle. It is not accidental that over almost a quarter century since the collapse of the Soviet Union, the United States and the European Union, as well as the Central Asian and Caucasus countries, have been preoccupied with the idea of containment of Moscow's would-be neo-imperial ambitions. This is why, when it comes to pipelines or the transportation of energy resources from Central Asia to Europe through the Caucasus, or the construction of highways and railroads connecting Europe and China through Central Asia and the Caucasus (like TRACECA), the concept of bypassing Russia has been frequently articulated in the international agenda.

The GUAM/GUUAM organization is also worth mentioning in this regard; it was initially created in 1994 by Georgia, Ukraine, Azerbaijan, and Moldova. Uzbekistan (the only country from Central Asia), later joined it. In 1998, however, Uzbekistan sus-

⁴ Alexey Dolinskiy, "Hard thinking about Russian soft power: What to do next?" *Russia Direct*, 10 April 2015, available at <http://www.russia-direct.org/analysis/hard-thinking-about-russian-soft-power-what-do-next>.

⁵ Farkhod Tolipov, "'Power Being' and 'Power Projection' of Russia in Central Asia," in *Two Decades of Re-Emerging Russia: Challenges and Prospects*, ed. Sanjay Deshpande (New Delhi: KW Publishers, 2015), 93–104.

pended its membership for political reasons. Despite some political confusion related to this fact, GUUAM still remains an attractive forum *per se* to take a new impetus. Three dimensions of the GUUAM—post-imperial, economic, and geopolitical—have made this organization quite unique among other post-Soviet groupings.⁶ From this point of view, GUUAM indicated a nascent strategic partnership between the member states of this group, so long as the latter symbolized a regional undertaking of a certain group of states without Russia.

Ukraine was supposed to be the leader of the GUUAM. Its aspiration of association with the EU and would-be membership in NATO ascribed this state a special geopolitical weight in the context of overall post-Soviet transformations. Some years ago, the former president of Ukraine, Viktor Yushchenko, argued that within the framework of GUAM a single space should be created for the extraction and transit of energy resources. The main segment in this system, he stated, should be the “oil pipeline Odessa-Brody, which we are to stretch towards Poland and will become an alternative to the Russian energy supply to Europe.”⁷

It was not by accident that the declaration signed by member states on 23 May 2006 declared the creation of the “Organization for Democracy and Economic Development – GUAM.” Interestingly, this is the only organization among many within the post-Soviet space that does not include Russia, and also the only one that articulates democracy in its name.

By and large, two essential questions now remain at the center of most of discussions concerning the essence, the form, and the character of political transformations of the former Soviet republics and their international relations. These two questions are related to their attitude towards Russia and the fate of democracy. The previous status quo, which has existed since the collapse of the Soviet Union, implied the domination of Russia and the persistence of autocratic regimes as a legacy of the Soviet past. Today, such a status quo is being questioned, as the transition period is coming to an end and the post-Soviet space is being reformatted and restructured.

While states on Russia’s perimeter have been engaged in geopolitical tricks under the vague concept of bypassing Russia, the latter has traditionally been engaged in what is called the “collection of lands” – the strategy that is facing essential risks in the context of events in Ukraine. This permanent feature of Moscow’s geopolitics needs to be reexamined. As John Mearsheimer rightly mentions,

Putin’s actions should be easy to comprehend. A huge expanse of flat land that Napoleonic France, imperial Germany, and Nazi Germany all crossed to strike at Russia itself, Ukraine serves as a buffer state of enormous strategic importance to Russia. No Russian leader would tolerate a military alliance that was Moscow’s mortal enemy until recently moving into Ukraine. Nor would any Russian leader stand idly by while the West helped install a government there that was determined to integrate Ukraine into the West [...]

⁶ Farkhod Tolipov, “GUAM as A Symbol of Post-Soviet Democratic Geopolitics,” *Central Asia and Caucasus* 3–4 (2008) (in Russian).

⁷ The Club of Three Letters: Moldova May Get out of GUAM, Source – Moscow News, 22 June 2007, available at www.centrasia.ru (in Russian).

Washington may not like Moscow's position, but it should understand the logic behind it. This is Geopolitics 101: great powers are always sensitive to potential threats near their home territory. After all, the United States does not tolerate distant great powers deploying military forces anywhere in the Western Hemisphere, much less on its borders. Imagine the outrage in Washington if China built an impressive military alliance and tried to include Canada and Mexico in it.⁸

This is true from the realist perspective. However, liberals might inquire more clearly as to whether there is a real threat from one great power (US) to another (Russian Federation) today.

Mearsheimer further argues that the West, by operating the liberal playbook, "unknowingly provoked a major crisis over Ukraine." At the same time, one could note that Russia, in turn, by operating the *Realpolitik* playbook, did the same.

Here it must be noted that most of the discussions on the Ukrainian tragedy are concentrated on great power rivalries, in terms of Moscow *versus* Washington or Russia *versus* NATO. Less, or almost no account, is taken of Ukraine's right to make its own choice. Mearsheimer makes a strong assertion on this matter: "Abstract rights such as self-determination are largely meaningless when powerful states get into brawls with weaker states. Did Cuba have the right to form a military alliance with the Soviet Union during the Cold War? The United States certainly did not think so, and the Russians think the same way about Ukraine joining the West. It is in Ukraine's interest to understand these facts of life and tread carefully when dealing with its more powerful neighbor."⁹ But that was the Cold War period. How about the post-Cold War era? By post-Cold War I mean not only the end of ideological competition between the US and the USSR and the crash of world communism, but also the end of the division of the world into two mega-spheres of influence, as well as the emergence of new centers of power shaping the new world order.

If we accept the thought that Ukraine can do nothing *vis-à-vis* Russia, then the same thought should be relevant towards other former Soviet republics, which are perhaps as vulnerable to Russian pressure as Ukraine. It would be advisable to differentiate between the concept of leaving the Russian sphere of influence and that of going closer to Europe. It was not the West that wanted to pull Ukraine away from Russia, but Ukraine itself that wanted to move towards Europe – and that had been its long-lasting, permanent goal since 1991. Interestingly, Russia itself was moving, albeit with some reversals, towards Europe.

When it comes to EAEU, it seems Moscow is undertaking convulsive efforts to realize an integration project, having forgotten the lessons of CIS, which in fact have failed. Any efforts of this kind have so far taken the form of what Roy Allison called "protectionist integration," i.e., a "form of collective political solidarity with Russia and China

⁸ John J. Mearsheimer, "Why the Ukraine Crisis is the West's Fault. The Liberal Delusions that Provoked Putin," *Foreign Affairs*, September/October 2014, available at <https://www.foreignaffairs.com/articles/russia-fsu/2014-08-18/why-ukraine-crisis-west-s-fault>.

⁹ *Ibid.*

against the international political processes or agenda which are perceived as a challenge to the incumbent regimes and their leaders.”¹⁰

Yet, as Anton Barbashin has pointed out, the idea of universally beneficial integration on equal terms has always been a façade. Long before the EAEU was launched, it was clear that gross economic disparities among the group’s members would work in Russia’s favor, with other countries getting secondary roles. Before the ruble’s collapse in December 2014, Russia accounted for 87 percent of the Union’s total GDP and 83 percent of its population. By comparison, the EU’s largest economy, Germany, represents about 15.8 percent of its GDP and just six percent of its population. Russia will apparently dominate the EAEU, representing about three-fourths of its total economic weight.¹¹

The situation within the EAEU is now exacerbating as consequences of sanctions imposed by the West upon Russia are already felt in other member countries. Nonetheless, “unlike Belarus and Kazakhstan, Russia stands ready to sacrifice economic prosperity and internal stability for a geopolitical cause.” Therefore, “the more Russia spirals into economic recession, the more its allies will look toward the West.”¹²

Central Asia in Perplexity

For Central Asia, the events in Ukraine can be interpreted as a “moment of truth.” Astana, Bishkek, and Tashkent initially issued official statements on the events in Ukraine in March 2014, speaking out for the country’s territorial integrity and sovereignty. They expressed concern about the course of events. Bishkek’s statement was more cautious and Dushanbe’s position was rather pro-Russian. These statements could be considered as a warning message addressed not only towards Ukraine by stressing the importance of a peaceful resolution to the crisis, but also towards Russia.

However, after Crimea’s *de facto* secession and annexation to Russia, Astana and Bishkek slightly changed their positions, issuing statements cautiously expressing “understanding” and “recognition” of the *fait accompli*. But Tashkent’s position remained relatively firm. In the Shanghai Cooperation Organization’s Dushanbe summit in September 2014, President of Uzbekistan Islam Karimov stated that the clue for the resolution of the Ukrainian war can be found only through direct negotiations between Kiev and Moscow. Some observers evaluated such a statement as Tashkent’s favor to Moscow and Uzbekistan’s turning towards Russia. In fact, however, it was not a change in Karimov’s stance: yes, Uzbekistan still stands for the territorial integrity and sovereignty of Ukraine, but believes that the two states—Ukraine and Russia—must engage in direct negotiations with each other.

¹⁰ Roy Allison, “Virtual Regionalism, Regional Structures and Regime Security in Central Asia,” *Central Asian Survey* 27/2 (2008): 185–6.

¹¹ Anton Barbashin, “The Eurasian Illusion. The Myth of Russia’s Economic Union,” *Foreign Affairs*, 15 January 2015, <http://the-levant.com/the-urasian-illusion-the-myth-of-russias-economic-union/>.

¹² *Ibid.*

For Central Asians, who just recently became independent actors in the international system, the observation of the Ukrainian crisis revealed a strong divergence in the interpretation and application of international law on the part of great powers, regarding their own behavior as well as their attitude towards smaller states. Russian representatives repeatedly mentioned the Kosovo precedent to justify the annexation of Crimea. Hence, in the course of events Moscow not only retaliated against Kiev but also made a point of legitimizing that retaliation in exchanges with Washington. This is a problematic precedent for smaller countries in the post-Soviet space because it demonstrates the vague and ad-hoc nature of the international order in this part of the world.

From this perspective, one of the side effects of the Ukrainian drama is that, with all his recent statements related to the situation in Ukraine and the secession of Crimea, President Putin has in fact delegitimized the CIS. He stated that Ukraine's secession from the Soviet Union was illegal. However, this would be valid for all former USSR republics, including Russia – the USSR ultimately crumbled due to a coup d'état led by former Russian President Yeltsin. By extension, Putin's statement would imply that the CIS is illegitimate as well. It was symptomatic that the President of Ukraine, Petro Poroshenko, did not show up at the last CIS summit in October 2014; in his speech, President of Uzbekistan Islam Karimov even accused him of ignoring the summit and assumed that Poroshenko was perhaps wavering between remaining a CIS member and withdrawing from it.¹³

Meanwhile, overall events in and related to Ukraine strongly affected public opinion in Central Asian countries. Many people in Central Asia judge events in Ukraine under the influence of the Russian media. As one analysis argues,

[a]fter the initial shock the crisis brought, Central Asian states have gradually come to the conclusion that they should continue dealing with Russia. Still, none of these states are prepared to be totally controlled by Russia, while all of them seek to balance Russia's influence by dealing with the West and China. There are strong indications that Beijing will take advantage of Central Asia's balancing act by promoting itself as a less aggressive partner than the West or Russia. This will prove to be a good strategy for installing itself as a hegemon in Central Asia in the coming years.¹⁴

In this regard, the countries of this region are perplexed by the age-old *modus operandi* dictating their balancing act and are in search for a new *modus vivendi*.

The situation was somewhat further exacerbated when Putin made a rash and ambiguous statement on 29 August 2014 that Kazakhs never had their own state in the past and that President of Kazakhstan, Nursultan Nazarbayev, accomplished a unique mission – that is, created the state of Kazakhstan. Such an incautious statement, albeit praising Nazarbayev, caused doubled resentment among Kazakhs as firstly, their pride

¹³ See <http://news.bigmir.net/world/851389-Na-sammite-SNG-v-Minske-osudili-otsutstvие-Poroshenko>.

¹⁴ Bayram Balci and Daniyar Kosnazarov, "The Ukraine Crisis's Central Asian Echoes," *Carnegie Moscow Center*, 25 December 2014, available at <http://carnegie.ru/eurasiaoutlook/?fa=57603>.

of their history was hurt and secondly, the statement triggered suspicions among them concerning possible replications of the Ukrainian scenario in the territory of Kazakhstan. Such suspicions actually first began to emerge on the eve of the crisis in Ukraine, when Russian politicians often expressed opinions that a nation such as “Ukraine” did not exist and that historically Ukraine never existed as a state.

In the course of such a transformation process—and events in Ukraine just confirm this—CIS institutions including the CSTO have been considerably marginalized due to their diplomatic paralysis during the ongoing Ukrainian crisis. This put Central Asian countries directly at odds with Russia and undermined multilateral structures that could potentially mitigate such crises. It is notable in this regard that Uzbekistan’s decision to exit the CSTO and distance itself from other Russia-led multilateral structures, which has been criticized by some experts, suddenly proved to be a prudent strategy.

In the context of the Ukrainian drama, Central Asia today faces a twofold challenge: firstly, the challenge of continued partnership with NATO, resistance to which has become a key feature of Russia’s global posture in general and its policies during the Ukrainian crisis in particular; secondly, the challenge of rebooting a regional cooperation format, given the fundamental crisis of the CIS. Given the new circumstances, Tashkent could take the lead in reinvigorating the 25-year-old idea of regional integration.

Interestingly, Steven Cohen—a professor of Russian history of the New-York University—has pointed out that Putin’s Russia can be understood only in light of the national collapse caused by the dissolution of the USSR.¹⁵ This raises an existential question as to whether Russia as a great power can survive and develop only by surrounding itself with former satellites. The similar existential question addresses the ability and desire of former satellites, especially Central Asian ones, to develop independently of Russia’s domination.

Does Russia want to keep its exceptional sphere of influence by using the old-fashioned imperial geopolitical power game or does it want to realize a genuine democratic project of reunification of the former Soviet geographical space on the basis of new principles? While Russia still has not formulated its clear-cut strategy with respect to Central Asia, its geopolitical competitors such as the United States, European Union, Japan, and China already have. The lack or absence of an adequate Russian strategy toward Central Asia is perhaps the main reason for the visible disharmony between its huge power assets and its limited power projection. The war in Ukraine will serve as a litmus test for unveiling the essence of the Russian post-Soviet posture.

Conclusion

The conflict in Ukraine and Russia’s involvement in it has become a new test for all – Ukraine, Russia, UN, EU, NATO, OSCE, and CIS. It was a watershed that marked the end of the post-Cold War period for all these communities of nations. Since the conflict was triggered by Kiev’s motion towards Europe and NATO, one might raise the rhetori-

¹⁵ S. Koen, “The collapse of the Soviet Union interrupted Russia’s march towards democracy,” *www.centrasia.org*, 14 December 2006, Source – InoSMI, 13 December 2006 (in Russian).

cal question of why one part of the country wants to join European institutions and the other part resists such an option and prefers to reunite with Russia. In any case, even a partition of Ukraine of this kind would not prevent at least the pro-Western part of the country from joining the Western community – a scenario that Russia is also eager to resist. From this perspective, the current war seems meaningless and disadvantageous for Russia.

The Ukrainian theater has galvanized political circles and public opinion elsewhere in the post-Soviet space, including Central Asia: Europeans are concerned with Russia's resort to hard power policy in the international arena, and so are post-Soviets. This theater, alongside Russia's previous campaigns against Georgia and Moldova, has rearticulated the notion of a "sphere of influence" or "sphere of vital interests" in the era of globalization. On the one hand, from the *Realpolitik* perspective, one can understand and explain why Moscow is keen to pursue its own version of the Monroe Doctrine by securing the buffer zone covering the territories of its former Soviet satellites along its perimeter. Yet, on the other hand, the perspective of *Realpolitik* does not sufficiently address whether the latter countries wish to remain Russia's buffers zones, or whether they will attempt to change this status quo. As one analyst argues,

NATO now needs to explain to its partners around the world why partnerships are necessary, and what added value they can bring... [T]he recent Ukrainian crisis invokes the necessity of formulating a strategic vision for the future policy in the region based on the Alliance's holistic perspective, not just the views of individual member states. The Ukrainian crisis could stimulate relations between NATO and other regional countries, including member-states, the Caucasus countries, or even Moldova, which will search for additional mechanisms of cooperation... The whole framework of cooperation must be reconfigured. It should shift from sporadic to strategic.¹⁶

In this context, the same assumption is relevant when it comes to NATO's partnership with all other post-Soviet countries, including Central Asia – the region where the Alliance just recently got quite the unique experience, due to the ISAF operation in Afghanistan.

¹⁶ Hanna Shelest, "NATO and Ukraine: In or Out?" *Caucasus International* 4 (Winter 2014–2015): 65–66.

How Russia, Step by Step, Wants to Regain an Imperial Role in the Global and European Security System

Zofia Studzińska *

Abstract: Russia has been an empire for centuries. After the fall of communism and the disintegration of the Soviet Union, many countries saw a chance to build a new world order and a new international and European security system. But for Moscow, the last 15 years were simply an aberration to be rectified rather than the new reality. Currently, we are witnessing the Russian Federation attempt to rebuild its sphere of influence and restore its borders to what they were during the time of the Cold War. The first sign of Russia testing this plan was the Russo-Georgian war in August 2008. After a poor reaction from the West, Moscow decided to pursue another confrontation, this time going much further, challenging the limits of the possible – the annexation of Crimea in March 2014 and the conflict in Eastern Ukraine, ongoing from April 2014. With the lack of a strong response from the Western countries, one can assume that Russia is on its way to rebuilding its imperial position and will continue to grasp for control of other territories.

Keywords: Sphere of influence, imperial role, Russian Federation, conflict, crisis, parastate, separatists.

Introduction

The actions taking place in Ukraine (the annexation of Crimea in March 2014 and the conflict in Eastern Ukraine, ongoing from April 2014) and the growing tension between Russia and the countries of the West is the result of a planned and conscious new-old Russian geopolitical doctrine that is oriented to compete with the West and exert Russia's dominance in Eurasia.

After the fall of communism and the disintegration of the Soviet Union, opportunities appeared for the countries of Central and Eastern Europe to build a new world order and new international and European security architecture. This amounted to creating a Europe free from any divisions and spheres of influence. An important event that helped to implement this idea was the signing of the Charter of Paris for a New Europe in 1990, which was confirmed nine years later in the Charter for European Security (adopted by the Organization for Security and Cooperation in Europe, OSCE). Article 8 of this charter posits "an equal right to security, inherent right of each and every participating State to be free to choose or change its security arrangements, including treaties of alliance, as they evolve. Each State also has the right to neutrality. Each participating State will respect the rights of all others in these regards. They will not strengthen their security at

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the expense of the security of other States.”¹ The steps the countries of Central and Eastern Europe and the Baltic States have taken,² including their willingness to integrate with the European Union (EU) and the North Atlantic Treaty Organization (NATO), are examples of them exercising precisely these rights.

Europe and the United States wanted to build a cooperative European security system with Russia. Examples of this more than two decade-long effort to build a partnership with Russia include the mechanism of the NATO-Russia Council (NRC),³ through which Russia was to be incorporated into the Western structure, and the Partnership and Cooperation Agreement (PCA),⁴ signed in 1994, which established a mechanism for summits between the EU and Russia. As described by Dr. Robert Czulda from the University of Lodz, the period of cooperation with Russia after the Cold War can be illustrated as a sine wave: at one moment it functions the correct way and at another it is refracted, only to later again return to improved relations.⁵

Today we are witnessing the Russian Federation sidestepping from a path of integration with the West in a clear and conscious way onto a road based on a new geopolitical, Eurasian, anti-liberal doctrine oriented to compete with the West and towards the restoration of the Kremlin’s hegemony over the majority of the post-Soviet countries, as well as the subordination of its neighbors.⁶ This began when President Vladimir Putin came to power after Boris Yeltsin and stated in the Russian Duma “that the collapse of the USSR was the greatest geopolitical catastrophe of the century.”⁷ The turning point when Russia started to pursue this new doctrine can be assumed to be the years 2003 (Rose Revolution in Georgia) and 2004 (Orange Revolution on Ukraine). These two cases were met with a very positive response from the Western countries, who saw them as signs of the beginning of the democratization process in the East; in Russia’s opin-

¹ Organization for Security and Co-operation in Europe, *Istanbul Document 1999*, 6th OSCE Summit of Heads of State or Government, Istanbul 1999, Article 8.

² Three northern European countries east of the Baltic Sea – Estonia, Latvia and Lithuania.

³ “The NATO-Russia Council (NRC) was established at the NATO-Russia Summit in Rome on 28 May 2002. It replaced the Permanent Joint Council (PJC), a forum for consultation and cooperation created in 1997 [...]. The NRC is a mechanism for consultation, consensus-building, cooperation, joint decision and joint action, in which the individual NATO member states and Russia work as equal partners on a wide spectrum of security issues of common interest.” Cf. <http://www.nato.int/nrc-website/en/about/index.html> (accessed 23 March 2015).

⁴ The aim of this agreement was to strengthen democracy and develop economic cooperation in a wide range of areas through political dialogue.

⁵ Robert Czulda, “Rosja-NATO: w stronę partnerstwa czy nowej zimnej wojny,” in *Ze studiów nad polityką zagraniczną Federacji Rosyjskiej*, ed. Małgorzata Pietrasiak (Piotrków Trybunalski, 2013), available at www.academia.edu/3710268/NATO_Rosja_W_stronę_partnerstwa_czy_nowej_zimnej_wojny_NATO_Russia_Towards_a_Partnership_or_New_Cold_War (accessed 23 March 2015).

⁶ Jolanta Darczewska, *The Anatomy of Russian Information Warfare. The Crimean Operation, a Case Study*, OSW Point of View series 42 (Warsaw: Center for Eastern Studies, 2014), 36.

⁷ Roger E. Kanet, “The return of imperial Russia,” in *Conflict in the Former USSR*, ed. Matthew Sussex (Cambridge: Cambridge University Press, 2012), 26.

ion—its main aim being the restoration of its imperial position—these cases were seen as threats to its existential interests. In both cases, Moscow blamed the West, mainly US non-governmental organizations, for bringing about revolution, and “Russia thus became a ‘strategic competitor’ rather than a ‘strategic partner’.”⁸ The Kremlin did not want to recognize the efforts of these two countries — the efforts of two sovereign states that had, and still have, the right, in accordance with the Charter for European Security, to make their own decisions and choose their own alliances. Subsequently, these countries became major targets of Russia’s aggressive new policy. Moscow feared that if these countries managed to implement reforms and successfully complete the integration process with the West, other countries of the South Caucasus and the former Soviet republics would follow in their footsteps. This, for Russia, would be tantamount to a *de facto* loss of influence over their policies. It was for this reason that Russia moved to stop the enlargement of NATO and the EU by new Eastern states. To achieve its objective, Russia took actions that shook Europe and the world, and which revealed the crisis of European security. All these steps were certainly carefully thought-out and intended to force Western states to recognize the Russian Federation’s special position, and to recognize the Commonwealth of Independent States (CIS) as Moscow’s privileged zone of interest. In addition, the Kremlin demanded from the West the right to co-decide the political, economic, and military European order and the right to decide on any relevant matters of international security.⁹

In analyzing Putin’s current activities, it is not impossible to predict his next moves. The Russo-Georgian war in August 2008, the annexation of Crimea in March 2014, and the conflict in Eastern Ukraine, ongoing from April 2014, show some convergent mechanisms of action in Russia’s conduct. In this article, I would like to portray these mechanisms, as well as try to consider what the West should strategically do in the future to mitigate Russia’s imperialist intentions.

The First Warning for the West: The War in 2008

Russia’s war against Georgia in August 2008 was the result of several factors and long-term historical processes which Russia, without hesitation, used to hinder the pro-Western aspirations of this small country. Russia played a significant role in Georgia’s two protracted conflicts with Abkhazia and South Ossetia from the very beginning.

Two “frozen conflicts” have existed within the territory of Georgia since the collapse of the Soviet Union: one in South Ossetia and another in the separatist region of Abkhazia. Both conflicts were escalated beyond the political level, frequently taking the form of armed confrontation. The region settled into a tenuous peace monitored by Russian peacekeepers. Russia continuously took advantage of its power in organizations such as the United Nations (UN) or the OSCE. The Kremlin used both terminated mis-

⁸ Robert Ondrejcsák, “Partnership for Stability: How to Connect the Strategic Futures of Central Europe and the EaP,” *The Polish Quarterly of International Affairs* 23:4 (2014): 125.

⁹ Marcin Kaczmarek, *Russia’s Revisionist Policy Towards the West* (Warsaw: Center for Eastern Studies, 2009), 5.

sions—the UN Observer Mission in Georgia (UNOMIG) in Abkhazia and the OSCE mission in South Ossetia¹⁰—for its own purposes. The missions began operations in the 1990s in order to control the course of a ceasefire in both provinces. However, neither was effective. The staff were dominated by Russian officers, thereby undermining their neutrality from the very onset. Russia, expected to act as a mediator, was a de facto hidden actor in this conflict. The peacekeeping forces, who were peaceful in name only, were constantly reinforced and rearmed by Moscow – an open violation of the law and international agreements. Western countries reacted passively, pretending that everything was normal. As Ronald D. Asmus accurately points out, the West tolerated this situation, apparently convinced of having selected the best of the bad options for action. In their view, the presence of both these missions was better than none at all.¹¹

Throughout the duration of these two conflicts, Russia “manipulated ethnic disputes to gain political advantages and encouraged minorities and regional leaders to express various grievances against the central governments that it opposed.”¹² The Kremlin supported the efforts of rebellious regions by providing weapons, military training and sending fighting units to battle.¹³ These actions were not a sign of “good will” and a desire to help Abkhazia and South Ossetia win their independence. While the aim of these operations was to ensure the continued existence of these minority regions, they were mainly targeted against the state of Georgia, which would be weakened and embroiled in internecine conflicts, thus remaining primarily dependent on assistance from Russia. Any agreement that was concluded by the separatists and the Georgian and Russian side were soon broken off, which led to further escalation of the conflict. Here, the Kremlin drew strategies from the former imperial policy of “divide and rule.”¹⁴ As a result, “Russia’s increasing influence in South Ossetia and Abkhazia over the years transformed the separatist conflicts into essentially Russia-Georgia disputes.”¹⁵

¹⁰ Including about 530 Russians, a 300-member North Ossetian brigade (which was actually composed of South Ossetians and headed by a North Ossetian) and about 300 Georgians.

¹¹ Ronald D. Asmus, *A Little War That Shook the World: Georgia, Russia, and the Future of the West* (New York: Palgrave Macmillan, 2010), 112.

¹² Janusz Bugajski, *Georgian Lessons. Conflicting Russian and Western Interests in the Wider Europe* (Washington, D.C.: CSIS, 2010), 45.

¹³ Kamil Janicki, “Gruzja, Abchazja, Osetia Południowa,” in *Źródła nienawiści. Konflikty etniczne w krajach postkomunistycznych*, ed. Kamil Janicki (Kraków-Warszawa: Instytut wydawniczy ERICA, 2009), 250.

¹⁴ The terms and conditions of “divide and rule” policy were used first by the ancient Romans in relation to conquered peoples. The main idea of this policy was to divide the population into manageable parts, which made it impossible for them to come together and fight against the sovereign authority. In ancient times, the occupied provinces had to sign an agreement with Rome as “allies,” but they could not do the same between each other; as a result, they could not unite and defeat Rome. The principles of this policy were applied by the Russian Empire and, later, by the Soviet Union on the occupied territories of the Caucasian countries, Central Asia and Siberia.

¹⁵ Jim Nichol, “Russia-Georgia Conflict in August 2008. Context and Implications for U.S. Interests,” Congressional Research Service Report for Congress, 3 March 2009, 6.

After the Rose Revolution in 2003, when Mikheil Saakashvili's anti-Russian faction came to power, a time of democratic and economic reforms began in Georgia, which brought Tbilisi closer to NATO and the EU. Saakashvili also wanted to regain central government authority over the separatist regions. This process was constantly hindered by Moscow, which was striving to restore its lost imperial position. Russia used all means and all possible mechanisms at its disposal to achieve this objective, which later resulted in a final settlement. One of the methods was the gradual Russification of Abkhazia and South Ossetia (which was also carried out in Crimea and the eastern part of Ukraine, and which is currently being applied in Transnistria).

This process boiled down to:

- granting Russian citizenship and passports to people living in these two districts (after the war, Russians explained its involvement as a need to protect its own citizens). The Kremlin's passport policy, as rightly pointed out in Heidi Tagliavini's EU report, was conducted in violation of international law, which led to interference in Georgian internal policy, visibly questioning its sovereignty;¹⁶
- important positions in the various bodies were filled by Russian officials, so that the Kremlin could freely and without any obstacles affect their policies;
- the Russian ruble became the official currency of both entities;
- gradually increased reliance on Russia's economy for these regions;
- implementation of a system of educational exchange;¹⁷
- Russian cultural and linguistic domination of the regions of Abkhazia and Ossetia.¹⁸

The second method was aimed directly at Georgia:

- Russia unilaterally introduced a visa regime for Georgia;¹⁹
- economic sanctions on Georgian products;
- control of energy supply, with periodic disruption in gas supplies during the winter season, cut-offs, and price hikes.²⁰

¹⁶ Heidi Tagliavini, ed., *Independent International Fact-Finding Mission on the Conflict in Georgia*, Report (Brussels: The Council of the European Union, 2009), 26.

¹⁷ Janicki, "Gruzja, Abchazja, Osetia Południowa," 265.

¹⁸ One-third of Abkhazians cannot speak Abkhaz, even on a basic level, and only few can read or write in it.

¹⁹ Françoise Companjen, "Recent Political History of the South Caucasus in the Context of Transition," in *Exploring the Caucasus in the 21st Century. Essays on Culture, History and Politics in a Dynamic Context*, ed. Françoise Companjen et al. (Amsterdam: Pallas Publications, 2010), 113.

²⁰ Fatma A. Kelkitli, "Russian Foreign Policy in South Caucasus Under Putin," *Perceptions* 13 (2008), available at <http://sam.gov.tr/wp-content/uploads/2012/01/Fatma-Kelkitli.pdf> (accessed 25 March 2015).

Georgia, seeing how Russia is using both republics in its policies against their country, has established a new strategy, which boils down to these questions:

- attempts to internationalize the issue of parastates;
- engagement of Western structures (NATO and the EU) in the conflict;
- attempts to transfer the mediation role from Russia (which, in the opinion of Georgians, was a participant in this conflict) to international organizations.²¹

None of these Georgian objectives have been achieved, yet they remain only in the form of declarations, which contribute little to any real changes.

It is assumed that the factors that had a dominant influence on the outbreak of war between Georgia and Russia were two events, which occurred at the beginning of 2008. The first was the recognition of the independence of Kosovo. The second was the NATO Bucharest Summit. These events led to a “cooling” of relations and to several years of armed conflict. When the US and some of the EU countries recognized Kosovo’s independence, “Moscow fumed and resolved to flex its muscle in an area that it considers its own sphere of influence.”²² This declaration aggravated Russia because of its veto, which was ignored in the matter. As a result, Moscow used the precedent of granting Kosovo independence as a basis for granting the independence of Abkhazia and South Ossetia. In the second important event, the NATO Bucharest Summit, neither Georgia nor Ukraine were granted Membership Action Plans.²³ This was something on which Saakashvili had truly been counting. The NATO states did, however, agree that in the future these countries would become members. These two events clearly show the bigger picture, revealing that Moscow has steadily escalated its policies against Georgia with a number of measures, culminating in war.²⁴ On 8 April 2008, Russian Foreign Minister Sergey Lavrov told the *Echo of Moscow* radio station that “[w]e will do everything possible to prevent the accession of the Ukraine and Georgia to NATO.”²⁵ This is what Russia was really doing over the course of those six months of conflict with Georgia, and it is also what it is doing now with Ukraine.

The war was far from a surprise: it had been planned for months and the geopolitical foundations of the war had been building up since 1992. Georgia was the ideal setting for Russia’s response. First of all, it presented a perfect opportunity to demonstrate Moscow’s military power and to show the West how powerless it is regarding Russia’s

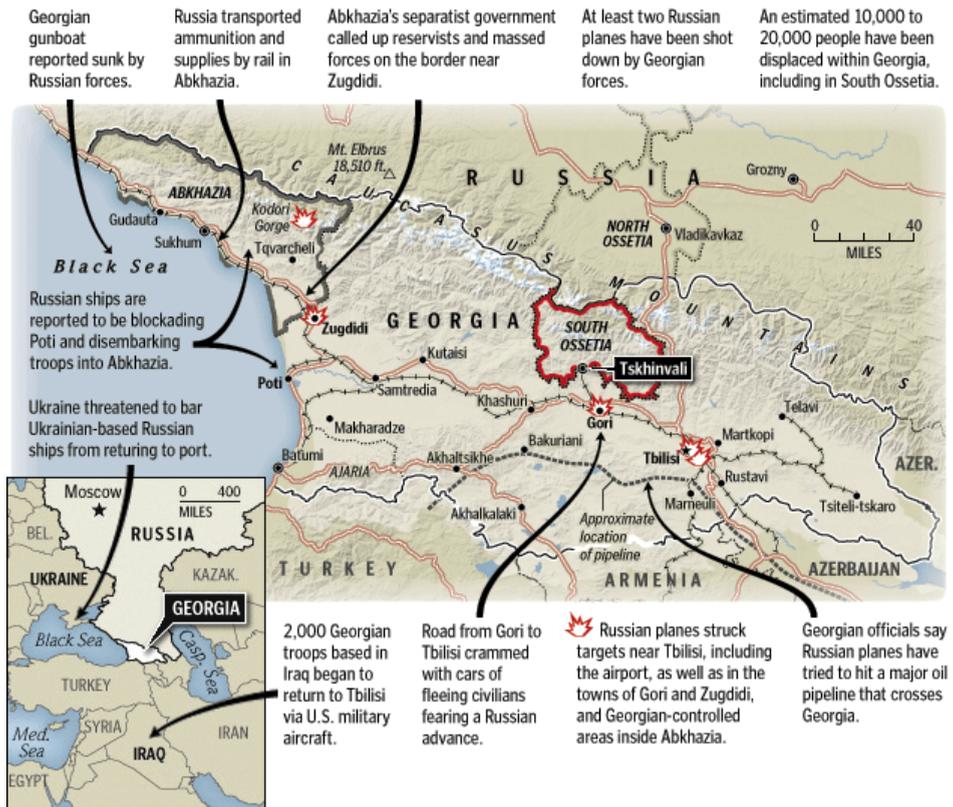
²¹ Janicki, “Gruzja, Abchazja, Osetia Południowa,” 273.

²² Svante E. Cornell and S. Frederick Starr, eds., *The Guns of August 2008: Russia’s War in Georgia* (Abingdon: Routledge, 2015), 125.

²³ “The Membership Action Plan (MAP) is a NATO program of advice, assistance and practical support tailored to the individual needs of countries wishing to join the Alliance. Participation in the MAP does not prejudice any decision by the Alliance on future membership,” cf. http://www.nato.int/cps/en/natolive/topics_37356.htm.

²⁴ Cornell and Starr, eds., *The Guns of August 2008*, 127.

²⁵ *Ibid.*, 127.



Source: <http://kelsocartography.com/blog/wp-content/uploads/2008/08/gr2008081100071.gif>.

Figure 1: Russo-Georgian War in 2008.

periphery.²⁶ The Russo-Georgian war lasted five days, from the 7–12 August 2008. As in all wars, this one caused only hatred and ethnic conflict. Nations and cultural groups that had lived side by side for centuries crossed the line of mutual coexistence, leading to bloodshed among neighbors. The end of the war brought about a six-point peace plan announced by French President Nicolas Sarkozy, who was representing the EU, which called for:

1. the prohibition of further use of military force;
2. the cessation of all further hostilities;

²⁶ George Friedman, "The Russo-Georgian War and the Balance of Power," *Stratfor Global Intelligence*, 12 August 2008, https://www.stratfor.com/weekly/russo_georgian_war_and_balance_power (accessed 27 March 2015).

3. the guarantee of free access to humanitarian aid and the return of displaced persons;
4. the withdrawal of Georgia's armed forces to the positions they held before the conflict began;
5. the return of the armed forces of the Russian Federation to pre-conflict areas of deployment;
6. the opening of an international debate on the future status of Abkhazia and South Ossetia.²⁷

Although this plan was a result of compromise, it has not been respected by Russia, which has put the country's credibility in question. Point 5 was realized by Russia only after two years. On 18 October 2010, Russian troops left the Georgian village of Perevi, which lies on the administrative border with South Ossetia.²⁸ Point 6 was not fulfilled at all, as Russia recognized the independence of Abkhazia and South Ossetia.

Russian intervention in Georgia was not met with any serious consequences. The US and EU members did not accept the secession of both republics as these were in violation of international law, which rendered the recognition of their independence by Russia invalid. However, the international community did not place any sanctions on Moscow. As Bugajski points out, "most Western governments concluded that Russia was too important a country to be isolated, that sanctions would be ineffective, and that Moscow's estrangement would be counterproductive and fuel further hostility."²⁹ The war, which was short and did not leave a large number of victims, exposed the weakness of the standards and principles that shape the European security system. The UN and OSCE missions, which were stationed in the breakaway republics, had no real effect on what has happened around them. Structures that in principle should be neutral and also ensure peace were used rather by the side of the aggressor to suit its own needs. Currently, the only international mission in Georgia is the EU's Monitoring Mission (EUMM), which was put in place to help stabilize the situation on the ground, but it has been denied access to the territory of Abkhazia and South Ossetia by Russia. Also, diplomatic efforts have been unsuccessful – they did not stop the war and the conditions of the negotiated peace were not effectively enforced by Western countries against Russia. They also could neither take back the lands gained by Russia, nor restore the pre-conflict status quo.³⁰ Ironically, the small US commitment to resolve the dispute and the

²⁷ Nichol, "Russia-Georgia Conflict in August 2008," 11.

²⁸ According to the Tbilisi government, the agreement is still not respected by Russia, because Moscow constantly maintains its military presence in South Ossetian and Abkhazian break-away regions of Georgia.

²⁹ Bugajski, *Georgian Lessons. Conflicting Russian and Western Interests in the Wider Europ*, 1.

³⁰ With regard to Abkhazia and South Ossetia, Russia still occupies the land of the two republics, and did not stop their militarization, despite the protest of international opinion. On March 5, 2015, the Russian-Abkhaz Treaty on "Alliance and Strategic Partnership," first signed in 2014, entered into force. Its main goal is a slow connection of Abkhazia with the Russian Federation, which will mark the end of the actual functioning of this para-state and its real annexation with

lack of a strong response was probably a consequence of the imminently concluding term of President George W. Bush.

Moscow, forcibly changing the borders of a sovereign state, has shown the ugly neo-imperialist side of its policies. The Kremlin warned the world that it is ready to use military force to pursue strategies related to the protection of its interests. Russia's actions in Georgia showed how far Moscow is ready to go to retain influence on other Soviet successor states. At the same time this strengthened its position in the region, delaying the integration process of Georgia for at least several years. This policy was openly confirmed by former Russian president Dmitry Medvedev, who in 2011 stated that the war from 2008 had an important aim: successfully thwarting NATO's expansion to the region.³¹ Furthermore, Lavrov said that Georgia's further efforts in this direction could lead to a repetition of the events of 2008.³² Despite these threats, Georgia continues its pro-Western policies while trying to restore good relations with Russia. During the Eastern Partnership Summit in Vilnius, which was held in November 2013, Georgia signed an Association Agreement (AA) with EU and an agreement creating a Deep and Comprehensive Free Trade Area (DCFTA). However, Russia's determined attitude and its desire to rebuild its sphere of influence in the CIS, along with the current situation in Ukraine, raises concerns for Tbilisi that Georgia might once again become the target of Moscow, which will strive to block the implementation of the AA.

The Second Warning for the West: The Conclusive Result?

After the war in 2008, many specialists (such as Asmus) believed that Moscow's next target would be Ukraine. In turn, Ukraine's officials were expressing their heightened concerns about Russian intentions, including threats made by Putin and others in Russia to encourage secessionism by Eastern Ukraine and the Crimean Peninsula.³³ The 2008 war was Putin's way of testing the waters. As Otashvili points out, "the minor international outrage and lack of any meaningful punishment was what Putin hoped for and achieved. This laid the groundwork for the war in Ukraine."³⁴

Russia. A similar situation is occurring in South Ossetia now. The treaty was, of course, condemned by the US, NATO, the EU and the European Parliament. However, the vision of the end of the Russian-Georgian conflict was rejected even more strongly. There is a high probability that the threat of annexation of one or both of these republics will be another form of pressure on the government in Tbilisi.

³¹ Iskra Kirova, *Public Diplomacy and Conflict Resolution: Russia, Georgia and the EU in Abkhazia and South Ossetia* (Los Angeles: Figueroa Press, 2012), 14.

³² Irakli Matcharashvili, *2008 rok. Wojna rosyjsko-gruzińska. Wojna która nie wstrząsnęła światem* (Oświęcim: NapoleonV, 2013), 186.

³³ Nichol, "Russia-Georgia Conflict in August 2008," 24.

³⁴ Maia Otashvili, "Georgia and Moldova Remain Fragile as Russian Aggression Continues," Foreign Policy Research Institute (FPRI), Geopoliticus: The FPRI Blog, 30 January 2015, <http://www.fpri.org/geopoliticus/2015/01/georgia-and-moldova-remain-fragile-russian-aggression-continues> (accessed 30 March 2015).

In the early years of his presidential term, Putin did not seem to be concerned with the prospect of accession of the post-Soviet countries to NATO. At the press conference after the NATO Prague Summit (2002), when a journalist asked him about the Ukrainians' aspirations to membership in NATO, he said that Ukraine is a sovereign, independent state, and can decide its own security policy. He added that Russia's interests are not harmed by good Ukrainian relations with NATO and it certainly will not cast a shadow on relations between Russia and Ukraine.³⁵ It was the calm before the storm. The tone of his speech changed dramatically while at the NATO Bucharest Summit, where he admitted that the possible extension of NATO to include Ukraine could lead to the disintegration of the country.

When Viktor Yanukovich, a supporter of the pro-Russian policy, became the president of Ukraine, several important decisions were adopted. In 2010, the parliament of Ukraine proclaimed a non-block status, which is equivalent to non-participation in military alliances. However, from today's perspective, the event with the most far-reaching consequences was the Eastern Partnership Summit in Vilnius in 2013. The Ukrainian government had refrained from signing the Association Agreement with the EU, explaining this move with reasons of national security and the need for improved relations with Russia and other CIS countries. This decision resulted in the largest protests since the Orange Revolution. The government's actions were targeted by strong pressure from Moscow. The Kremlin sought to stem the increasing possibility of integration with the EU through the introduction of an embargo on goods from Ukraine, putting Kiev in a very difficult economic situation. Restrictions on exports between Ukraine and Russia gave a clear signal that further efforts to bring Ukraine closer to the EU were unacceptable to Russia. Via protests, which were the consequence of social discontent because the agreement with the EU had not been signed, Ukrainians wanted to force the government to change the decision. The demonstrations, which began to slowly weaken due to the lack of response from the government, strongly intensified when Yanukovich's administration used force to try to end them. Protests, which started to take on an anti-government character, lasted several months and became bloody in nature (many people were killed and several hundreds were wounded). The consequence of what happened in the Euromaidan was the signing of an agreement to hold early elections by president Yanukovich and the opposition, which were consequently won by Petro Poroshenko. Yanukovich decided to flee the country. The new authorities, chosen in a democratic way by the Ukrainian citizens, were not recognized by Russia, which described them as "fascist."³⁶

The process leading to the secession of Crimea from Ukraine began immediately after the overthrow of Yanukovich. There were a series of clashes between the supporters and the opponents of the secession of Crimea and its annexation by Russia. Despite the

³⁵ Bertil Nygren, *The Rebuilding of Greater Russia: Putin's Foreign Policy towards the CIS Countries* (Abingdon: Routledge, 2008), 55.

³⁶ Andrea Chalupa, "Putin's Fabricated Claim of a Fascist Threat in Ukraine," *Forbes*, 4 April 2014, <http://www.forbes.com/sites/realspin/2014/04/04/putins-fabricated-claim-of-a-fascist-threat-in-ukraine> (accessed 30 March 2015).

opposition, the authorities of the Autonomous Republic of Crimea announced a referendum on independence. Russia, similarly to the case of its aggression against Georgia, justified its involvement and use of troops as a need to protect the lives of its own citizens. US President Barack Obama warned Russia that the possibility of Russian intervention in Ukraine would have far-reaching consequences. The EU also recognized Moscow's actions as acts of aggression. Despite the protest from the West, however, Moscow continued its policy towards Ukraine and Crimea. The escalation of tensions on the Crimean Peninsula deepened. Pro-Russian forces took control in Crimea in February. On 16 March they organized a referendum calling for a separation from Ukraine and incorporation into Russia. Less than a week later, Putin signed a law formalizing Russia's takeover of Crimea from Ukraine. This step was not recognized by the international community and Ukraine.³⁷ The loss of the peninsula by Ukraine caused heavy damage to its armed forces and far-reaching economic consequences, especially for the energy and mining sectors.³⁸ By contrast, the annexation of this strategic territory by Russia was a chance to change the balance of power in the Black Sea region. Right now, Moscow undoubtedly has become a dominant force in this region.

The incorporation of Crimea into the Russian Federation has been accompanied by information warfare, blending elements of cyber warfare, propaganda, economic pressure, energy blackmail, diplomacy, and political destabilization on a large scale. Moscow explained that it was attempting to counteract the "aggressive information policy" of Western countries under the leadership of the US, which was targeting Russian civilization.³⁹ This information warfare, which began with the Euromaidan protests, has several goals. Firstly, it aims to manipulate information and exert psychological influence on another state's political and military leaders, soldiers, and civilian population to destabilize Ukraine, so that Kiev can be controlled by Moscow. Second, it serves the purpose of strengthening the presidential power center in the Russian Federation by providing support from its own citizens as well as the broader Russian-speaking community – the subject of previously planned manipulation.⁴⁰ It has been pointed out that "Russian-speaking citizens of Ukraine who had undergone necessary psychological and informational treatment (intoxication) took part in the separatist coup and the annexation of Crimea by Russia."⁴¹ The same mechanism can be observed today in Eastern

³⁷ "Ukraine: Putin Signs Crimea Annexation," *BBC news*, 21 March 2014, available at <http://www.bbc.com/news/world-europe-26686949> (accessed 30 March 2015).

³⁸ Tadeusz A. Olszański and Agata Wierzbowska-Miazga, "The Consequences of the Annexation of Crimea," Center for Eastern Studies (OSW), Analyses, 19 March 2014, available at <http://www.osw.waw.pl/en/publikacje/analyses/2014-03-19/consequences-annexation-crimea> (accessed 30 March 2015).

³⁹ Darczewska, *The Anatomy of Russian Information Warfare*, 5.

⁴⁰ John R. Haines, "Russia's Use of Disinformation in the Ukraine Conflict," Foreign Policy Research Institute (FPRI), E-Notes, February 2015, available at <http://www.fpri.org/articles/2015/02/russias-use-disinformation-ukraine-conflict> (accessed 30 March 2015).

⁴¹ Darczewska, *The Anatomy of Russian Information Warfare*, 6.

Ukraine where the citizens are predominantly pro-Russian. The intent is to demoralize and provoke a popular backlash against the Ukrainian government, even a putsch.

After the annexation of Crimea, Russia launched a full-scale invasion of Ukraine. The escalation of the conflict in the eastern regions of Ukraine turned into regular fighting between separatists (supported by Moscow with forces, training, and advanced weapons) and the Ukrainian army. In August 2014, regular units of the Russian armed forces invaded Donbas, occupying part of the territory of Donetsk and the Luhansk region. According to NATO,⁴² Russian soldiers are actively taking part in fights, and even if the Kremlin is denying that there are any Russian soldiers in Ukraine, “their credibility is nil and no one takes them seriously anymore.”⁴³ Fights were interrupted for a moment, in the framework of signed ceasefires, but “peace” did not last long, as agreements were immediately broken by the separatists. The conflict in Donbas, which continues to absorb more and more human lives, touches not only the military personnel. Increasingly, it is apparent that the attacks are directed on civilian populations, as exemplified by rocket fire in the Ukrainian city of Mariupol. In early February 2015, a peace agreement, the Minsk Protocol, was signed by Ukraine, Russia, France, Germany, the OSCE, and pro-Russian separatists.⁴⁴ The protocol provides for, inter alia, a ceasefire, withdrawal of troops, and, critically for Kiev, imposes an obligation to adopt a new constitution and decentralization of Ukraine with special status given to the territories controlled by the separatists.⁴⁵ Russia has long demanded this from Kiev. Decentralization would leave Moscow to interfere in Kiev’s policies and take effective action to prevent Ukraine’s integration with the West without any restrictions. In fact, for Ukraine it would mean a waiver of a fundamental right as a sovereign country to self-manage its system.⁴⁶ Accepting a truce cannot be recognized as a success because, interestingly, it requires more responsibility on the Ukrainian side than on that of the separatists. As could be predicted, the agreement did not stop the fighting, which still continues.⁴⁷ In

⁴² Zeke J. Miller, “Russian Forces Fighting Alongside Separatists in Ukraine, NATO Says,” *Time*, 28 August 2014, available at <http://time.com/3209084/ukraine-russia-nato-obama> (accessed 30 March 2015).

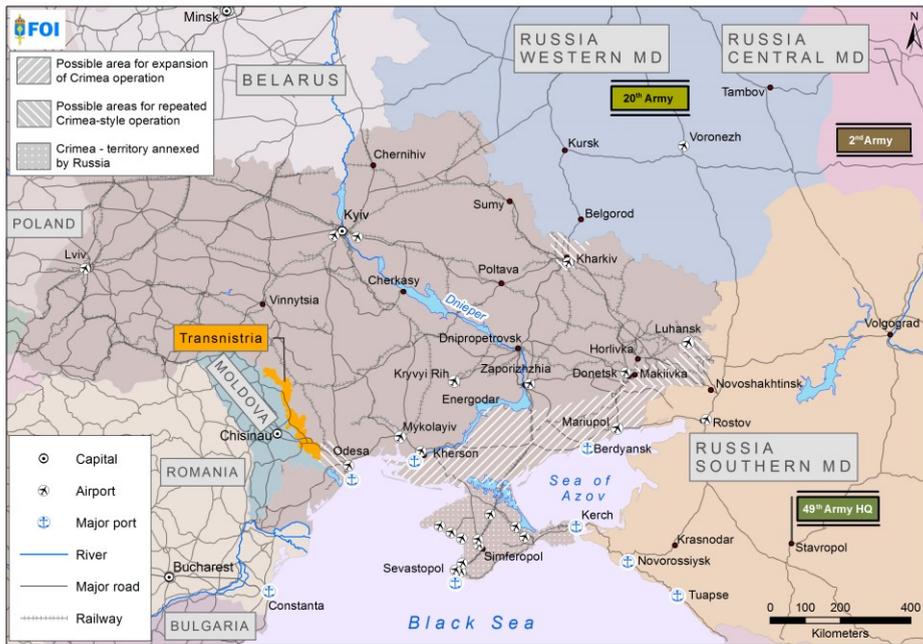
⁴³ Alexander Motyl, “Russo-Ukrainian War Now a Reality,” *The World Post*, 29 August 2014, available at http://www.huffingtonpost.com/alexander-motyl/russo-ukrainian-war-reality_b_5737412.html (accessed 30 March 2015).

⁴⁴ Szymon Kardaś and Wojciech Konończuk, “Minsk 2 – a Fragile Truce,” Center for Eastern Studies (OSW), Analyses, 2 February 2015, available at <http://www.osw.waw.pl/en/publikacje/analyses/2015-02-12/minsk-2-a-fragile-truce> (accessed 30 March 2015).

⁴⁵ Michael Kofman, “Don’t Doubt the Ceasefire, Minsk II Could Freeze the Conflict in Ukraine,” *Foreign Affairs*, 22 February 2015, available at <http://www.foreignaffairs.com/articles/143165/michael-kofman/dont-doubt-the-ceasefire> (accessed 31 March 2015).

⁴⁶ Tadeusz A. Olszański, Andrzej Wilk, and Jan Strzelecki, “Kyiv refuses to make concessions to the separatist republics?,” Center for Eastern Studies (OSW), Analyses, 25 March 2015, available at www.osw.waw.pl/en/publikacje/analyses/2015-03-25/kyiv-refuses-to-make-concessions-to-separatist-republics (accessed 31 March 2015).

⁴⁷ The ceasefire agreement concluded in Minsk on 12 February has not been implemented, either militarily or politically.



Source: https://www.iiss.org/-/media/Images/Military Balance Blog/April 2014/Ukraine_ConflictArea_large.jpg?la=en.

Figure 2: The map of conflict in Ukraine in 2014.

addition, there was an increase of activity among separatists in neighboring regions, such as Odessa and Kharkov. Surely the aim of the separatists, and at the same time that of Russia, will be the gradual expansion of the controlled area.

Ukraine is the target of Putin’s dream to resurrect the Soviet Union. The main goal of Russia in the coming months will be to fuel the conflict and create further destabilization in Ukraine in order to block its political transformation and any attempts to integrate with the EU. Putin is counting on time and endurance to bring the collapse and division of Ukraine and a revision of the post-Cold War world order by maintaining a permanent crisis that will make Ukraine a “failed state,” incapable of making any reforms or initiatives. This would prompt Ukraine to end the conflict on unfavorable terms. Russia wants to reassert itself as the dominant power, having a real impact on the policies of other countries of the CIS. Therefore, the matter of Ukraine remaining within Russia’s sphere of influence will be one of life or death. In turn, Ukraine will try to

“freeze” the conflict in Donbas,⁴⁸ as well as reduce its destabilizing effect on the entire country.⁴⁹

Are the diplomatic efforts and the commitment of the Western countries to solving the conflict effective? For the time being, one cannot say that they are. Of course, the Russian aggression and the annexation of Crimea have been met with international condemnation. The escalation of the conflict in the eastern part of Ukraine is the subject of international criticism. The EU and the US have imposed a series of economic sanctions on Russia, but in the case of the EU they are limited and mainly directed towards several oligarchs associated with the camp authorities. These sanctions are the minimum of the minimum. Berlin is trying to resolve the conflict on behalf of the EU. Its position is, on the one hand, critical of Russia, but on the other hand it is cautiously undertaking diplomatic action, which so far has contributed to a sense of frustration and helplessness in the face of Russia’s effectiveness.⁵⁰ In April 2014, NATO suspended all practical cooperation with Russia, including in the NRC. However, the Alliance agreed to keep channels of communication open at the ambassadorial level and, above all, to allow for the exchange of opinions.⁵¹ In the resolution of the conflict so far, there has been little involvement from the US and Obama, although there is a visible change of attitude. At the end of March 2015, the US House of Representatives passed a resolution asking Obama to send weapons to help the Ukrainian government.⁵²

Conclusion

The conflicts and consequences presented in this article demonstrate that they are not only a problem for Georgia or Ukraine, but that they go much farther, touching all of Europe and practically all of the world. It is an obligation to think about European security, the relations of the EU and NATO with young democracies, as well as the increasingly aggressive policy of Russia, which constantly strives to regain its sphere of influence. Both aforementioned conflicts were provoked and developed by Russia. Their

⁴⁸ The Ukrainian government considers the separatist-controlled areas to be “temporarily occupied,” which absolves Kyiv of responsibility for the situation in these areas. The Ukrainian authority has turned to the UN and the EU to ask for a peacekeeping mission to be sent to the Donbas, which will be synonymous with “freezing” the conflict under international control.

⁴⁹ Tadeusz Iwański, “Still Together, but Apart? Kyiv’s Policy towards the Donbas,” *Commentary* 160 (Center for Eastern Studies, 6 February 2015), 8.

⁵⁰ Anna Kwiatkowska-Drożdż and Kamil Frymark, “Germany in the Russian-Ukrainian Conflict: a Political or a Humanitarian Mission?,” *Commentary* 163 (Center for Eastern Studies (OSW), 18 February 2015), 1.

⁵¹ “NATO-Russia Council,” available at http://www.nato.int/cps/en/natohq/topics_50091.htm (accessed 31 March 2015).

⁵² The White House announced it will deliver a \$75-million package of nonlethal defensive equipment to the Ukrainians, cf. Peter Baker, “US to Give Ukraine’ Military an Additional \$75 Million in Nonlethal Aid,” *New York Times*, 11 March 2015, available at www.nytimes.com/2015/03/12/us/us-imposes-sanctions-on-pro-russian-separatists-in-ukraine.html?_r=0 (accessed 31 March 2015).

cause was not, as in the case of Georgia, the unclear status of Abkhazia and South Ossetia. Russia used these two republics as a tool to destabilize the internal political situation of Georgia. The case is similar in Crimea and Eastern Ukraine, where Moscow has openly supported the separatist activities in the mutinous regions of Donetsk and Luhansk. The aim of Russia, which elicited the crisis in both countries, was to stop their integration into Western structures. Georgia and Ukraine, which in accordance with the provisions of the Charter for European Security wanted to guarantee for themselves security, sovereignty, and independence through membership in NATO and the EU, were brutally suppressed by their bigger neighbor, which, incidentally, is a signatory of the Charter and took part in the building of this new international order. The war in 2008 with Georgia was a test of how far Moscow would be allowed to go, as well as a means to gauge the West's reaction. With Ukraine, Russia went much further, pushing the limits of what is possible. As a matter of fact, this process is still under way. There is a high probability that the next target of massive pressure from Russia will be Moldova.⁵³ Moreover, NATO fears that Putin will direct his aggressive policy towards the Baltic states – Latvia, Estonia, and Lithuania.⁵⁴ Anders Fogh Rasmussen, NATO's previous secretary general, said there was a “high probability” that Putin would test NATO's Article 5.⁵⁵ It is also expected that pressure will increase further in relation to Georgia, Azerbaijan, and Armenia.

There is much reason to fear that Moldova might become the next Crimea or Eastern Ukraine. An autonomous region, Transnistria is located on the east side of the Dniestr River in Moldova. This part of Moldova, which is pro-Russian territory, declared its independence in the early 90s, although this was not recognized by most of the world.⁵⁶ Now this region depends on the presence of Russian peacekeeping troops⁵⁷ and on Kremlin subsidies.⁵⁸ Transnistria is a post-Soviet “frozen conflict” zone, which Russia uses as a tool to influence the policies of Moldova. The crisis in Eastern Ukraine and Moldova's signing of the Association Agreement with the EU in June 2014 renewed concerns that Russia will use all possible measures to stem Chisinau's integration with Western structures, inter alia by supporting Transnistria in its independence efforts or by enacting embargoes on Moldovan export products.

⁵³ Kamil Całus and Agata Wierzbowska-Miazga, “Russia is Playing Harder for Moldova,” Analyses (Center for Eastern Studies OSW, 2 April 2014), available at <http://www.osw.waw.pl/en/publikacje/analyses/2014-04-02/russia-playing-harder-moldova> (accessed 31 March 2015).

⁵⁴ These countries have large Russian-speaking minorities.

⁵⁵ “From Cold War to hot war,” *The Economist*, 14 February 2015, available at <http://www.economist.com/news/briefing/21643220-russias-aggression-ukraine-part-broader-and-more-dangerous-confrontation> (accessed 31 March 2015).

⁵⁶ Only Abkhazia and South Ossetia recognize Transnistria as an independent country.

⁵⁷ Russia keeps about 1,500 troops in Transnistria, stationed in Tiraspol and Bender (close to the border with Moldova).

⁵⁸ Victoria Puiu, “Russia's Ruble Crisis Threatens Support for Rebel Republic Transnistria,” *The Guardian*, 20 February 2015, <http://www.theguardian.com/world/2015/feb/20/transnistria-russia-rouble-crisis> (accessed 31 March 2015).

Armenia is another victim of the imperial policies of Russia. Under pressure from Moscow, Armenia did not sign the Association Agreement with the EU at the Vilnius summit in 2013. Putin effectively used the ongoing conflict between Yerevan and Baku in Nagorno-Karabakh, openly hinting at the possibility of conflict escalation in that region by selling weapons to Azerbaijan, whereby he was able to persuade the president of Armenia, Serzh Sargsyan, to withdraw from the agreement.⁵⁹ As a result, Armenia joined the Eurasian Economic Union in January 2015. Moscow is also ready to use the frozen conflict in Nagorno-Karabakh as an instrument of influence on Azerbaijan and put pressure on Baku to obstruct its progress toward Western institutions. The Kremlin's actions as a mediator in the conflict between Yerevan and Baku are not intended to improve the relations between them, as this would result in Moscow losing its tool of impact on the region.

According to Michael Fallon, a British politician, the next object of Putin's aggression will be former Soviet bloc countries such as Latvia, Lithuania, or Estonia, where he "could involve irregular troops, cyber attacks, and inflame tensions with ethnic Russian minorities in nations seen as part of the country's 'near abroad' by Moscow."⁶⁰ As a result of rising tension in the area of the Baltic states, the US is planning to send 3,000 soldiers, about 750 tanks, helicopters, and other equipment near Russia's border for training exercises with the militaries of Estonia, Latvia, and Lithuania.⁶¹

"Russia has been an empire for centuries. The last 15 years or so were not the new reality, but simply an aberration to be rectified. *And now it is being rectified.*"⁶² Currently, Russia wants to rebuild its position as a regional power with its own sphere of influence, where it will have the sole right to decision. Russia has used and is still using the same mechanisms to destabilize Georgia and Ukraine, along with other former post-Soviet countries. All of these mechanisms are represented in the table at the end of this article. In addition, Russia wants to rebuild the European security system in order to attain the same position in it as that of the US and NATO.

With this in mind, what should the Western countries do to strategically stop Russia's attempts at imperialist expansion? Russia, like every country, has the right to take care of matters close to its borders that appear to be dangers or threats to its sovereignty. However, it does not have the right to interfere in the internal politics of its neighbors,

⁵⁹ Elzbieta Kaca and Anita Sobják, "Recalibrating the Eastern Partnership: Pressure for a More Relevant Policy," *The Polish Quarterly of International Affairs* 4 (2014): 54.

⁶⁰ Michael Fallon, "Russia a Threat to Baltic States after Ukraine Conflict," *The Guardian*, 19 February 2015, available at <http://www.theguardian.com/politics/2015/feb/19/russia-a-threat-to-baltic-states-after-ukraine-conflict-warns-michael-fallon> (accessed 31 March 2015).

⁶¹ Howard Koplowitz, "Ukraine Crisis: US Sending 3000 Troops to Latvia, Estonia, Lithuania for Military Exercises," *International Business Times*, 9 March 2015, available at www.ibtimes.com/ukraine-crisis-us-sending-3000-troops-latvia-estonia-lithuania-military-exercises-1840934 (accessed 31 March 2015).

⁶² George Friedman, "The Russo-Georgian War and the Balance of Power," *Stratfor Global Intelligence*, 12 August 2008, available at http://www.stratfor.com/weekly/russo_georgian_war_and_balance_power (accessed 31 March 2015).

change their democratically-elected governments, or decide on the direction of their foreign policy. For such actions, there is absolutely no consent. It is clear that Russia will not change its policy in the near future, as it is not afraid of political confrontation with the West. In Moscow's opinion, the EU members are too divided and poorly interested in their Eastern neighbors. The Kremlin does not care about the sanctions, as it believes that in the near future everything will return to normal, especially in the economic sphere, and revert to the circumstances after the Georgian War in 2008. Bearing in mind that efforts of Western diplomacy were not effective, Russia believes that there is nothing to fear. The West was not able to stop the outbreak of war in 2008, and only compliance by Russia enabled a peace plan. The lack of lessons learned from the Russo-Georgian War and the helplessness of the West in the face of the current conflict in Ukraine reveals that Europe and the EU, if they want to have influence on the conduct of Russia, must act decisively and unanimously, with strong support from the US. Europe and the US should tighten the economic sanctions against Russia and send a clear signal that if Moscow does not change its policy, they will begin arming Ukraine. The West must raise the price paid by Putin for the escalation of the conflict, so that the costs are significantly higher than he projects when compared to the benefits.

Russia's mechanisms of action leading to the destabilization of the post-Soviet countries						
Mechanisms of action	Georgia	Ukraine	Moldova	Armenia	Azerbaijan	Baltic States
Passport policy ⁶³	Used in Abkhazia as well as South Ossetia.	In Crimea and the eastern part of Ukraine.	In Transnistria.	Many citizens hold Russian passports in Armenian territory.	The case is the same as it is in Armenia.	Russia is using "passportization" efforts: it is offering its passports and citizenship to Russian-speaking citizens of Baltic states.
Supporting the entrance of pro-Russian politicians into national governments.	In both republics, Russia began to replace Abkhazian and Ossetian politicians with those who have strict pro-Russian views, for example former KGB agents. In Georgia, Russia is giving financial support for pro-Russian politicians such as Nino Burjanadze.	In Crimea and in the break-away Donetsk and Luhansk regions Russia supports separatists and separatist leaders.	In Moldova, pro-Russian parties using illegal funds from Russia are very strong. In Transnistria, the president is a pro-Russian politician, Yevgeny Shevchuk, who is entirely dependent on Moscow's support.	In Armenia, there are many individuals who are ideologically pro-Russian in the presidential administration, such as the Minister of Foreign Affairs Eduard Nalbandyan, who is following orders from the Kremlin. ⁶⁴	The Government of Azerbaijan, which is quite independent from the Kremlin, is under constant pressure from Moscow, which is using the Armenian-Azerbaijani conflict as a leverage for influence over Azerbaijan.	In the Baltic states there are a number of political parties and politicians who represent the Russian-speaking minority.

⁶³ Georgia is believed to have about 179,000 Russian passport holders, the Transnistria enclave in Moldova about 100,000, Azerbaijan 160,000, Armenia 114,00 and Ukraine's Crimea up to 100,000, with approximately half a million Russian citizens in Ukraine as a whole, despite dual citizenships being illegal under Ukrainian law.

⁶⁴ Eduard Abrahamyan, "Russia's Main Strategy for the Nagorno-Karabakh Issue," *Foreign Policy Journal*, 28 November 2014, available at <http://www.foreignpolicyjournal.com/2014/11/28/russias-main-strategy-for-the-nagorno-karabakh-issue> (accessed 31 March 2015).

Russia's mechanisms of action leading to the destabilization of the post-Soviet countries

Mechanisms of action	Georgia	Ukraine	Moldova	Armenia	Azerbaijan	Baltic States
Financial and economic dependence	The budget of Abkhazia and South Ossetia is dependent on Moscow. Due to strategic partnerships with Russia signed by both Republics, they will be slowly incorporated into the Russian area of defense, economic, and social affairs. The Russian ruble has become the official currency in both entities. Russia put economic sanctions on Georgian products and was controlling energy through periodic disruptions of the gas supply during the winter season, as well as cut-offs and price hikes.	Russia is financing the Crimean Peninsula in order to adapt it to the Russian economy, defense, and social affairs. Control of energy is also a tool to pressure Kyiv. In 2005–2006, Russia cut off exports of gas in the middle of winter. Moscow also enacted an embargo on Ukrainian goods.	Transnistria is dependent economically, politically, and militarily on the support of Russia. The Russian ruble is an official currency there. Moldova is dependent on Russia's energy supplies. Moreover, by placing embargoes on Moldovan export products, Moscow is trying to influence Chisinau's policies.	Armenia, which suffers from a weak economy, is entirely dependent on Russia and its energy supplies.		Russia has de facto control over the energy supplies of the Baltic states.

Russia's mechanisms of action leading to the destabilization of the post-Soviet countries

Mechanisms of action	Georgia	Ukraine	Moldova	Armenia	Azerbaijan	Baltic States
Information warfare	During the 2008 war, Russia disrupted communication channels and generated confusion at a time of crisis in Georgian government and news media websites.	Has continued since the protests on the Euromaidan, combining both cyber and information warfare tactics.				By 2014, following Russia's annexation of Crimea, Russia's information warfare in the Baltic states intensified.
Fuelling hatred and nationalism	Although Russia is a mediator in the Georgian-Abkhazian and Georgian-Ossetian conflicts, and should thus be striving for peace, Moscow has encouraged violence against Tbilisi.	Supporting the Crimean Autonomous Government's efforts to secede, as well as the separatists in the east.	Transnistrian separatists are supported by Russia. Now there is huge possibility of a similar scenario to what happened in Crimea and the unfolding situation in Ukraine.	Moscow is using the "frozen conflict" in Nagorno-Karabakh as a way to keep Armenia and Azerbaijan under its control. It is a tool to exert pressure on their policy.		In the Baltic states, the Kremlin is using their minorities as political tools. In Lithuania, Russian-speakers comprise 15 percent of the entire population; in Latvia, the number is 34 percent; and in Estonia, the number might be as high as 30 percent.

Russia's mechanisms of action leading to the destabilization of the post-Soviet countries						
Mechanisms of action	Georgia	Ukraine	Moldova	Armenia	Azerbaijan	Baltic States
Military support	Ossetian and Abkhazian separatists were supported, armed, and trained by Russia. Russian troops took part in conflicts in both republics. Currently, Moscow has several military bases in Abkhazia – zone near Gudauta; in South Ossetia, one in Tskhinvali, and another in Java.	Russian support for separatists from Donbass, apart from the supply of ammunition and modern combat equipment, consists of providing direct combat support of its military forces. Units of the Russian army are taking an active part in the fighting. There is a base of the Russian Black Sea Fleet in Sevastopol in Crimea.	As of early 2010, Russia had 1,500 troops on Transnistrian territory, which are helping ensure the region's invulnerability to Western influence.	In the conflict in Nagorno-Karabakh, Russia supported the Armenian side. Russia has a collective security agreement with Armenia (Russia maintains a large military base in Gyumri and an air base at the Erebuni Airport near Yerevan with 4,000-5,000 troops), and it provides the country with discounted weaponry.		

Source: own work.

A Look Back at NATO's 1999 Kosovo Campaign: A Questionably “Legal” but Justifiable Exception?

Ralph R. Steinke *

*If one can say of any war that it is ethical, or that it is being
waged for ethical reasons, then it is true of this war.*

~ Vaclav Havel, April 29, 1999

It was the last European war in a bloody century of European wars. Less than ten years after the collapse of the Berlin Wall, the 1999 Kosovo War—Operation Allied Force, as the North Atlantic Treaty Organization (NATO) referred to it—was unique in many respects. From the perspectives of both international law and the law of armed conflict, it significantly challenged the limits of *jus ad bellum*, the international laws of war governing the circumstances under which nations are permitted to use force, as well as *jus in bello*, the laws of war relating to proper conduct in war.¹ After decades of a NATO-Warsaw Pact standoff in Europe and proxy wars elsewhere it was not self-defense, but rather humanitarian considerations, that drew the NATO Alliance, with the United States in the forefront, into this conflict.

While the seventy-eight-day NATO bombing campaign captured the world's attention, not long after its conclusion this military operation began to fade from the public memory. Beyond the Balkans, a little more than two years after the Kosovo War's conclusion, the traumatic events of September 11, 2001, would virtually remove global examination and recollections of the Kosovo conflict from the agenda. The United States and much of the world embarked on an entirely new, 21st century ideological and combative struggle: fighting the scourge of terrorism. Nevertheless, the Kosovo War has alternatively been referred to as a reference point by Americans who have sought a response to the Syrian conflict as well as by Vladimir Putin as justification for claims to Crimea and the “protection” of Russian nationals.

Some sixteen years after the Kosovo conflict and Operation Allied Force, it is worth asking: are there any insights to be recalled and gained from this conflict? What has been the war's effect on the law of international armed conflict to date? Is it right to re-

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¹ David Wippman, “Kosovo and the Limits of International Law,” *Fordham International Law Journal* 25 (2001): 129–150, available at <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1813&context=ilj> (accessed 14 January 2015).

fer to the Kosovo campaign as justification for the use of force, either implied or explicit, in Crimea or greater Ukraine?

It will be argued here that in spite of significant concern and warnings then that the Kosovo campaign would provide a dangerous precedent for international law and even global stability,² it has had a nominal if not negligible effect on the body of international law as informed by *jus ad bellum*. In spite of attempts to try to identify it as a precedent, the Kosovo campaign was indeed an *exception*. While it was characterized as a messy and “ugly” affair,³ it did accomplish what it intended to do: stop the killing of potentially tens of thousands of Kosovar Albanians and the expulsion of hundreds of thousands more from Kosovo, ultimately providing them with a better and more secure life than was possible in the pre-Kosovo campaign period.

The Roots of Conflict

The deep roots of the 1999 Kosovo War can be traced back to 1389 and the Battle of Kosovo, when, not far from present-day Pristina, the Serbs attempted to fend off the encroaching Ottoman Turks, with Albanians fighting on both sides. After a subsequent battle in 1448 between the Ottoman Turks and the Hungarians, however, the Ottomans came to dominate the region for centuries. Over time, the Albanians, who constituted the majority in the Kosovo territory, were portrayed as Ottoman sympathizers by the Serbian and mostly Orthodox Christians. The following centuries only contributed to this portrayal and associated hatreds, fears, and myths. With time, Kosovo became heavily populated with Albanians and in the 17th century the Serbs were forced out by the Ottomans. However, with the Ottoman Empire reaching its high water mark outside the gates of Vienna in the Ottoman-Hapsburg War of 1683–1699, the Serbs, Montenegrins, Bulgarians, and Greeks drove the Ottoman armies out of the Balkan Peninsula in the early 20th century.⁴

Both Albanians and Serbs, to varying degrees, had long-standing claims to the province.⁵ Serbia gained control over Kosovo in 1912, but that was also the same year that Albania was declared an independent state, with a large population of Albanians residing in Kosovo. During World War I, Serbia lost control of Kosovo and after the Great War both Kosovo and Serbia became part of a greater Yugoslavia, with Kosovo becoming a province of Serbia. During the 20th century, the Serbs made several attempts to expel Albanians from Kosovo, yet Albanians remained the majority population in the province throughout the century.

² Tom Barry and Martha Honey, eds., “Bombs Away: A Call for the Unconditional Ending of the Bombing Campaign,” *Foreign Policy in Focus* 4:13 (May 1999): 3, available at <http://www.ciaonet.org/pbei/fpif/bat01/> (accessed 14 January 2015).

³ Ivo H. Daalder and Michael E. O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo* (Washington, D.C.: The Brookings Institution, 2000), 6.

⁴ *Ibid.*, 6–7.

⁵ *Ibid.*

In the 1980s, however, several major events led to the conflagration that erupted in the following decade. In 1981, not long after the death of Tito, Albanian students demonstrated against Yugoslavian authorities in Pristina. In 1987, Slobodan Milošević became president of Yugoslavia, and in 1989 he stripped Kosovo of the autonomy it had retained since the adoption of the 1974 Yugoslavian constitution. Serb oppression increased while Albanians continued to build parallel state structures. By the mid-1990s, Albanian desires for separation were well beyond a plurality, with a 1995 poll demonstrating that 57 percent wanted outright independence, while the remaining 43 percent wanted to join Albania.⁶

In the early 1990s, there were signs—and U.S. concerns—that conditions in Kosovo could cause a violent eruption. Those concerns were spread over the greater region, with significant Albanian populations residing beyond Albania in Greece, Macedonia, and Yugoslavia. At the time, the United States was essentially taking a “hands off” approach to the Balkans, while significantly drawing down forces from Europe in anticipation of a peace dividend. However, having received indications that the Serbian government was seriously contemplating a violent crackdown on Kosovo, President George H.W. Bush, in a “Christmas letter” to Serbian President Milošević, warned that in the event of an escalation in violence against the Kosovar Albanians, “U.S. military force would be aimed against Serbian troops in Kosovo and in Serbia itself.”⁷

In the mid-1990’s, the focal point for establishing stability on the Balkan Peninsula became the war in Bosnia and the resulting Dayton Peace Accords. Kosovo, while certainly of concern to the United States and its European allies, was not the most significant issue of the day and the Serbia-Kosovo problem essentially received short shrift in U.S. and European policy approaches. U.S. and European policy was limited to rhetorical pressure on Belgrade to recognize Kosovo Albanian human rights and improve treatment of Albanians in Kosovo, as well as working towards eventual Kosovo autonomy or independence.⁸

The March to War

Violence among Serbs and Albanians in Kosovo significantly increased by 1998. Indeed, 1998 was a pivotal year on the road to 1999 and NATO’s Operation Allied Force. The U.S. increased its direct diplomatic engagement, warning Milošević of consequences if the potential “downward spiral of darkness” continued. On February 28, 1998, Serb forces killed some two dozen people in Qirez and Likosane. A few days later a major Former Republic of Yugoslavia (FRY)/Serbia military assault was conducted in the Drenica Valley, leaving another fifty-one people dead, including eleven children and

⁶ Ibid., 8.

⁷ Art Pine, “Bush Warns Serbia Against Escalation,” *Los Angeles Times*, 29 December 1992, available at http://articles.latimes.com/1992-12-29/news/mn-2755_1_bush-administration (accessed 14 January 2015).

⁸ Daalder and O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo*, 9.

twenty-three women. A week later, eighty-five more people were murdered by Serb security forces.⁹

Meanwhile, on a lesser scale, the Kosovo Liberation Army (KLA) was also perpetrating attacks on Serbian security forces. So it went through much of 1998, with the resulting clashes between Serbian forces, Albanian civilians, and the KLA, resulting in the deaths of more than 1,500 Kosovar Albanians, with more than 400,000 driven from their homes by Serbian forces, many into the mountains or neighboring countries such as Albania.¹⁰

On 28 May 1998, the North Atlantic Council, meeting at the foreign ministers level, responded to the conflagration developing on its borders. At this meeting, it laid out two fundamental objectives: to help achieve a peaceful resolution by contributing to the international community and response, and to promote stability and security in neighboring countries, with particular emphasis on “Albania and the former Yugoslav Republic of Macedonia.”¹¹

In September 1998, through UN Security Council Resolution (UNSCR) 1199, the United Nations expressed grave concern about the “excessive and indiscriminate use of force by Serbian security forces,”¹² resulting in “numerous civilian casualties” and the “displacement of over 230,000 person from their homes.” It also noted deep concern about the “rapid deterioration in the humanitarian situation” as well as expressed alarm concerning the “impending humanitarian catastrophe” and the “need to prevent this from happening.” It further reaffirmed the sovereignty and territorial integrity of the Federal Republic of Yugoslavia.

The situation continued to deteriorate, however, and by October 1998, in a move to give credence to ongoing diplomatic efforts to stop the violence and allow refugees to return to their homes, the NATO Council authorized activation orders for airstrikes against Serbian military forces. At the last moment, however, following diplomatic initiatives by NATO Secretary General Javier Solana, U.S. Envoys Richard Holbrooke and Christopher Hill, among others, Milošević agreed to comply and the airstrikes were deactivated.¹³

Two further actions were taken in the late fall of 1998: the establishment of a Kosovo Verification Mission (KVM) to observe compliance on the ground, as well as a NATO-led aerial surveillance mission. UNSCR 1203 endorsed both of these actions.¹⁴

In early 1999, after acts of provocation on both sides and the “excessive and disproportionate use of force by the Serbian Army and Special Police,” the violence in

⁹ *Ibid.*, 27–28.

¹⁰ “NATO’s Role in Relation to the Conflict in Kosovo,” 15 July 1999, available at <http://www.nato.int/kosovo/history.htm> (accessed 15 January 2015).

¹¹ *Ibid.*

¹² United Nations Security Council Resolution 1199 (S/RES/1199), 23 September 1998, available at <http://unscr.com/en/resolutions/doc/1199> (accessed 15 January 2015).

¹³ “NATO’s Role in Relation to the Conflict in Kosovo.”

¹⁴ United Nations, Security Council, Resolution 1203 (S/RES/1203), 24 October 1998, available at <http://unscr.com/en/resolutions/doc/1203> (accessed 15 January 2015).

Kosovo again increased dramatically.¹⁵ This included the massacre of forty-five Kosovo Albanians by the Serbs on 15 January 1999 in retaliation for Albanian killings of four Serbian policemen.¹⁶

As the months wore on, many NATO officials increasingly came to the opinion that the Alliance had to act, believing also that the reluctance to do so promptly and forcefully in the early 1990s led to many thousands of deaths that could have potentially been avoided, particularly in Bosnia. The specter of the Srebrenica massacre and the conflagration that consumed Bosnia in the early 1990s provided the primary impetus to act in order to avoid the possible deaths of hundreds, and perhaps even thousands, of Kosovar Albanians, as well as a major humanitarian crisis. Farther afield were also considerations of the fairly recent Rwanda genocide, in which the world stood by as hundreds of thousands were massacred. These factors led to a major diplomatic push for peace negotiations, which were held in Rambouillet, France, from 6 to 23 February, 1999, as well as a subsequent conference in Paris from 15–18 March between Kosovo and FRY/Serbia.¹⁷

These talks were brokered by the Contact Group, consisting of France, Germany, Italy, Russia, the United Kingdom, the United States, the OSCE, and UN Security Council representatives. The talks centered on the demilitarization of the KLA, a partial withdrawal of FRY/Serb forces and heavy weapons from Kosovo, and a timeline for the “final settlement” of Kosovo, which was to be determined in three years. The Rambouillet talks ended without resolution, with the Albanian delegation prepared to sign subject to final consultation at home and the FRY/Serbia delegation pressing for additional talks.¹⁸

During the break between the Rambouillet talks and those held in Paris, however, FRY/Serbia concentrated its troops along the border with Kosovo and in Kosovo itself. Given this military pressure on Kosovo, on 20 March the OSCE Kosovo Verification Mission was withdrawn from the region. After the Paris talks closed without success, FRY/Serb military forces launched an offensive against entire villages and civilian installations. Within days, over 200,000 people had fled, many into the nearby mountains or across the borders and into Albania, Macedonia and other countries in the region.¹⁹

The Contact Group negotiators, however, were not yet finished, making a last ditch effort to achieve a resolution. Led by Holbrooke, a last attempt was made on 22 March to persuade Belgrade to cease offensive operations and accept the Rambouillet accords. No progress was made; later that day Holbrooke returned to NATO headquarters in Brussels and rendered a briefing to senior NATO officials regarding his discussions. On

¹⁵ “NATO’s Role in Relation to the Conflict in Kosovo.”

¹⁶ Stephen T. Hosmer, *The Conflict over Kosovo: Why Milošević Decided to Settle When He Did* (Santa Monica, CA: RAND, 2001), 7.

¹⁷ Marc Weller, “The Rambouillet Conference on Kosovo,” *International Affairs* 75 (1999): 221–223, available at [www.chatamhouse.org/sites/default/files/public/International Affairs/Blanket File Import/inta069.pdf](http://www.chatamhouse.org/sites/default/files/public/International%20Affairs/Blanket%20File%20Import/inta069.pdf) (accessed 14 January 2015).

¹⁸ *Ibid.*, 231–233.

¹⁹ *Ibid.*, 235–236.

23 March, 1999, British Prime Minister Tony Blair stated, “We must act – to save thousands of innocent men, women and children.” On that same day, NATO issued the order to initiate air strikes for Operation Allied Force.²⁰

Thus, the proximate cause of war erupting in Europe and on NATO’s doorstep in 1999, after a very tumultuous 1998 in Kosovo and a decade of violence on the Balkan Peninsula, was Milošević’s refusal to accept NATO’s terms at Rambouillet and his subsequent drive to forcibly and violently rid Kosovo of Kosovar Albanians.²¹ For NATO’s part, the driving force for action was humanitarian reasons. To a large degree, this anticipatory and preemptory action served to help Kosovar Albanians avoid even further violence and trauma. NATO’s actions in March 1999 and in the weeks that followed were seen in some, if not many, quarters to be a violation of international law; the legal basis of that action was debated then as it is now. FRY/Serbia, which included Kosovo, was a sovereign state that had not attacked another state. No NATO nation could directly claim a defensive response. At the same time, many quarters also recognized an imperative to act, an imperative to avoid a repeat of the Srebrenica massacre as well as a massive humanitarian crisis.

The Kosovo Campaign: International Legal Implications

In spite of the argument in some corners of NATO that because FRY/Serbia’s military actions threatened peace and stability on the Balkan Peninsula, and that this potential diffusion of instability through Macedonia could threaten NATO member Greece, NATO did not invoke—nor did it have cause to do so—Article 5 of its charter. Arguably the cornerstone of the NATO alliance, Article 5 essentially states that an attack on *any* Alliance member is an attack on NATO as a whole, and will be responded to collectively by NATO member states, including with military force. This is the “collective defense” provision of the charter and the originating essence of NATO, meaning that Article 5 (which is based on the UN Charter’s Article 51) is valid if a NATO nation is externally attacked by a non-NATO state.²² This, of course, did not happen in Kosovo as no NATO member was directly attacked or faced the threat of imminent attack.

Fearing vetoes by China and Russia, NATO neither sought nor received UN Security Council approval for its actions under Chapter VII of the UN Charter. Accordingly, from an international law perspective, NATO’s actions on that day and in the ensuing eleven weeks were highly controversial, and were judged certainly by some, if not many, observers to have been a violation of *jus ad bellum*.²³

As a foundation of *jus ad bellum*, the UN Charter mandates that any non-defensive use of force must be approved by a Security Council supermajority, including approval by all of the Council’s permanent members. Written and approved in the aftermath of

²⁰ Ibid., 235–236.

²¹ Hosmer, *The Conflict over Kosovo*, 20–21.

²² “Collective Defence – Article 5,” 18 February 2005, available at <http://www.nato.int/terrorism/five.htm> (accessed 15 January 2015).

²³ Barry and Honey, eds., “Bombs Away.”

World War II and the development of the atomic bomb, this was intended to be an international safeguard against interstate violence potentially escalating out of control. While the Charter does express concern for human rights, its fundamental purpose was focused elsewhere: to “save succeeding generations from the scourge of war.”²⁴

The Charter’s main calculus, in effect, is that the constraints on the use of force and resulting potential international escalation far outweigh any reasons to dilute these constraints for humanitarian purposes.²⁵ The UN Charter did provide a means for legitimizing NATO’s military actions, however. If one accepts that NATO meets the definition of a regional organization, NATO’s actions could have been sanctioned under Chapter VIII of the Charter. However, under Article 53, the Charter prohibits enforcement actions by regional organizations (as opposed to self-defense) unless authorized by the Security Council. Where humanitarian circumstances are of such grave and widespread consequence that international military action is required, the Security Council may accordingly approve such action.

If one disputes that NATO is a regional organization, then Article 42 could also potentially have sanctioned NATO’s actions with a Security Council finding that the situation constituted a “threat to the peace, breach of the peace or act of aggression,” per Article 39. In the case of Kosovo, if the actions were purely designed to drive FRY/Serbia to the negotiating table, it would require Security Council authorization under Article 53. However, if NATO action was mainly intended to ensure humanitarian relief for the people of Kosovo, one could also argue that Security Council authorization was not required.²⁶

NATO did not easily arrive at the ultimate approach taken by its members. In fact, it was quite divided on the international legality of taking action without any reason to invoke Article 5, or said another way, without any real self-defense basis. France and Germany, in particular, argued for seeking Security Council authority and were supported by other nations in the Alliance. At the same time, China and Russia made it clear that they would trump any such attempt to gain Security Council authority.²⁷

However, in spite of NATO’s decision to circumvent any concerted effort to comply with international law pursuant to the UN Charter, there was relatively widespread support in the international community for NATO’s actions. One reference for this support was evident in the vote on a draft Security Council resolution that would have condemned NATO’s actions early in the bombing. This vote essentially told two stories: one that said that a majority of the members supported action and another that said that two key permanent Security Council members did not support it. China and Russia, as

²⁴ Wippman, “Kosovo and the Limits of International Law,” 131.

²⁵ Ibid.

²⁶ Frederic L. Kirgis, “The Kosovo Situation and NATO Military Action,” *American Society of International Law* (March 1999), available at [http://dspace.cigilibrary.org/jspui/bitstream/123456789/10010/1/The Kosovo Situation and NATO Military Action.pdf](http://dspace.cigilibrary.org/jspui/bitstream/123456789/10010/1/The%20Kosovo%20Situation%20and%20NATO%20Military%20Action.pdf) (accessed 15 January 2015).

²⁷ Daalder and O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo*, 36.

well as Namibia, voted for the draft resolution condemning the bombing, while twelve other nations voted not to condemn NATO's action, thus defeating the draft resolution.²⁸

Individual voices in support of NATO were also quite strong. In his foundational "Doctrine of the International Community" speech delivered in Chicago, British Prime Minister Tony Blair assailed the "awful crimes" and "ethnic cleansing, systematic rape, [and] mass murder" that were being perpetrated against Kosovar Albanians. He further referred to it as a "just war," not based on territorial ambitions by NATO but rather on shared values.²⁹ While not everyone agreed with his use of the term "ethnic cleansing," U.S. President Bill Clinton, with the bombing underway, fully supported NATO's efforts to stop the "real enemy" and a "poisonous hatred unleashed by cynical leaders," while also leaving the door open for future assimilation of Serbia into Europe.³⁰

However, there were critics of the NATO intervention.³¹ NATO was assailed for breaching international law, led by "the arrogance of power" of the United States. One critical view was that NATO's actions, on the eve of the fiftieth anniversary of its founding, mainly served as a means for NATO to reinvent itself for the evolving post-Cold War era.³² However, it must be recalled that NATO officials in many countries of the Alliance expressed grave concern about previous Western reluctance to intervene early and forcefully in Bosnia, thus resulting in thousands of deaths that could have been avoided.³³ In the end, NATO did unanimously support the action to intervene.³⁴

Further, by March 1999, when NATO military action was initiated, previous UN actions had resulted in no definitive results in precluding FRY/Serbia from violently expelling Kosovar Albanians from Kosovo. In March 1998, through Resolution 1160, the Security Council imposed an arms embargo on the Federal Republic of Yugoslavia, "calling upon states to act strictly in conformity with this resolution." However, the UN did not allocate any broad competence for enforcing this resolution.³⁵

²⁸ Wippman, "Kosovo and the Limits of International Law," 134.

²⁹ Tony Blair, "Doctrine of the International Community," speech to the Economic Club of Chicago, 22 April 1999, available at <http://www.britishpoliticalspeech.org/speech-archive.htm?speech=279> (accessed 15 January 2015).

³⁰ William Clinton, "Crisis in the Balkans; Clinton's Remarks in Defense of Military Intervention in the Balkans," *New York Times*, 14 May 1999, available at <http://www.nytimes.com/1999/05/14/world/crisis-balkans-clinton-s-remarks-defense-military-intervention-balkans.html> (accessed 16 January 2015).

³¹ Louis Henkin, "Kosovo and the Law of 'Humanitarian Intervention'," *The American Journal of International Law* 93 (1999): 824, available at <http://www.jstor.org/stable/2555346> (accessed 15 January 2015).

³² Barry and Honey, eds., "Bombs Away."

³³ Wippman, "Kosovo and the Limits of International Law," 132.

³⁴ Madeleine Albright, *The Mighty and the Almighty. Reflections on America, God, and World Affairs* (New York, NY: Harper Collins Publishers, 2006), 62.

³⁵ Christine M. Chinkin, "Kosovo: A 'Good' or 'Bad' War?" *The American Journal of International Law* 93:4 (October 1999): 841–847, available at <http://www.jstor.org/stable/pdfplus/2555349.pdf?acceptTC=true> (accessed 16 January 2015).

Later, UNSCR 1203 of October 24, 1998 also had negligible effect. It directed obligations against the “Kosovo Albanian Leadership” to comply with all relevant UN resolutions, to condemn all terrorist actions, and to pursue its goals through peaceful means only. Meanwhile, the Federal Republic of Yugoslavia was also required to comply with relevant resolutions, to be mindful of its main responsibility to secure diplomatic personnel, and to return refugees to their homes.³⁶

In March 1999, many NATO officials believed—mistakenly, in the end, to be sure—that Milošević would back down again as he had done the previous October and after NATO authorized the activation of aircrews and potential airstrikes against FRY/Serbia. While Holbrooke personally and quite unequivocally delivered the threat of NATO bombs to Milošević, emphasizing that the bombing would be “swift, severe and sustained,” it was not enough to deter Milošević.³⁷

A post-war analysis of Milošević’s calculus revealed that he, too, had a mistaken belief: namely, that NATO’s bombing would be neither severe nor sustained. Further, Milošević believed that over time he could also undermine NATO’s unity. He was, of course, ultimately wrong on both counts.³⁸

While the bombing itself did contribute in some degree to the refugee crisis that ensued, so did Milošević’s operational plan—Operation Horseshoe—designed to expel most of the ethnic Albanian population from Kosovo. More than 10,000 people are believed to have died at the hands of FRY/Serbia forces. While the NATO bombing contributed to the evacuation of the area by the tens of thousands, it was the terror and trauma that was widely inflicted on the Kosovar Albanians that drove most of them into the mountains or beyond Kosovo’s borders.³⁹

In May 1999, after weeks of incessant bombing by NATO, a series of events took place that contributed to Milošević’s reckoning that he needed to negotiate for peace and cease and desist his military operations or face the destruction of the FRY/Serbia military forces.⁴⁰ On 10 May 1999, NATO began to publicly discuss a ground invasion option. By 12 May, there were 25,000 NATO forces on the ground in Albania and Macedonia; on 21 May, the U.S. administration announced that it would push NATO allies to increase that number to 50,000. On 19 May, Milošević began to engage Russian envoy Viktor Chernomyrdin about a potential peace plan “based on G-8 principles.” By 26 May, the KLA began concerted operations against FRY/Serbian forces in Kosovo. On 3 June, the Serbian parliament approved a NATO-proposed peace plan, and on 10 June 1999, NATO suspended air operations.⁴¹

³⁶ Ibid., 842.

³⁷ Hosmer, *The Conflict over Kosovo*, 20.

³⁸ Ibid., 20–22.

³⁹ Wippman, “Kosovo and the Limits of International Law,” 134.

⁴⁰ Hosmer, *The Conflict over Kosovo*, 40–47.

⁴¹ Daalder and O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo*, 233.

Kosovo War as Precedent?

With the cessation of the bombing, the follow-on deployment of NATO (and Russian) forces into Kosovo and the return of the vast majority of refugees to their homes, NATO had essentially accomplished its mission: the lethal threat to the people of Kosovo was effectively removed and the great majority of the 1.3 million people that had been driven from their homes were able to return.⁴² While the Kosovo War did damage relations with China and Russia, those damages were effectively repaired within months.⁴³ With the events of September 11, 2001, the world had far greater challenges to international order and security with which to be concerned.

In the intervening years, the Kosovo War has on occasion been referred to as a precedent for potential or realized state action. In August 2013, during U.S. presidential administration deliberations on Syria and on an appropriate response to suspected Syrian chemical weapons use, the NATO air war in Kosovo was identified as a “possible blueprint.” It was recognized by President Obama that Russia would likely veto any attempt to obtain a UN mandate for action. With that realization, it was also clear that the President had serious questions about international law violations, as well as the degree to which broad international support would be required to legitimize U.S. actions. Ironically, these deliberations also included the fact that Russia had longstanding ties to Syria, much as it did to Kosovo.⁴⁴ In the end, military force was not employed.

In March 2014, Russian President Vladimir Putin made reference to the Kosovo War as a precedent, deriding the increasingly prevalent notion that it was an exception. He stated that the ongoing Ukraine situation is “like a mirror” reflecting “what is going on and what has been happening in the world over the past several decades,” whereupon the first example he provides is “Yugoslavia; we remember 1999 very well.”⁴⁵ With this comment directed against the United States, he notes that the U.S. forced “necessary resolutions from international organizations” and, barring that, ignored and bypassed the UN Security Council. The lack of a UN Security Council resolution justifying U.S. and NATO action in Kosovo was also noted.⁴⁶

While his latter point is evident, in comparing Ukraine to Kosovo, this commentary leaves out several facts bearing upon each country’s situation. In Ukraine, there is no evidence that the Ukrainian government was trying to forcibly or systemically “ethnically cleanse” the country of Russian inhabitants. In Kosovo, while the KLA cannot

⁴² Ibid., 4.

⁴³ Ibid., 21.

⁴⁴ Mark Landler and Michael R. Gordon, “Air War in Kosovo Seen as Precedent in Possible Response to Syria Chemical Attack,” *New York Times*, 23 August 2013, www.nytimes.com/2013/08/24/world/air-war-in-kosovo-seen-as-precedent-in-possible-response-to-syria-chemical-attack.html (accessed 16 January 2015).

⁴⁵ For further discussion, compare “Full Text of Putin’s Speech on Crimea,” *Prague Post*, 19 March 2014, available at <http://praguepost.com/eu-news/37854-full-text-of-putin-s-speech-on-crimea> (accessed 29 March 2014).

⁴⁶ Ibid.

fully escape some degree of having episodically prodded FRY/Serbia military responses, the FRY/Serbia forces responses far exceeded any relation to proportionality, not only killing but also terrorizing thousands of Albanians, as well as driving hundreds of thousands from their homes. In the case of Ukraine, there is no widespread humanitarian crisis as was evident in Kosovo.

Another point is the collective nature of NATO's action. Multiple nations were involved in Operation Allied Force, as well as the deployment of forces to Kosovo thereafter (which included Russia). This was not the case of a single state taking unilateral action against a neighboring state. Further, while NATO neither sought nor received UN Security Council approval for its actions, the humanitarian crisis and efforts to ameliorate it were clearly underwritten by UNSCR 1239, issued on 14 May 1999.⁴⁷

There is serious doubt that the UN Security Council will similarly underwrite any Russian actions based on military force, covert or otherwise, with respect to Ukraine and Crimea. In Ukraine, it is evident that Russia is trying to turn back the clock by trying to reestablish or "re-extend" its sphere of influence, and purporting to do so under the guise of protecting its citizens. In fact, in the past sixteen or so years, there has been very little accorded to the Kosovo War as a precedent for international law and, more specifically, *jus ad bellum*.

Conclusion

The 1999 war in Kosovo was exceptional in many respects. It was NATO's first engagement with military force beyond its borders. It was not based on invoking Article 5, the primary reason for NATO's existence. It was based on a relatively and commonly-perceived need for collective military intervention based on humanitarian needs. It happened in Europe's back yard and was initiated in a part of the world that had not seen war in roughly fifty years.

However, in terms of *jus ad bellum*, the aspect of the international law of armed conflict that governs the circumstances under which nations are permitted to use force, NATO's actions were criticized by some as a violation of those laws. At the foundation of these international laws is the UN Charter, which places—as it should—a premium on ensuring interstate violence does not potentially escalate out of control. In so doing, it places the need for direct force in alleviating humanitarian suffering in a secondary role. NATO and Operation Allied Force, by not obtaining Security Council approval for applying force for non-defensive purposes, challenged and perhaps even crossed these UN-established boundary lines. However, in the end, potentially tens of thousands of lives were saved and human suffering on a wide scale was significantly reduced as well as preempted.

While there have been some references to NATO's 1999 actions as providing a precedent, there has been little if any evidence to confirm that assertion and the angst that was originally prevalent among critics of the NATO action in 1999. If anything, the

⁴⁷ United Nations Security Council Resolution 1239, 14 May 1999, available at www.nato.int/kosovo/docu/u990514a.htm (accessed 16 January 2015).

Kosovo War did, however, move the bar somewhat in countenancing humanitarian intervention, based on real humanitarian crises and in the absence of a UN mandate. In the Kosovo War context, in 2006 former U.S. Secretary of State Madeline Albright referred to humanitarian intervention as a duty “to defend the vulnerable other.”⁴⁸ This is also evidenced by the fairly recent and emerging concept of the “responsibility to protect” and intervene in humanitarian crises.

More recently, some have argued that in terms of the use of force and *jus ad bellum*, it would be far more effective if the United States was more transparent concerning when it might intervene, backed by the credibility that it will do so. Although some degree of ambiguity is useful and at times perhaps even necessary, if a state is trying to deter aggression, either internationally or from non-state actors, some likelihood of a cost should be explicit in the event that any “line in the sand” is crossed.⁴⁹

Further, the United States should now firmly refute any claim concerning the “precedent” of Kosovo, to justify aggressive actions in Ukraine or beyond, such as against the Baltic states. It was clear in Kosovo that NATO’s actions were based on irrefutable evidence that the Serbs were killing, maiming, and driving thousands of Kosovar Albanians from their homes. Further, while numbers alone do not justify actions taken, this was nonetheless a collective and unanimous military action taken by nineteen sovereign states of the Alliance. As has been discussed, NATO’s actions in Kosovo, based primarily on humanitarian reasons, reflect no resemblance to Russia’s recent and potential actions vis-à-vis Ukraine or beyond, and the United States should not blush at making that point.

Finally, in the U.S. Department of Defense particularly there is an unquenchable culture of constantly extracting lessons learned from past conflicts. This is in the main very healthy for organizational growth and change, especially in an organization where lives are put at risk as a matter of course. However, one must at the same time be cautious about drawing or extracting the wrong lessons, or perhaps even manufacturing lessons, as opposed to observations, where there are few if any to be learned. An article in *The New York Times* on 23 August 2013 reports that the Obama administration was considering the Kosovo War as precedent for a possible response to chemical attacks by Syria.⁵⁰ However, a subsequent article in *The Economist* in September 2013 rightly contested whether there were “any relevant issues for Syria from the Balkans,” further noting that the geopolitical context was very different.⁵¹ With this in mind, the Kosovo War did not provide the “dangerous precedent” that some claimed it would during the

⁴⁸ Albright, *The Mighty and the Almighty*, 61.

⁴⁹ With regard to this point, the author wishes to acknowledge the thoughts of Professor Michael Schmitt, Charles H. Stockton Professor and Director of the Stockton Center for the Study of International Law, U.S. Naval War College, Newport, Rhode Island.

⁵⁰ Landler and Gordon, “Air War in Kosovo Seen as Precedent in Possible Response to Syria Chemical Attack.”

⁵¹ “What Did America Learn from the 1999 Kosovo War,” *The Economist*, 11 September 2013, available at <http://www.economist.com/blogs/easternapproaches/2013/09/balkans-and-syria> (accessed 10 April 2015).

war and its immediate aftermath and, as such, Operation Allied Force proved to be an exception.

Kosovo 1999 and Crimea 2014: Similarities and Differences

Pál Dunay*

Introduction

Since the so-called Kosovo conflict of 1999 the views of states, including those of major players, have been divided as to whether it was a humanitarian intervention or the collective aggression of NATO member states. In 2014 the Russian Federation annexed Crimea and Sevastopol (formally separate entities) to its territory. Since then the argument has shifted and the current disagreement centers around how we should assess these two changes of territorial status quo (Kosovo and Crimea) in Europe. The situation is further complicated as states wish to present their actions as moral and legal (the general expectation is that they do so). This results in a situation where the dominant discourse is supposed to support the aspirations of states both in the east and in the west. The main effort of each party goes in countering the other's position.

It is difficult to get hold of a reliable set of facts, as these are presented selectively by the different parties. A further challenge arises in that different fields are not kept distinct from one another, and hence the legal and political analyses are often used interchangeably and with insufficient differentiation. This is aggravated by the fact that the so-called normative approach to international (and domestic) politics prevails in the analysis. Every state feels compelled to prove that it acts in full accordance with international norms, including legal rules and moral predicaments. However, any attempt to correctly analyze the change of the territorial status quo in the two cases mentioned above requires the contrary: keeping the different aspects strictly separate and only synthesizing the results in the conclusions.

In this article I endeavor to keep the legal analysis separate from the political and moral assessment and wish to state in advance that they do not necessarily manifest in the same direction. Moreover, when the topic of analysis is as politically heavy-loaded as the change of territorial status quo in Europe, the international legal assessment must be disaggregated further. Namely, there is the positive international law as it exists, *de lege lata*, as adopted by the states or as it appears as *jus cogens*. There is also international law that does not exist, yet about which we speak as *de lege ferenda* with a view to its future evolution. Such differentiation will be particularly relevant in this case due to the swift evolution of norms in the area of humanitarian intervention relevant as point of reference in the case of Kosovo and the ambiguous content of the right to self-determination in the case of Crimea.

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International law has a further characteristic feature. Namely, its development cannot flexibly follow historical changes. This is particularly noticeable when major historical changes occur at a rapid pace. This was the case before and during World War II and more recently as the Cold War came to an end. The international system changed and international law in some areas did not follow. The gap between the international system and international law, where the latter forms part and parcel of the former, has widened. Furthermore, universal international law most often requires the consent of states in various regions of the world. This presents a challenge as states often profess different values and their value judgment serves different interests.

It is the purpose of this article to present the legal situation that underlies the two cases, the position of the main actors, and attempt to draw separate conclusions as regards the assessment *de lege lata* and *de lege ferenda*.

Legal Perspectives

International law is extremely restrictive insofar as territorial changes in the international system are concerned. This is fully understandable given that the foundation of the system is the existence of sovereign states. State sovereignty is established on a given territory. As sovereigns are obliged to respect each other's territory, territorial change can only occur with the consent of the state that practices sovereignty over it. Moreover, since 1945, if not earlier, there has been an unconditional prohibition to use force in interstate relations. The UN Charter obliges every state, be they members of the United Nations or not, to respect its rules (see art. 2, para. 6 of the UN Charter). There are basically two exceptions from the general prohibition of the use of force: individual or collective self-defense and enforcement by the United Nations. Threat or use of force not covered by the two exceptions fall under the general prohibition and are hence illegal. Assuming that the self-defense clause applies only in reaction to an earlier (and hence illegal) use of force and that the UN Security Council would not approve the use of force unless a state illegally used force earlier, use of force in international relations would not only be illegal but also unimaginable. However, the use of force has by far not become exceptional.

Such a simple picture does not help solve every problem. International law traditionally did not address domestic contingencies. However, in light of the development of international law since the end of World War II, certain domestic contingencies—in particular the violation of human rights—have remained unaddressed. Many territorial changes are induced by domestic political processes often supported by external forces, namely, foreign states. States are rarely ready to give up (a part of) their territory without contesting those that would like to acquire it. Hence, territorial changes are the most frequent sources of interstate conflict. It is difficult to imagine how to successfully persuade a state to consent to a change (reduction) in its territory without violence.

Looking at the evolution of international law since the adoption of the UN Charter reveals that one of the most important changes has been the weakening of the cohesive structure of the basic principles of international law enshrined in the Charter. Whereas in 1945 it was easy to conclude that all Article 2 principles protected the state (sovereign

equality, peaceful settlement of disputes, prohibition on the threat or use of force, non-interference in domestic affairs); since then, two principles have enriched the basic principles of international law. Both the right to self-determination and the respect for human rights protect entities other than the state. In the case of the right to self-determination, it is a collective entity—ethnicities, peoples—whereas the protection of human rights concerns the individual, and in some cases, a group of individuals. The former could serve as a point of reference lending external support to groups that label their fights as fought in the name of self-determination. In accordance with a non-binding resolution of the UN General Assembly:

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination, freedom and independence. In their *actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support* in accordance with the purposes and principles of the Charter.¹

This means that those claiming to be oppressed may receive external support for their fight, whereas states may contest intervention on account of their sovereignty. The sovereign, if necessary, may also seek external assistance to successfully contest those who fight in order to realize their right to self-determination. In this fight the state will naturally deny that the opponent is fighting for self-determination and will deprive the group of that “label” of legitimacy. Instead, the state, trying to retain its territory, will call them separatists, extremists, if not outright terrorists – with reason or without, all so that the state can avoid accusations of having violated international law. Both parties will “mainstream their messages” and use discourses that make their behavior legal and also morally acceptable.

The *de lege lata* situation is further complicated, given that since the beginning of the 21st century steady efforts have been made by politicians, diplomats, and experts to make international law reflect the fact that many outrageous developments cannot be addressed and condemned as they occur in or originate within a domestic context. A whistle-blower in this case was the UN’s iconic secretary general, Kofi Annan: “[I]f humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?”²

The consideration given to this pertinent problem resulted in the Responsibility to Protect (R2P) principle and report and in an avalanche of well-intentioned literature

¹ United Nations General Assembly, Resolution 2625 (XXV), 24 October 1970, Annex: Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, available at <http://www.un-documents.net/a25r2625.htm> (emphasis added).

² Kofi A. Annan, *We the Peoples: The Role of the United Nations in the 21st Century* (New York: United Nations, Department of Public Information, 2000), 48, available at <http://www.unmillenniumproject.org/documents/wethepeople.pdf>.

crossing the frontier of state sovereignty in the name of humanity and addressing matters that belong to domestic jurisdiction. Although many remember R2P as grounds for humanitarian intervention, those who were present at its inception share the view that the primary intention was to prevent intervention and give a better chance to conflict prevention.³ It is essential to note, however, that there is no legally binding document that codifies humanitarian intervention.⁴ Many states would object to making the philosophy of R2P part of universal international law. Short of such a norm, humanitarian intervention, however regrettable it may be, does not have solid legal foundations. Making humanitarian intervention part and parcel of positive international law is a slippery slope as it will provide further legal grounds to question, weaken, and undermine sovereignty. This is largely unacceptable to many countries and not only to those that systematically violate the human rights of their populations. While regionally, in Europe, it may not be possible to agree upon humanitarian intervention due to the abuse of this right in post-Cold War history, globally the reason for this is more so due to philosophical opposition against further eroding state sovereignty and providing grounds for interference. This was clearly evidenced in Libya in 2011, a case often regarded as the first UN Security Council approved humanitarian intervention. Irrespective how noble the objective was, the longer term consequence is a failing, if not outright failed state that also contributes to exporting instability.

The fact humanitarian intervention has not become part of positive international law does not mean much as far as the prohibition of the use of force is concerned. Short of (individual or collective) self-defense, there is one body in the world, the UN Security Council, in a position to decide whether “threat to the peace, breach of the peace or act of aggression” is in place.⁵ It is up to the Security Council in accordance with the rules enshrined in the Charter to take action or not (be the action a recommendation, a resolution, or a non-military or military sanction). The “threat to the peace” is a particularly elusive category, as it can be easily subjected to arbitrary interpretation. It is clear that if domestic conflicts have international repercussions, then threat to the peace also has to embrace situations that are of a domestic nature and preferably before they escalate internationally. Because of the ambiguity of the terms in the title of Chapter VII of the Charter, it is largely subject to the wisdom and the interpretation of the UN body to approve a decision. However, the following should be taken into consideration: the UN Security Council has behaved quite responsibly over the seven decades since its incep-

³ This is clear from the Report when it concludes among its priorities that “Prevention is the single most important dimension of the responsibility to protect.” *Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, December 2001), Priorities, p.xi., http://www.responsibilitytoprotect.org/ICISS_Report.pdf.

⁴ As of October 2015, 38 UN resolutions referenced Responsibility to Protect. However, this does not change the situation as far as the absence of a legally binding norm. See www.globalr2p.org/resources/335.

⁵ Charter of the United Nations, Chapter VII, available at <http://www.un.org/en/charter-united-nations/index.html>.

tion. Perhaps more importantly, the structure of the Security Council is such that it is difficult to abuse its powers. First of all, there are five permanent members, which can exercise a veto to block any resolution. The privileged status of the permanent members is the “price” the world is paying in order for the five states to remain interested in participation and in the functioning of collective security under the UN Charter. However, during the better part of the last seventy years since the inception of the United Nations, the structure of the international system has significantly broadened the circle of states enjoying impunity. During the Cold War very few states were not integrated on one side or another of the “divide.” They were proxies of one permanent member or another in the Security Council. They were hence protected, as their patron was always ready to stand behind them and cast a veto for them. This situation has reemerged and once again many states benefit from the protection of permanent members. It is a consequence of this situation that quite often no resolution can be passed concerning a state protected by a permanent member.

Kosovo and Crimea *de lege lata*

Neither the use of force in order to curtail the deprivation of Kosovo’s population of its fundamental human rights, nor the use of force to annex Crimea to the Russian Federation were based on the approval of the UN Security Council. In that sense, under the Charter, they have the same status and both actions could be regarded illegal, to which the Russian Federation has been referring since the Kosovo operation. This is certainly an important similarity between the two cases irrespective of the fact that they have significantly different foundations and, as will be demonstrated later, the assessment *de lege ferenda*, morally as well as politically, would not lead to the same conclusion.

It is a further similarity that force was used in both cases. In the case of Kosovo (Serbia), it meant bombing another state. In the case of Crimea (Ukraine), it meant the use of armed forces stationed on that territory in contravention of the agreement on the basis of which these forces were present. In its Annex, the UN General Assembly defines aggression as:

Any of the following acts ... qualify as an act of aggression: ... b) Bombardment by the armed forces of a State against the territory of another State ... e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement.⁶

The first case is extremely simple. Nevertheless, it must be noted that if bombardment by one state is not permitted, it is certain that bombardment by a group of states—members of an alliance—is also prohibited. The case of Crimea is a bit more complex, as one must refer to the agreement of the Russian Federation and Ukraine signed in 1997 and later extended in 2010 in the so-called Kharkiv Pact. According to the latter’s most relevant paragraph: “Military formations carry out their activity at stationing locations in

⁶ United Nations General Assembly, Decision 3314 (XXIX), “Definition of Aggression,” Annex, Art. 3(b) and 3(e).

accordance with Russian Federation legislation, respect Ukraine's sovereignty, abide by its legislation, and do not allow interference in Ukraine's internal affairs."⁷ There is no doubt that the agreement was in force between the two states when the Russian Federation used its troops in contravention of its provisions and that the 2010 extension of the treaty did not affect this part of the content of the 1997 agreement. In sum, and on the level of *de lege lata*, it is well-established that both actions violated international law.

There is one international legal document that pertains to the annexation of Crimea. Although the legally binding nature of the document may well be debated, there are overwhelming reasons to conclude that it is legally binding. Among others due to the fact that guarantees: 1. Can be directly derived from some of the basic principles of international law and hence irrespective the declaration must be respected. 2. As at least one author has argued persuasively, the commitment is repetition of obligations taken earlier in legally binding form.⁸ Namely, in December 1994 on the margins of the Budapest CSCE Summit, the Russian Federation, Ukraine, the UK, and the US signed the Budapest Memorandum on Security Assurances provided to Ukraine. Accordingly:

The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defence or otherwise in accordance with the Charter of the United Nations.⁹

The Russian Federation was ostensibly one of the guarantors of the territorial integrity of Ukraine and with its annexation of Crimea it violated the agreement signed less than twenty years earlier. The violation continues in the southeast of Ukraine, although some of the foundations are not identical. In Crimea, a reference was made to Russian armed forces used in contravention of an agreement signed earlier, whereas in the so-called Donbas, it is "[T]he invasion or attack by the armed forces of a State of the territory of another State..." and "[T]he sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries..." that can be invoked.¹⁰

The Russian Federation has frequently asserted that it has not sent regular troops to the Donetsk and Lugansk areas. Evidence to the contrary has been growing gradually. Moscow also expressed the view that the Russian military personnel identified there were on holiday, i.e. not sent by the Russian state. However, the Russian argument is not

⁷ Quoted in Eric Posner, "The 1997 Black Sea Fleet Agreement between Russia and Ukraine," ericposner.com (blog), 5 March 2014, available at <http://ericposner.com/the-1997-black-sea-fleet-agreement-between-russia-and-ukraine/>.

⁸ For this see Thomas D. Grant, "The Budapest Memorandum of 5 December 1994: Political Engagement or Legal Obligation?" in *Polish Yearbook of International Law 2014*, Volume XXXIV (Warsaw: Wydawnictwo Naukowe SCHOLAR, 2015), 89–114.

⁹ United Nations General Assembly and Security Council, "Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons," A/49/765, S/1994/1399, 19 December 1994.

¹⁰ United Nations General Assembly, Decision 3314 (XXIX), "Definition of Aggression," Annex, Art. 3 (a) and 3 (g).

only flawed but also inherently weak. States are responsible for their territory and no exception has been granted to Russia since 2014 when the hostilities in Donbas broke out.¹¹ Hence, even if one gave credit to the Russian position regarding Russian military persons “on holiday,” Russia as a state would be responsible for controlling its borders and identifying its citizens beyond state borders. In sum, one way or another, it is a violation of public international law irrespective of whether Russia sends military personnel expressly, or just tolerates that its inhabitants cross the border and engage in hostilities.

The fact that there were weapon systems identified in Ukraine that were not present before and were not registered in Ukraine’s armed forces presents a further problem. When the Minsk 2 Agreement of February 2015 included reference to a weapon system that fell into this category, it was also legally clear and supported by solid evidence that the Russian Federation actively supported the separatists with military force in eastern Ukraine.¹² In sum, the Russian Federation, irrespective of making statements to the contrary, violated international law on multiple grounds.

As outlined above, international law does not offer a more positive assessment of the 1999 so-called Kosovo operation. Bombardment of former Yugoslavia (Serbia and Montenegro, including Kosovo) was not sanctioned by the UN Security Council and hence could not be regarded as legal use of force. It is also clear that a state or group thereof cannot act in self-defense outside its own territory. When a regional arrangement or agency acts under the UN Charter, it can happen on the basis of two possible grounds: 1. The peaceful settlement of disputes; 2. Enforcement action. It would be difficult, if not outright impossible, to qualify NATO’s actions as contributing to a peaceful settlement of disputes, which was rather an act of enforcement. However, the conditions of such activity by a regional arrangement or agency are restrictive. The Charter clearly states that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.”¹³ Nevertheless, NATO had already much earlier expressed its view that it was not a regional organization under the Charter.¹⁴ In spite of the difference in terminology, it is clear that NATO could not be regarded as a regional arrangement or agency. Hence, it

¹¹ Russia is not in a state of civil war. Notably, if this were the case, the central government’s responsibility still would not extend to the part of state territory that is controlled by the state’s opponent.

¹² Ivan Konovalov, “Uragannyyi ogon’ po ploshadyam,” *Voenno-promyshlennyyi kur’er*, 3 April 2013, available at <http://vpk-news.ru/articles/15219>, refers to the Tornado-G and Tornado-C systems that have been in the Russian arsenal (and only there) since 2012. This is mentioned by András Rácz and Sinikukka Saari, “The New Minsk Ceasefire: A Breakthrough or Just a Mirage in the Ukrainian Conflict Settlement?” *FIIA Comment* 5 (2015): 1, available at http://www.fiaa.fi/en/publication/485/the_new_minsk_ceasefire.

¹³ Charter of the United Nations, art. 53, para. 1, available at <http://www.un.org/en/charter-united-nations/index.html>

¹⁴ A letter to this effect was sent by NATO Secretary General Willy Claes to the UN Secretary General. Reference to the aforementioned letter was made by Bruno Simma in his seminal article, “NATO, the UN, and the Use of Force: Legal Aspects,” *European Journal of International Law* 10 (1999): 10, <http://www.ejil.org/pdfs/10/1/567.pdf>.

could only act under Chapter VII of the UN Charter. However, short of a specific resolution including express authorization, NATO could have acted only in self-defense. This would have required an arbitrarily broad interpretation of the Charter, as no NATO member state was attacked. In sum, the process followed leaves no doubt that the legal foundation of the operation was missing. A few weeks before the operation, Secretary General Annan stated that “normally a UN Security Council resolution is required.”¹⁵

Kosovo and Crimea *de lege ferenda*

It is clear that both the NATO Kosovo operation and the Russian military actions in Ukraine were in breach of international law. Moving the focus of analysis to raise the question of how the two actions entailing the use of force are to be assessed in light of *de lege ferenda* politically as well as morally, the difference between the two cases will become significant.

There is solid, extensive evidence that the overwhelmingly Albanian population of Kosovo suffered persecution before the start of the military operation of March 1999. It is a separate matter as to how western powers arrived at the point of having Kosovo’s politicians demonstrate their willingness to reconcile differences with Serbia, while Serbs remained in denial.¹⁶ The two taken together, persecution and reluctance to compromise while the other party demonstrated readiness, must have provided sufficient reason to take further action to protect the rights of Kosovo’s overwhelmingly Albanian population. Nevertheless, this should not have given the right to use force, though it could be interpreted as grounds for humanitarian intervention. It could also be argued in the name of morality.

However, the case of Crimea is different. The differences extend to the following: first, Kosovo was part of a state and has achieved independence, yet with recognition by only 111 states.¹⁷ Second, Crimea has become part of another sovereign entity. Instead of Ukraine, it is now part of the Russian Federation. Third, the declaration of Kosovo’s independent statehood was based on the decision of its parliament, whereas the accession of Crimea and Sevastopol to the Russian Federation were based on a referendum of the population. Fourth, Kosovo’s separation from former Yugoslavia was achieved by the use of force, whereas Crimea changed hands peacefully. Fifth, the legal status of Kosovo was regulated internationally by UN Security Council Resolution 1244, whereas Crimea’s belonging to Ukraine was based on the fact that it was part of the Ukrainian Soviet Socialist Republic since 1954 and, when the Soviet Union dissolved, it remained

¹⁵ Quoted in Simma, “NATO, the UN and the Use of Force,” 8. (Emphasis in the original.)

¹⁶ How U.S. diplomacy achieved that the Kosovo delegation signed the so-called Rambouillet accord whilst Serbia did not is documented by James Rubin, then spokesperson of the State Department. See James P. Rubin, “Countdown to a Very Personal War,” *Financial Times*, 30 September 2000; and James P. Rubin, “The Promise of Freedom,” *Financial Times*, 7 October 2000, i, ix.

¹⁷ On October 3, 2015. See <http://www.kosovothanksyou.com/news>.

part of Ukraine in accordance with the *uti possidetis* principle. Finally, neither decision was internationally monitored.

Both cases raised the right to self-determination and in neither case can it be regarded as legally unobjectionable. Kosovo could formally not claim independent statehood on its own as the UN Security Council resolution that was adopted upon the end of hostilities in June 1999 reaffirmed “the commitment of the Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act.”¹⁸ It reaffirmed the provision of “an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions.” It also reaffirmed “overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement.”¹⁹

The situation is different in the case of Crimea. There was no international prohibition to change its territorial status. However, a few conspicuous factors have to be taken into account. First of all, the constitution of Ukraine does not allow holding a local referendum. Moreover, the constitution specifically mentions that “Issues of altering the territory of Ukraine are resolved exclusively by an all-Ukrainian referendum.”²⁰ Understandably, the Ukrainian authorities have never given their consent to either holding the referendum in Crimea, or to its result – the changing of its territorial status. Furthermore, the presence of Russian armed forces in Crimea and their “involvement in organization before the referendum” made the process and the result all the more questionable. This was underlined by the fact that Ukraine’s amended constitution clearly pointed out that “The location of foreign military bases shall not be permitted on the territory of Ukraine.”²¹ This meant that Russia faced a threat to the future stationing of its armed forces in Crimea, in spite of the Kharkiv agreement that was still in force. This must have caused worries in Moscow.

There are various opinions about the results of the referendum. Officially, 96.77 percent of the voters supported the “reunification” of Crimea with the Russian Federation and 2.51 percent supported Crimea staying with Ukraine.²² The chairman of the OSCE declared the referendum illegal. In spite of the invitation by the legislative body of the

¹⁸ United Nations Security Council (SC), Resolution # 1244, 10 June 1999, preamble and point 10.

¹⁹ *Ibid.*, point 11 f).

²⁰ Constitution of Ukraine, adopted on June 28, 1996, with amendments adopted before February 22, 2014. Available in English: Council of Europe, European Commission for Democracy through Law (Venice Commission), Constitution of Ukraine – Text provided by the Ukrainian authorities on 13 March 2014, CDL-REF 2014) 012, art. 73.

²¹ *Ibid.*, art. 17, last paragraph.

²² See the website of the news agency of the Republic of Crimea, c-inform.info.

Autonomous Republic of Crimea, the OSCE declined to monitor it.²³ The Russian Federation succeeded in mobilizing some western observers who arrived from right-wing parties supportive of Moscow and were occasionally subsidized by it.²⁴ The absence of official observers was understandable. It must be noted, however, that the absence of international election monitoring and monitors has various consequences. On the one hand, it deprives the referendum (or the election) of its international legitimacy. Oftentimes this is the objective rejecting the request for election observation. On the other hand, the monitors' absence deprives the organization and the broader international community of reliable information.

The Constitutional Court of the Russian Federation, a few days after the referendum in Crimea, passed a judgment with a set of reasons delineating why the referendum was legal.²⁵ This opened the way for the Russian Duma to adopt the necessary laws on the incorporation of Crimea and Sevastopol into the Russian Federation. The referendum suffered a major shortcoming related to the presence of Russian military forces in Crimea. The International Court of Justice, in its advisory opinion on the declaration of the independence of Kosovo, clearly stated that the declaration of independence is illegal if it is “connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*).”²⁶ The mere fact that the Russian forces were present in Crimea and were not used in concord with the treaty under which they were allowed to stay in Ukraine presented an irreparable flaw of the referendum. However, the advisory opinion of the International Court of Justice does not serve as precedent and not even a source of international law unless it codifies customary international law. Hence, reference to it as straddling Kosovo and Crimea may not be fully convincing. A greater problem inheres in the fact that the use of Russian armed forces on the territory of Crimea in violation of the underlying

²³ “Crimea Sends Official Invitation to OSCE to Monitor Referendum,” *Kyiv Post*, 11 March 2014, available at <http://www.kyivpost.com/content/ukraine/crimea-sends-official-invitation-to-osce-to-monitor-referendum-339003.html>; and “OSCE Chair Says Crimean Referendum in its Current Form Is Illegal and Calls for Alternative Ways to Address the Crimea Issue,” 11 March 2014, available at <http://www.osce.org/cio/116313>.

²⁴ Since the Crimea referendum, those observers who found everything in order, have faced an entry ban in Ukraine.

²⁵ *Postanovleniie po delu o proverke konstitutsionnosti nevstupivshevo v silu mezhdunarodnovo dogovora mezhdru Rossiiskoy Federatsiye in Respublikoy Krym o prinatiyi v Rossiyskuyu Federatsiyu Respubliki Krym i obrazovanii v sostave Rossiyskoy Federatsii novykh subyektov* (Judgment on the Case concerning the Review of Constitutionality of the Treaty between the Russian Federation and the Republic of Crimea on Admission of the Republic of Crimea into the Russian Federation and the Creation of New Subjects in the Composition of the Russian Federation), Constitutional Court of the Russian Federation, 19 March 2014, 6-II/2014, <http://doc.ksrfr.ru/decision/KSRFDecision155662.pdf>.

²⁶ International Court of Justice, “Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo – Advisory Opinion,” International Court of Justice Reports, 22 July 2010, para. 81, www.icj-cij.org/docket/files/141/15987.pdf.

agreement was contrary to international law per se, without reference to the advisory opinion of the International Court of Justice.

The Kosovo situation was even more blatant. There, it was the legislative branch that decided on 17 February 2008 to declare of independence. At the time, Kosovo was under UN administration. Thus, the UN Interim Administration Mission in Kosovo (UNMIK) should have approved or disapproved the decision of Kosovo's legislative bodies. However, the UN remained silent on the matter. This political development created a *fait accompli* for international law.

Conclusion

Territorial change is a regular occurrence in international relations. As sovereignty is practiced on every habitable part of the globe, establishing new sovereignty on a territory—be it the creation of a new state or the replacement of a former sovereign by another one—is the most politically loaded change in human history. Such change belongs to that particular realm where international law often gives way to extra-judicial processes and is practically violated.

In analyzing the so-called Kosovo conflict of 1999 and the accession of the Crimea to the Russian Federation, it is clear that both violated international law. It is in this sense correct to draw parallels and refer to similarities. However, beyond the *de lege lata* similarity, the two cases are different. Emerging norms of international law would provide stronger support to NATO's actions for terminating the persecution of Kosovo's population by the authorities of Serbia and the launching of a large-scale humanitarian emergency response. Kosovo was deprived of its autonomy by the regime in Belgrade back in 1989. The legality of changing the territorial status quo and integrating Crimea into the Russian Federation cannot be based on the same. Crimea enjoyed significant autonomy and there were no systematic complaints about discrimination against the population and certainly not against the Russian ethnicity.²⁷ In one sense, Crimea's changing of hands was better prepared than Kosovo's declaration of independence. Whereas a referendum decided the former, the latter was declared by the legislative authority in Pristina. Hence, it would be easier to argue for the democratic nature of the change in Crimea. However, knowing the rules of UN Security Council resolution 1244 and the role of UNMIK, it would have been impossible to hold a referendum without clearly violating the rules of both and thus it is understandable that the Kosovo authorities did not go down that road.

The use of force in former Yugoslavia suffered one major legal flaw: it was not sanctioned by the UN Security Council. The far lower intensity and camouflaged use of force in Crimea cannot be regarded as legal on the grounds of the persecution of the ethnic Russian population, and the reference to practicing the right to self-determination does

²⁷ Nevertheless, the Russian Federation made an attempt to argue on the basis of persecution but no evidence could be provided. See Glenn Kates, "Why Is Crimea Different from Scotland or Kosovo?" *Radio Free Europe – Radio Liberty* (RFERL), 13 March 2014, available at <http://rferl.org/articleprintview/25296187.html>.

not hold. Moreover, the Russian Federation disregarded a number of substantive legal rules, both international and domestic. The December 1994 guarantee for the territorial integrity of Ukraine as an independent state, given, among others, by the Russian Federation, is certainly the most important and unambiguous among them.

The difference between the two cases is primarily not in a more severe versus less severe violation of international law; it is in the legitimacy of the two actions lent by the historical processes that led to them. NATO's use of force in order to terminate the persecution of the Kosovars and the severe humanitarian situation created a point of reference for the Russian Federation, which Moscow did not miss the opportunity to use. With this, however, Russia, rather than respecting international law, has *de facto* recognized that the illegal activity of one international actor should legitimize the illegal action of the other. With this, the Russian Federation followed the West into the slippery slope of weakening the legal foundations of the international system.

Conflict in Kosovo through the Conceptual Framework of Stakeholders

*Aneta Nowakowska-Krystman and Marzena Żakowska **

Abstract: Kosovo has been one of the longest-running ethnic conflicts in contemporary Europe. It can be characterized by the diverse nature of the participating entities and the heterogeneous complexity of their interactions. These aspects violently surfaced during the civil war that lasted for almost two years, from 1998 to 1999. One of the major frameworks for viewing and analyzing the conflict, as well as one capable of seeing to its ultimate resolution, appears to be an assessment of the issues through the conceptual lens of “stakeholders.” This focuses on the specific investments or “stakes”—be they economic, ethnic, historic, or cultural—that each of the participants “holds” in generating the scene of the conflict. This lens provides a significant focus, and is one of the more important research methods employed within the domain of strategic analysis.

Keywords: Kosovo, conflict, internal and external stakeholders.

Introduction

Research into armed conflict should encompass the examination of the role and status of the participants by presenting their interests, goals, behaviors, and relationships. In this paper, we have chosen the Serbian-Albanian conflict in Kosovo as a case study. Although hostilities ceased in 1999, the conflict remains ongoing politically, and is largely unresolved.¹ This conflict has proven to be one of the most enduring in contemporary

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¹ Since the end of the civil war in 1999 and until 2012, Kosovo was covered by the Interim Administration Mission of the United Nations (UNMIK), established pursuant to Resolution 1244 of the UN Security Council of June 10, 1999. On 17 February 2008 Kosovo declared unilateral independence from the Republic of Serbia. The new state, in which the local administrative authorities is lead mainly by Albanians, has been recognized by an overwhelming majority of Member States of the United Nations, European Union, and NATO. To date, there has been no formal recognition by Serbia. The Serbian authorities still consider Kosovo a legal part of the territory of Serbia, and call it the Autonomous Province of Kosovo, as well as Metohija. “Kosovo’s PM Thaci on statehood, corruption and the EU dream,” available at

Europe. The crux of the conflict has been a dispute over the political status of Kosovo. Owing to its rich history and past cultural experiences, Kosovo's territory has deep symbolic and mythological dimensions within the minds of both the Serbs and the Albanians. The conflict is embodied by the diverse natures of the participating stakeholders and the complexity of their interactions. These factors were manifested violently during the civil war from 1998 to 1999 that featured the horrors of ethnic cleansing, a crime against humanity. The war ended with the establishment of the United Nations Interim Administration Mission in Kosovo in June of 1999. However, its full resolution remains incomplete.

This article touches on the ethical and historical roots of the conflict. Most importantly, it attempts to illuminate the problem from the perspective of the interest groups that existed prior to and during the engagement in the conflict. The situational problematic includes the framework provided by the stakeholders that was used in strategic analysis. This analysis covers the period of the civil war, tracing the operations of a contractual system capable of building a future state with various stakeholders who have invested in realizing a fully functional statehood (the concept stakeholder, shareholders). Stakeholders are frequently organizations and groups residing within the analyzed entity (Kosovo as the state) that are further dependent on the decisions affecting, or potentially affecting, the state's direction and navigational decision-making (see Figures 1 and 2). These entities directly or indirectly benefit or incur costs that are intimately associated to the state's functioning. It is important to note that the interests of different stakeholders can be contradictory. These contradictions tend to breed differing levels of conflict and are linked to the conflict's resolution.

It appears that the main actors must consider the specific needs and pressing force of establishing a critical hierarchy of importance in negotiations. Each of the interest groups or shareholders has their own authority, vulnerabilities, as well as vested interests. Also, each shareholder must reflect on the specific pressures prior to any major decision-making. Subject to analysis in this case are the authorities of Kosovo. This article thus presents the possibility of carrying out this kind of research with the Kosovo conflict as the case study, focusing on internal and external stakeholders.

Participation of the Main Stakeholders in the Kosovo Conflict

The background of the conflict between the Albanians and the Serbs is primarily ethnic. Other aspects of life and lived experience are shared, such as history, religion, culture, and language. The Serbs consider Kosovo to be the cradle of their statehood, belonging to territory that they gained in the Middle Ages; in this area was the capital of the medieval Serbian state. Furthermore, the seat of the Orthodox Church was in Peć. The church served as the cultural center of statehood, as well as a source of national identity for the Serbs. The presence of numerous monasteries provided the Kosovo Serbs with what was

www.euronews.com/2014/02/13/the-road-to-recognition-pm-thaci-on-statehood-corruption-and-kosovo-s-european/ (accessed 21 November 2014); "Kosovo profile," available at <http://www.bbc.com/news/world-europe-18328859> (accessed 21 November 2014).

called a “Serbian Jerusalem.” For the Albanians, Kosovo has also been the cradle of both the state and the nation. In this line of thought, the Albanians robustly identify themselves with the Illyrians. This tribal population inhabited Kosovo during the second century B.C., whereas the Slavs, from which the Serbs are descended, came to Kosovo in the sixth century. This historical narrative is embraced by the Albanians and forms the basis of their claims to the territory as an indigenous people. The Serbs are still viewed as latecomers lacking in entitlement.²

One essential source of conflict, therefore, appears to stem from Kosovo’s historical circumstances. These have generated multiple levels of antagonism between the Serbs and Albanians and have contributed to profoundly engrained dynamics of rivalry, as well as extremely partisan conflicts. It must be emphasized that for each of these groups, Kosovo holds deeply cherished mythological and symbolic values. Some of these identifications were forged in the defeat by the Ottoman Empire at the Battle of Kosovo Polje in 1389.³ The massive and bloody sacrifices of that battle are considered by Serbs, together with the Albanians, as a great sacrifice in the failed attempt to preserve the freedom of the nation.

Politically speaking, the distant Battle of Kosovo determined the loss of the once independent Serbian state. This further relegated the conquered population to what amounted to five-hundred years of submission and servitude to the Ottoman Empire, from 1459 to the early twentieth century. One result of Kosovo coming under Turkish rule was the gradual development of sharp antagonisms between the Albanians and Serbs. This was facilitated by the policy of colonization and Islamization decreed by the Turkish government. In Kosovo this resulted in the Albanians becoming the dominant ethnic group. They actively embraced Islam in contrast to the Serbs. Because of this, the Albanians were treated by the Turks as the privileged group, while the Serbs, who remained Orthodox, became alienated outsiders.⁴

This socio-political system was later reversed in the twentieth century as the result of a new geopolitical system emerging after the Balkan Wars and the First World War. Kosovo, which had been included territorially in the state created by the Serbs, the Kingdom of Serbia (1912–1918), was later included in the Kingdom of Yugoslavia (1918–1941).⁵ These political conditions spawned large migrations of Albanians who had be-

² Noel Malcolm, *Kosovo. A Short History* (New York: Harper Perennial, 1999), 22–40; Sylwia Nowak, “Kosowo – Mit i historia w konflikcie serbsko-albańskim,” in *Przemiany w świadomości i kulturze duchowej narodów Jugosławii po 1991 r.*, ed. Edyta Szcześniak-Kajzer (Kraków, 1999), 88–93.

³ Malcolm, *Kosovo*, 58–92; Tim Judah, *The Serbs. History, Myth and the Destruction of Yugoslavia* (New Haven and London: Yale University Press, 1997), 29–48.

⁴ Malcolm, *Kosovo*, 93–138; Maciej Kuczyński and Marian Ray-Ciemiega, *Balkański syndrom* (Warsaw: Ministerstwo Obrony Narodowej, 2000), 11–13.

⁵ Tim Judah, *Kosovo. War and Revenge* (New Haven and London: Yale University Press, 2002), 14–26; Malcolm, *Kosovo*, 239–289; Kuczyński and Ray-Ciemiega, *Balkański syndrom*, 19–21; Marek Waldenberg, *Rozbicie Jugosławii: od separacji Słowenii do wojny kosowskiej* (Warsaw: Wydawnictwo Naukowe Scholar, 2003), 253–267.

come increasingly and vehemently discriminated against by Serbs. The situation changed again during the Second World War when Kosovo was incorporated into a pro-fascist Albania – circumstances that favored the return of the Albanian émigrés to Kosovo. The Albanian resettlement brought reprisals against the once dominant Serbs that then led to a mass exodus of the Serbian population.⁶

After the war, and to the detriment of the Serbs, the entire ethnic composition changed in Kosovo. A main reason for this transformation was a high birth rate among the Albanian population as well as Serbian emigration that was also largely motivated by economic considerations. Kosovo was one of the least economically developed regions in Yugoslavia. In the 1990s, Kosovo was inhabited by an 81 percent Albanian population, in contrast to an approximately 11 percent Serbian population.⁷ This demographic advantage has been repeatedly cited and invoked by the Albanians on the international stage as one of the principal arguments favoring the granting of independence to Kosovo.

In the Socialist Federal Republic of Yugoslavia (SFRY), Kosovo had the political status of an autonomous region under the constitution in 1974.⁸ In practice, this meant Kosovo became a fully-functioning autonomous government, along with the introduction of an Albanian curriculum into the Serbian educational system. Despite this, in the 1980s Kosovo Albanians began to demand the granting of status as a republic, and an equivalency with the other republics of the SFRY. Their demands were not taken into account by the Yugoslav authorities. This was mainly due to the 1989 implementation of Serbian President Slobodan Milošević's program for Kosovo's centralization, as well as to a vigorous defense of the rights of the Serbs living in the region.⁹

This policy led to the abolition of Kosovo's autonomy in 1990 and the adoption of the new Constitution of the Republic of Serbia with widely restricted administrative rules for the province that had functioned during 1946–1973.¹⁰ A number of protests by Albanians against these changes were brutally suppressed through the use of military force. These events led to a serious crisis in Serbian-Albanian relations. In response, Kosovo Albanians aggravated by Serb discrimination, the abolition of political institutions, mass layoffs, and the introduction of the Serbian curriculum into the educational system, reactively formed a parallel administration, called the state of the Republic of Kosovo to the Socialist Republic of Serbia. In this state, they created a separate administration, taxation, education, health, and social service systems. In a secret referendum in September 1991, they proclaimed the independence of the Republic of Kosovo. In the following year, they established a secret ballot for parliament and president. Ibrahim Rugova, the leader of the Democratic League of Kosovo (the Albanian

⁶ Malcolm, *Kosovo*, 289–314; Waldenberg, *Rozbicie Jugosławii*, 267–268.

⁷ Branislav Krstić-Brano, *Kosovo. Facing the Court of History* (New York: Humanity Books, 2004), 93–119.

⁸ Heike Krieger, ed., *The Kosovo Conflict and International Law: An Analytical Documentation 1974–1999* (Cambridge: Cambridge University Press, 2001), 2–6.

⁹ Judah, *The Serbs*, 163–164; Waldenberg, *Rozbicie Jugosławii*, 281–283.

¹⁰ Krieger, ed., *The Kosovo Conflict*, 9.

opposition party), was elected as the first President of the Republic of Kosovo.¹¹ The parallel state was recognized only by Albania, as the European Community refused to approve or acknowledge its independence. However, Kosovo Albanians had hoped that the issue of their political status would be finally resolved in the Dayton Peace Agreement (1995) that had ended the war in Bosnia. This problem was ignored by the international community, which triggered aggressive radicalization among Albanians in Kosovo.¹²

Radical groups such as the Kosovo Liberation Army (Ushtria Çlirimtare e Kosovës, KLA) were vehemently opposed to the continuation of the previous policy of “passive resistance” promoted by their leader, Rugova.¹³ In the period from 1996 to 1997, the KLA began fighting for its independence by attacking Serbian police officers, police stations and civilians, as well as those Albanians suspected of loyalty to the authorities in Belgrade.¹⁴ In 1998, the conflict escalated and lethal clashes between KLA fighters and the Serbian police became an aspect of daily life. An escalation of these hostilities in 1998 caused approximately 242,000 people to flee their homes. The majority of these were Albanians.¹⁵

In the face of the ongoing civil war, once again raising the threat of destabilizing the Balkans, the international community began intensive diplomatic efforts to stop the violence and restore peace in Kosovo. The negotiations with both sides of the conflict were led by the Contact Group on former Yugoslavia, the Special Envoys from the United

¹¹ Judah, *Kosovo*, 63–72; Kamil Janicki, ed., *Źródła nienawiści. Konflikty etniczne w krajach postkomunistycznych* (Kraków-Warsaw: Instytut Wydawniczy Erica, 2009), 43–47.

¹² Joyce P. Kaufman, *NATO and the Former Yugoslavia: Crisis, Conflict, and the Atlantic Alliance* (Lanham, Maryland: Rowman & Littlefield, 2002), 153–156; Christopher Carson, “The Dayton Accords and the Escalating Tensions in Kosovo,” *Berkeley Undergraduate Journal*, available at <http://www.escholarship.org/uc/item/15p36388#page-4> (accessed 21 November 2014).

¹³ Henry H. Perritt, Jr., *Kosovo Liberation Army. The Inside Story of an Insurgency* (Chicago: University of Illinois Press, 2008); Marcin Marcinko, “Wyzwolenicza Armia Kosowa: analiza, struktury i ocena działalności,” available at <http://www.europeistyka.uj.edu.pl/documents/3458728/00c08055-43d6-4580-a5f5-9b42feca6fda> (accessed 21 November 2014).

¹⁴ Perritt, Jr., *Kosovo Liberation Army*, 61–88; Kuczyński and Ray-Ciemieęga, *Balkański syndrom*, 116–118; International Crisis Group (ICG), “Kosovo’s Long, Hot Summer: Briefing on Military, Humanitarian and Political Developments in Kosovo,” 2 September 1998, available at <http://www.crisisgroup.org/~media/files/europe/kosovo%203.pdf> (accessed 21 November 2014).

¹⁵ UN High Commissioner for Refugees, *UN Inter-Agency Update on Kosovo Situation*, Report No. 59, 1 September 1998, 2–7, available at <http://reliefweb.int/report/albania/un-inter-agency-update-kosovo-situation-report-59> (accessed 21 November 2014). With regard to the intensification of hostilities between March 1998 and March 1999, see Kuczyński and Ray-Ciemieęga, *Balkański syndrom*, 119–122; Armend R. Bekaj, *The KLA and the Kosovo War. From Intra-State Conflict to Independent Country* (Berlin: Berghof Conflict Research, 2010), 21–22, available at http://www.berghof-foundation.org/fileadmin/redaktion/Publications/Papers/Transitions_Series/transitions8_kosovo.pdf (accessed 21 November 2014).

States, Robert Galbarda and Richard Holbrooke, and U.S. Secretary of State Madeleine Albright, as well as the Russian President, Boris Yeltsin.¹⁶ The Security Council of the United Nations adopted resolutions that imposed an arms embargo on Yugoslavia and Kosovo. It further urged the parties to refrain from violence against the civilian populations and initiate the process of peace talks.¹⁷ On October 13, 1998, Holbrooke and Milosevic signed a ceasefire agreement. This engendered the hope of ending the conflict. Implementation of the agreement was to be overseen by the OSCE Verification Mission in cooperation with NATO air forces (i.e., Operation Eagle Eye and Determined Guarantor). In accordance with the provisions of the agreement, the Serbian forces partially withdrew from Kosovo. The ceasefire was unable to stand: soon after the withdrawal of Serbian forces, the KLA resumed fighting.¹⁸

The conflict reached a turning point when on January 15, 1999 people in the town of Račak discovered the bodies of 45 ethnic Albanian civilians. The Albanians blamed the Serbs for the massacre.¹⁹ This event led the Contact Group to hold peace talks the following month in Rambouillet, and to present a peace plan designed to end the conflict. The plan was rejected by the Serbs on account of two conditions it contained: a) acceptance by the Serbian authorities to allow NATO forces entry into Yugoslavia, enforcing thereby and monitoring the implementation of the peace agreement; and b) a referendum, to be carried out three years after the date of signing, to determine the political future of Kosovo.²⁰

In view of the failure of the peace talks and the conduct of the Serbian forces, i.e. ethnic cleansing, the Atlantic Alliance decided to launch a vigorous military intervention

¹⁶ Krieger, *The Kosovo Conflict and International Law*, 115–117; Independent International Commission on Kosovo (IICK), *Kosovo Report. Conflict, International Response, Lessons Learned* (New York: Oxford University Press, 2000), 131–163; Mark Smith, *The Kosovo Conflict. U.S. Diplomacy and Western Public Opinion* (Los Angeles, CA: Figueroa Press, 2009); Waldenberg, *Rozbicie Jugosławii*, 292–303.

¹⁷ Krieger, *The Kosovo Conflict and International Law*, 116; Wade Boese, “UN Security Council Approves Arms Embargo on Yugoslavia,” Arms Control Association, 1 March 1998, available at www.armscontrol.org/print/310 (accessed 21 November 2014).

¹⁸ Ivo H. Daalder and Michael E. O’Hanlon, *Winning Ugly: NATO’s War to Save Kosovo* (Washington, D.C.: Brookings Institution Press, 2000), 49–59.

¹⁹ “Interview: Ambassador William Walker,” *Frontline*, available at <http://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/walker.html> (accessed 21 November 2014); United Nations, “Security Council Strongly Condemns Massacre of Kosovo Albanians in Southern Kosovo,” Press Release SC/6628, 19 January 1999, available at <http://www.un.org/press/en/1999/19990119.sc6628.html> (accessed 21 November 2014).

²⁰ Krieger, *The Kosovo Conflict and International Law*, 253–278; Waldenberg, *Rozbicie Jugosławii*, 317–330; Ivan Boshkovich, “Rambouillet Peace Conference: Road to the Conference and Results,” MA thesis (Hawaii Pacific University, 2009), 56–80, available at www.hpu.edu/CHSS/History/GraduateDegree/MADMSTheses/files/Ivan_Boshkovich.pdf (accessed 21 November 2014).

against Yugoslavia on 24 March 1999 called Operation Allied Force.²¹ The aims of the intervention were to bring about the cessation of fighting and ethnic cleansing, to establish lasting peace, and to restore Kosovo's autonomy. NATO's bombing forced President Milošević to take the peace negotiations seriously, and appeared indispensable to any lasting agreement that could also ensure the safety of people returning to their homes.

After two months of bombing and intense diplomatic negotiations with the Serbian side, an agreement was finally signed between the Serbian government and NATO in Kumanovo to end the intervention in Yugoslavia.²² Under the agreement, again, most Serb forces were required to withdraw from Kosovo, and the international peacekeeping force KFOR to enter in their place as an international peacekeeping force under NATO command. The final terms of the peace agreement ending the armed conflict in Kosovo were adopted in Resolution 1244 by the UN Security Council.²³ According to the resolution, Kosovo was to remain under the temporary administration of the UN mission, remained an integral part of the Republic of Serbia and Yugoslavia. The restoration of order and security was entrusted to KFOR.

The Concept of Stakeholders and the Kosovo Conflict

The armed conflict in Kosovo is defined by the diversity of the actors involved. The various entities, or stakeholders, involved in the relevant period (1998–1999) can be divided into groups to identify the key or target stakeholders:²⁴

²¹ Benjamin S. Lambeth, *NATO's Air War for Kosovo: A Strategic and Operational Assessment* (Santa Monica, CA: RAND Corporation, 2001), 1–87; Maciej Marszałek, *Sojusznicza Operacja "Allied Force." Przebieg – ocena – wnioski* (Warsaw: Wydawnictwo Adam Marszałek, 2009).

²² "Military Technical Agreement between the International Security Force ('KFOR') and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia," 9 June 1999, available at: <http://www.nato.int/kosovo/docu/a990609a.htm> (accessed 21 November 2014).

²³ United Nations Security Council (SC) Resolution # 1244, 10 June 1999, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/kos%20SRES%201244.pdf> (accessed 21 November 2014).

²⁴ For more details about the Conceptual Framework of Stakeholders see Ronald K. Mitchell, Bradley R. Agle and Donna J. Wood, "Toward a Theory of Stakeholder Identification and Salience. Defining the Principle of Who and What Really Counts," *The Academy of Management Review* 22:4 (1997): 853–886; Thomas Donaldson and Lee E. Preston, "Stakeholder Theory of the Corporation: Concepts, Evidence and Implications," *The Academy of Management Review* 20:1 (1995): 65–91; Urszula Bąkowska-Morawska, "Zasoby relacyjne w strategii przedsiębiorstw," in *Zarządzanie strategiczne. Ujęcie zasobowe*, ed. Rafał Krupski (Wałbrzych, 2006), available at www.zarządzanie-strategiczne.pl/publikacje/Zarządzanie_strategiczne_Ujecie_zasobowe_Krupski_2006.pdf; Aneta Nowakowska-Krystman, "Zarządzanie relacjami systemu obronnego państwa," in *Spoleczeństwo, gospodarka, siły zbrojne – relacje i wyzwania*, ed. Marzena Piotrowska-Trybull (Warszawa: AON, 2015).

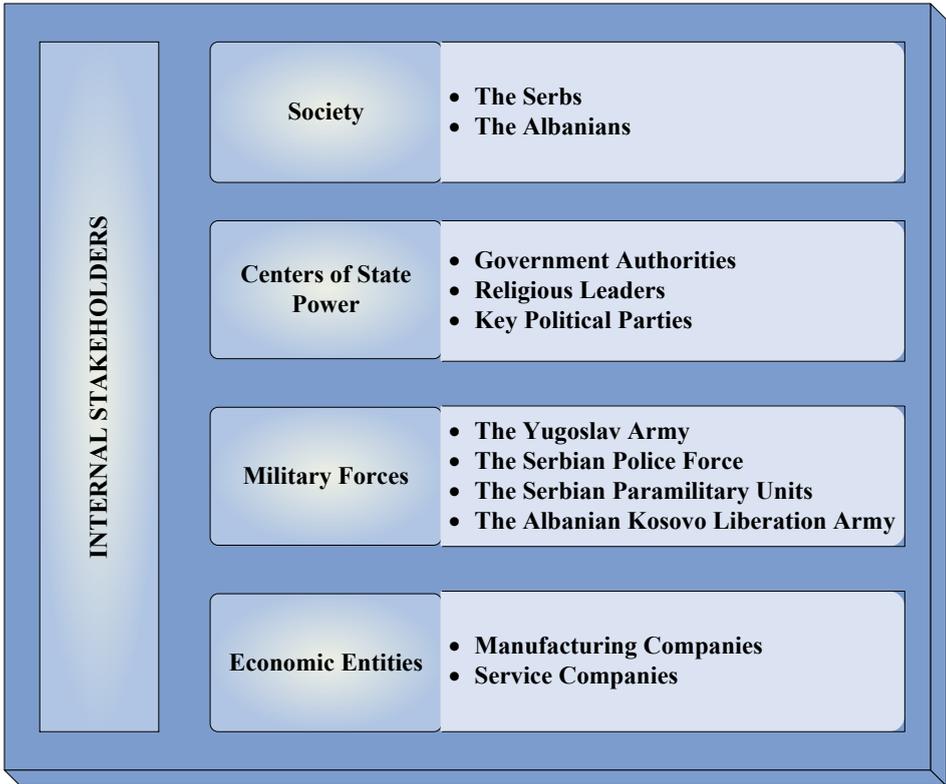


Figure 1: Internal Stakeholders.

- internal and external, i.e. situated inside and outside the country (see Figures 1 and 2);
- active and passive, namely those with direct influence (e.g. political parties, the Kosovo Liberation Army) and indirect influence (e.g. citizens, the Albanian and Serb populations, media);
- necessary and conditional, i.e. those necessarily present in developing countries (e.g. president, ministers) and those whose participation is not required;
- current and potential, i.e. those created because of the existence of a specific political situation, in this case taking into account the legal regulations concerning the impact on the functioning of the state;
- the positive (e.g. United Nations High Commissioner for Refugees, NATO), neutral (e.g. the International War Crimes Tribunal), or negative (e.g. the Serbian authorities, the Yugoslav army) nature of stakeholders' impact.

Within the conflict there emerge four groups of internal stakeholders (see Figure 1) that include national entities, namely:

- society, i.e. those immediately impacted by the conflict,
- centers of state power
- military force/direct participants in the conflict
- economic entities (manufacturing and services).

These groups are not uniform or unified. It seems appropriate, therefore, to extract smaller units (e.g., the president, the minister of national defense) and then determine the strength of their influence.

<i>The Group</i>	<i>Internal stakeholders</i>	
	Serbian	Albanian
1. The centers of state power: government authorities	<p><i>Federal Republic of Yugoslavia</i> President: Slobodan Milosevic Prime Minister: Momir Bulatovic Deputy Prime Minister: Nicola Sainovic Minister of Internal Affairs: Zoran Sokolovic</p> <p><i>Republic of Serbia</i> President of Serbia: Milan Milutinovic Prime Minister: Mirko Marjanović Deputy Prime Ministers: Milovan Bojic, Ratko Markovic, Dragan Tomić, Vojislav Šešelj, Tomislav Nikolić Minister of Internal Affairs of Serbia: Vlajko Strojilkovic</p>	<p><i>Self-proclaimed Republic of Kosovo (1991)</i> President: Ibrahim Rugova (elected president in 1992, re-elected in 1998) Prime minister: Bujar Bukoshi (the “prime minister” of Kosovo’s government-in-exile in Germany).</p>
2. The centers of state power: religious leaders	<p>Head of the Serbian Orthodox Church in Kosovo: Bishop Artemije Radosavljevic Head of the Serbian Orthodox monastery in Decani: Father Sava</p>	Not stated.

<p>3. The centers of state power: key political parties</p>	<p>Kosovo Serbian Resistance Movement: leader Momcilo Trajkovic Kosovo branch of the Serbian Radical Party: leader Rade Trajkovic</p>	<p>Democratic League of Kosovo, President Ibrahim Rugova United Democratic League, headed by Rexhep Qosja Parliamentary Party of Kosovo under the leadership of Adem Demaci, Bajram Kosumi</p>
<p>Military forces</p>	<p><i>The Yugoslav Army (Vojska Jugoslavija, or VJ):</i> Slobodan Milosevic; gen. Dragoljub Ojdanic chief of the VJ General Staff <i>The Serbian police force:</i> Ministry of Internal Affairs Republic of Serbia (Ministarstvo Unutrasnjih Poslova, MUP): Slobodan Milosevic; gen. Sreten Lukic, gen. Radomir Markovic <i>The Serbian paramilitary units:</i> Arkan’s Tigers, Seselj’s White Eagles.</p>	<p><i>Kosovo Liberation Army:</i> Hashim Thaqi rebel leader known by his nom-de-guerre “Snake”.</p>

Source: International Crisis Group, “Who’s Who in Kosovo,” <http://www.crisisgroup.org/~media/Files/europe/Kosovo%2012.pdf> (accessed 22 November 2014); Human Rights Watch, “Under Orders: War Crimes in Kosovo – 3. Forces of the Conflict,” <http://www.hrw.org/reports/2001/kosovo/undword-02.htm> (accessed 22 November 2014).

Within the group of external stakeholders, international actors have been identified in three groups (Figure 2), and should be analyzed as distinguished specific pressure groups on authority decision making process in the state. Based on the directness of impact, the first group can be divided into active (primary stakeholders) and passive (secondary stakeholders). Also highlighted are the current stakeholders (already existing) and prospective stakeholders (i.e., latent) that begin acting in response to a political situation.

We consider the key stakeholders to be groups, institutions, or organizations that meet two conditions: 1) they are able to exert effective pressure on the state; 2) they have their specific “stake” in action. The second category of analysis to be considered is



Figure 2: External Stakeholders.

a validation of impact/action. In addition, the state must take into account the urgency of their demands.²⁵

Institutional functioning reflects the legitimacy and the relationship of authority, and can be considered from the point of view of contracts, exchange, legal title, moral rights, or the status of the risk incurred. This indicates the dominance of the particular organization or domination of stakeholders for the correlation.

As a result, we obtain information about the significance of the stakeholder. The positioning can be carried out based on a scheme using two variables: the level of interest and the force of impact (Figure 3).

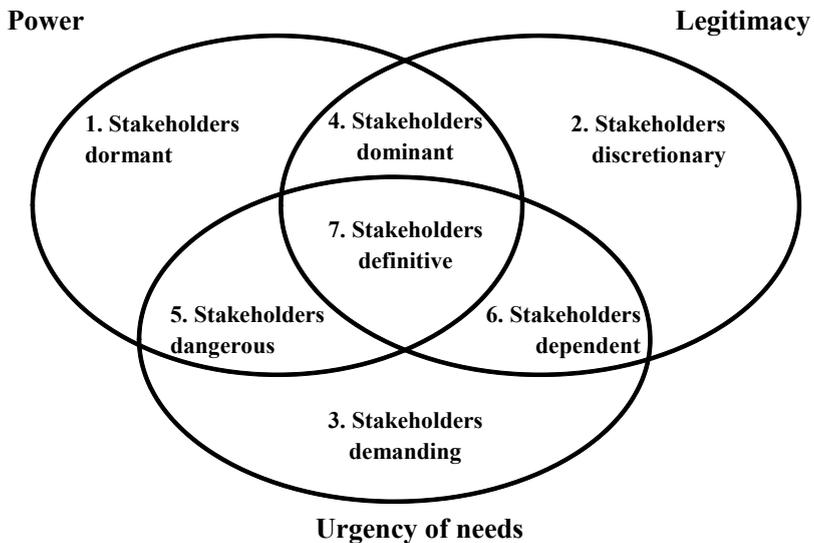
²⁵ Krzysztof Oblój, *Strategia organizacji. W poszukiwaniu trwałej przewagi konkurencyjnej* (Warsaw, 2007), 217–219.

		The level of interest	
		low	high
The force of the impact	Low	A <i>minimum effort</i>	B <i>constantly inform</i>
	High	C <i>maintain the satisfaction</i>	D <i>key players</i>

Source: Gerry Johnson and Kevan Scholes, eds., *Exploring Corporate Strategy* (London: Prentice Hall Europe, 1999), 216.

Figure 3: Positioning of Stakeholders.

In the literature, there are also schemes based on three categories of analysis: the force of impact (power/authority), legitimacy (validation), and the urgency of the needs and demands (Figure 4).



Legend: 1 to 3: Stakeholders of minor importance;
 4 to 6: Stakeholders of medium importance;
 7: Stakeholders of greatest importance (the key players)

Figure 4: The Three Analytical Dimension Stakeholders.

Source: Mitchell et al., "Toward a Theory of Stakeholder Identification and Saliency," 874.

The article briefly describes the problem by analyzing selected stakeholders. However, more often the type of analysis comes as stakeholders' maps (information delivered in the form of images) and as a matrix of mutual domination (a mathematical technique developed by T. Saaty) and then presents comprehensive analysis of stakeholders.

Conclusion

The behavior of an entity, a state such as Kosovo, is attributable to its strategy that should be preceded by analysis. One of the most important seems to be the analysis of stakeholders. In order to characterize the pressure groups, the state must:

- understand the needs of stakeholders
- establish specific negotiation processes (with the range and fields pertinent to the coalition activities, conflict management, and the avoidance of unilateral action) in order to understand the different groups of stakeholders
- establish a process of decision-making oriented towards initiating or not a response to occurring phenomena
- allocate resources of the state that are guided by the requirements and degree of external demands, and by not forgetting the nation's core competence.²⁶

Therefore, modern state management requires taking into account the broad perspective of bringing value/benefits to the stakeholders. It ostensibly results in efficient and effective action (Figure 5).

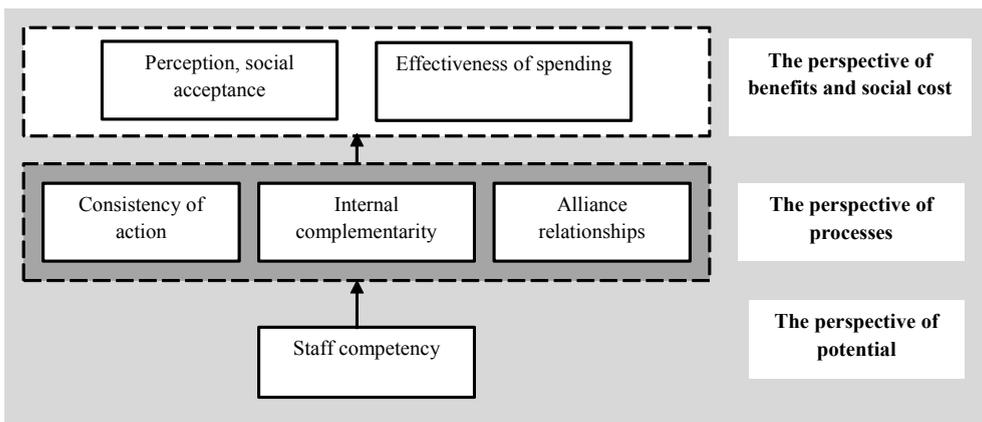


Figure 5. The Chain of Cause and Effect on a Balanced Scorecard.

Source: Robert S. Kaplan and David P. Norton, *Strategiczna karta wyników, Jak przełożyć strategię na działanie* (Warsaw: Wydawnictwo Naukowe PWN, 2007), 46.

²⁶ Ibid.

NATO SeaSparrow Program: Cooperation Based on Trust

Dabrowka Smolny *

Abstract: The author examines the background, rules and structure of the NATO SeaSparrow Program in the context of the “Smart Defense” initiative, introduced by Secretary General Anders Fogh Rasmussen at the NATO Summit in Chicago in 2012 as an attempt to counteract the defense budget cuts in the Allied Countries. The main objective of the study was to identify the mechanisms of the NATO SeaSparrow Program that could serve as the basis for future programs developed within the NATO initiative.

Keywords: NATO, SeaSparrow, Surface Missile System, SeaSparrow Program

Introduction

The purpose of this article is to analyze NATO’s program for the development and production of ship-launched short-range missiles serving the direct defence of naval vessels, known as the NATO SeaSparrow Surface Missile System (NSSMS), in terms of the mechanisms that have allowed it to function for more than 45 years, involving twelve member nations.

The author of this paper will also attempt to identify the so-called “good practice,” on which international cooperation programs in the development and production of weapons could be based, especially in the context of the concept of “Smart Defense.”

The production and procurement of weapons, and thus technical upgrading of the armed forces, is of interest to both civilian and military communities. The discussion comes alive especially at the time of procurement (or just an intent) of expensive military equipment. Words of opposition and disapproval of the high cost of arms borne by the taxpayer often come in times of relative peace and subjectively perceived security. However, when the relations between countries are strained and continuation of their cooperation is called into question, the public looks much more favorably at dollars spent on the armed forces.

Regardless of changing public opinion, one can assume it is correct to claim that, both now and in the future, states will continue to invest in defense, primarily in order to ensure the achievement of their own goals and national—and allied—interests. An old Latin adage, “*Si vis pacem para bellum*,” which can be interpreted as no one attacks the strong, is fitting here. The main challenge of shaping the future demand for weapons is the nature of the foreseeable risks. It is necessary, therefore, to develop the technology to deter and/or to combat and defeat these threats.

According to a report prepared by the Stockholm International Peace Research Institute (SIPRI) the transfer of defense technologies in 2009–2013 was about 14% higher

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than in 2004-2008.¹ In line with the ongoing trend for several years, most European countries have gradually reduced defense spending. Significant restrictions have also been noticed in the American defense budget. The primary factors affecting the size and nature of the production of weapons include:

- A significant reduction of defense spending, as well as deference of the implementation of armaments' long-term acquisition and modernization programs in Europe and the United States in connection with the financial crisis; but it is worth noting that the difficulty of maintaining high spending on armaments is nothing new, especially in democratic countries where the authorities have to reckon with the opinions of voters.
- A decrease in the demand for massive equipment in the absence of prospects for military conflict on a large scale, although there is more and more talk about the need to revise the forecasts of the security environment, especially in the context of the situation in Ukraine.
- An increased demand for raising the efficiency of the technology, interoperability, situational awareness, and precision in asymmetric conflicts.
- Shortening the time of the development cycle for equipment through the introduction of "single-purpose" technology in place of complex and expensive technologies requiring long years of research.²

Taking into account the need to ensure effective defense of national and Allied interests with a simultaneous decrease in defense spending, NATO members have undertaken an initiative to prevent the negative effects of the occurring trends. "Smart Defense" is an initiative involving the development, acquisition, and maintenance of the ability of Allied forces on the basis of cooperation between member states. It is a consequence of the financial crisis of recent years, which has caused significant cuts in defense spending, thereby aggravating the disparities in defense investments between Europe and the United States. "Smart Defense" operates in areas that are crucial in the capacity of NATO's armed forces. These capabilities were defined at the Lisbon Summit in 2010 and include ballistic missile defense, intelligence, surveillance and reconnaissance training and preparation, and effective involvement and protection of troops. Member states are committed to giving priority to the development of these capabilities by developing specialization in certain fields and searching for common international solutions.

¹ Siemon T. Wezeman and Pieter D. Wezeman, "Trends in International Arms Transfers, 2013," *SIPRI Fact Sheet*, March 2014, available at <http://books.sipri.org/files/FS/SIPRIFS1403.pdf> (accessed 31 March 2014).

² See Dabrowka Smolny, "Bezpieczeństwo niemilitarne jako perspektywa rozwoju polskiego przemysłu obronnego," *Szybkobieżne Pojazdy Gąsienicowe, Biuletyn Naukowo-Techniczny* 30:2 (2012): 16.

NATO's role is to assist in determining what countries can do together better, cheaper, and with less risk.³

The cooperation in the development and production of weapons systems has a long tradition within NATO. A prime example of such cooperation, from which one can draw patterns, is the program for the development and production of short-range missile systems for ships to defend against maneuvering missiles, known as the NATO SeaSparrow Missile System (NSSMS), which is celebrating its 46th anniversary this year.

From Project to Program

Project Context

The NATO SeaSparrow project started in favorable circumstances, both political and economic. The 1960s were the period of the first serious challenge to NATO. The Alliance was based on American military presence in Europe and the adoption of strategic guidance by the USA. With its nuclear weapons, the United States gave an illusory belief (perhaps much needed by Europe after the World War II experience) of having the power of deterrence against all attacks. The consequence of this belief was that the conventional forces of the Alliance remained less developed. This was, at the same time, convenient for European governments due to budgetary constraints. As a result, the European partners possessed insufficient defense capabilities, which were significantly influenced by their poorly developed industrial bases. This resulted in the steady increase of disparities between American and European NATO forces.⁴ In this period, however, the Soviet Union began to build its own nuclear capability, thereby calling into question the NATO concept of massive retaliation based on the nuclear superiority of the United States. The Allies thus began to realize that nuclear forces were not enough to prevent aggression.

Another impetus to start cooperation in the framework of the project was the development of new arms technologies and related hazards. In the context of shipboard defense, particular attention was paid to defense against jet aircraft, which flew at high speeds and at low altitudes and left little time for defensive reactions. An additional challenge was the maneuvering of aircraft missiles, which allowed attacks from a distance. The United States Navy, based on the experience of the Army in the development of anti-aircraft systems, began a program in 1960 to adjust the MIM-46 Mauler system for use at sea. However, due to numerous errors, the program was cancelled. The American Navy later began another, this time successful, attempt to adapt missiles used by the Air Force. For this purpose, the air-to-air AIM-7E Sparrow missile was considered,

³ See NATO information on "Smart Defence," www.nato.int/cps/en/natohq/topics_84268.htm (accessed 31 March 2014).

⁴ To help European allies develop their potential, the United States signed a number of bilateral framework agreements for data exchange (so-called Master Data Exchange Agreements). Their goal was to partially transfer American technology to European armament factories in order to facilitate their reconstruction. Cf. Francis M. Cevasco, "Origins of a Four Decade Success Story. NATO SeaSparrow's founders got it right," *Common Defense Quarterly* 4 (2009): 18.

which without modification entered into the Navy arsenal under the name of the RIM-7E SeaSparrow. Missile tests conducted in 1967 on board the USS Bradley frigate highlighted a number of problems (such as reduced operating range, dimensions that were too large) caused by a mismatch of the construction for new tasks.⁵

In the same year (1967), there was an incident that drew attention to a different kind of maritime threat, namely surface-to-surface maneuvering missiles. On October 21, near Port Said in the Sinai Peninsula, two Egyptian Komar type missile boats sank the Israeli destroyer “Eilat,” firing a total of four Soviet-produced “Styx” missiles. This incident was the first successful attack using (maritime) surface-to-surface type missiles, and it killed 47 Israeli sailors. In light of these events, Western countries stepped up the development of their system of short-range missiles.⁶

Beginning of the Cooperation

This event motivated Denmark, Italy, Norway, and the United States to launch a NATO development project that would allow for the reduction of the system development and acquisition costs, while maintaining standards and interoperability. The NATO SeaSparrow Missile System Cooperative Development and Production Agreement served as the basis for formal cooperation and was concluded in 1968 (Table 1). The Project was established as a formal NATO project, and its project office (NATO SeaSparrow Project Office, or NSPO) was located in Washington, DC. In October 1969, the parties signed a contract for the development of the NATO Mk57 SeaSparrow missile system with the Raytheon Company. To save time and reduce costs, it was decided to integrate the (semi-active homing) air-to-air Sparrow missile—the adaptations of which were already working for use at the sea—with European weapon components, such as a fire control computer, control displays, and fire control tracking and illumination radars. As a result, the participating nations started an unprecedented and complex international project. In 1972, the first model of the system was developed; the nations decided to start its production, and three years later the system was fully operational.

Over time, more countries have joined the consortium: Belgium and the Netherlands (1970), Germany (1977), Canada and Greece (1982), Turkey (1987), Portugal (1988), Australia (1990), and Spain (1991). In 2002, Italy withdrew from the agreement after decommissioning the SeaSparrow system from its naval units.

The following companies are involved in the project: BAE Systems (Australia), Honeywell (Canada), Terma (Denmark), RAMSYS, Diehl BGT Defence, MBDA-LFK (Germany), ELFON, INTRACOM, HAI (Greece), Thales (Netherlands), Nammo Rau-

⁵ See <http://www.okretywojenne.mil.pl/index.php?go=171> (accessed 31 March 2014) (in Polish).

⁶ Since 1966, the Design Group 2, consisting of representatives of Italy, France, Norway and the United States (Germany, Denmark and the Netherlands participated as observers) and operating under NATO’s Maritime Armament Group, has conducted research on a common ship self-defense system against maneuvering missiles. Cf. Francis M. Cevasco, “Origins of a Four Decade Success Story,” 18.

Table 1: NSSMS Project MOUs.

<i>MOU' Name</i>	<i>Validation dates</i>	<i>Scope</i>
1 NATO SeaSparrow Missile System Co-operative Development and Production	1968 – present	Developing and testing a shipboard self-defense anti-air warfare weapon; Eliminating duplication of efforts amongst the MOU partners; Ensuring standardization and interoperability amongst the MOU partners; Implementing a cost and work-share process. (currently used by US only, effectively inactive)
2 NATO SeaSparrow Missile System Co-operative Support	1977 – No end date. Can only terminate by the withdrawal of 12 participating governments	Provides for the organization, structure, and procedures of the project, as well of the support of the NSSMS Fire Control System.
3 Evolved SeaSparrow Missile Engineering and Manufacturing Development (E&MD)	1995 – Expired	Improvement of the kinematic performance needed to address the emerging threat; Development of the Mk25 Quad Pack Canister for use in Mk41 VLS.
4 Evolved SeaSparrow Missile Cooperative Production	1997–2014 After 2014, production continues, but not on a co-operative basis.	Cooperative production of a new and improved version of the SeaSparrow missile that will provide effective intercept of high speed manoeuvring anti-ship cruise missiles at greater intercept range. Development and initial production of life cycle elements incl. spare parts, test equipment, technical data, training, and technical support. Planning for and establishment of depot level repair and refurbishment facilities.
5 Evolved SeaSparrow Missile In-Service Support	2001–2016 MOU Amendment signed to extend MOU through 2030	Provides for the In-Service Support of ESSM Block 1.

6	Evolved SeaSparrow Missile Block 2 Engineering and Manufacturing Development	Negotiations completed. In final staffing for signature in 2014.	Features a dual-mode X-band seeker and other enhancements that will collectively enable the missile to defeat future threats.
7	Evolved SeaSparrow Missile Block 2 Cooperative Production	Under negotiation. Notional signature date end 2016.	Cooperative Production of ESSM Block 2
8	Evolved SeaSparrow Missile Block 2 In-Service Support	Negotiations expected to start in 2016-2020 timeframe	To provide for the In-Service Support of ESSM Block 2

foss (Norway), Indra (Spain), Roketsan (Turkey), Raytheon, Alliant Techsystems, BAE Systems Land and Armament, and Lockheed Martin (USA).

Rules of the Consortium

The cooperation of member nations of the consortium is based on the principle that the work share of nations’ individual defense industries corresponds with the financial contributions to the project of the member nations, which in turn corresponds with the number of systems and missiles the individual nations intend to acquire.

Other rules of the consortium assume that:

- Each member nation shall have one vote;
- Every vote has the same weight;
- All decisions are taken unanimously;
- Decisions are based on the principle of trust;
- Member nations are partners, not customers;
- The project is managed by an international project office, which consists of representatives of all member nations;
- The United States is pursuing contracts for supplies and services on behalf of all member nations;
- A strong international military-industrial support network is maintained.⁷

Program Structure

The structure of the program⁸ consists of two formal organizational units (Figure 1): the NATO SeaSparrow Project Steering Committee (NSPSC) and the NATO SeaSparrow Project Office (NSPO).

⁷ Cf. Francis M. Cevasco, “Origins of a Four Decade Success Story,” 18-19.

⁸ Ibid., 20.

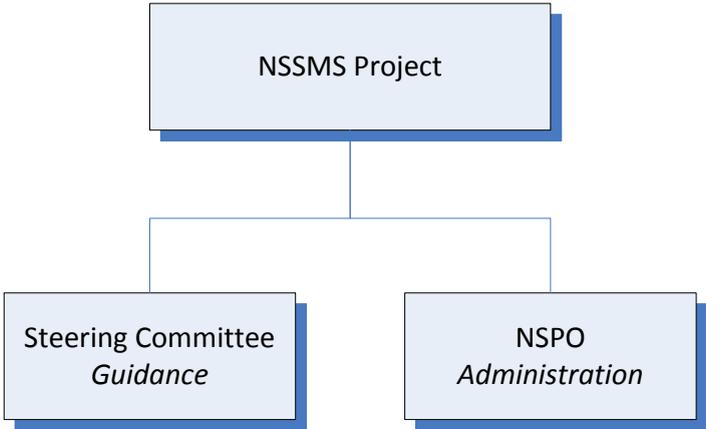


Figure 1: NSSMS Organizational Structure.

The Steering Committee is composed of senior officers of all countries participating in the project, and is historically chaired by a US Navy (rear-) admiral. The Committee establishes the policy, provides strategic direction of the project, approves the annual budgets, and supervises the work of the Project Office.

The head of the Project Office is the Project Manager (US Navy captain). One of his or her two deputies is a captain from a non-US member nation. Representatives and subject matter experts from all member nations (military and civilian) work in the Office. The NSPO, among other responsibilities, collects information about the functioning of the project, serves as a forum for discussion of technical changes, provides the infrastructure for the project, is responsible for the execution of the agreements on cooperation in the development, production and in-service phases, is responsible for mission assurance, and has the financial resources to execute the contracts with suppliers and government agencies.

Program Evolution

In the 1980s, the production of weapons by the Soviet Union and the Warsaw Pact countries repeatedly exceeded the production of the USA and NATO in numbers. This was a consequence of low military spending, especially by European Member States, constrained by the public opinion. In the period from the mid-70s to mid-80s, the governments managed to increase defense budgets in Europe to 3% of their respective GDP, yet this was not sufficient to offset the gap between the potential of the Warsaw Pact and NATO. Therefore, it was decided to compensate for the quantitative imbalance with better quality. At the same time, it was recognized that the cooperation of countries would allow them to achieve a synergy effect, i.e. achieve more (and better) results at a lower

cost. Consequently, a number of facilities for technology transfer were introduced.⁹ The United States Congress passed an amendment to the Brooks Act,¹⁰ known as the Nunn-Warner Amendment, which excluded military technologies from complicated acquisition procedures. This was intended to facilitate and speed up the process of acquiring technology especially important for the defense of the country. This provided new opportunities for the functioning of the NATO SeaSparrow consortium.

Initially, the NATO SeaSparrow Surface Missile System was developed cooperatively, and the RIM-7 SeaSparrow missiles were procured by the non-US member nations through Foreign Military Sales (FMS) cases. Later on, the missiles that succeeded the SeaSparrow missile, Evolved SeaSparrow Missile (ESSM) Blocks 1 and 2, were also cooperatively developed and produced. It should be noted that in the initial years of the project, due to providing the SeaSparrow missile, the United States had the position of “*primus inter pares*.” Thanks to the FMS program, the buyers within the consortium had a privileged position in relation to other (non-consortium) countries (i.e. they were informed of the plans to modify the missile). Nevertheless, the issues related to technical changes to the missiles remained in the hands of the Naval Air Systems Command (NAVAIR) and the partners did not have a casting vote. The role of the NSPO was to manage the system elements (fire control system, launchers, etc.), provide information, identify potential problems, perform analysis, and communicate recommendations, as well as to help with the integration of the missile with national systems.

The position of the USA changed when it realized that the capabilities of the missile were no longer sufficient in the light of new threats, which were related to armaments production based on Russian designs by the Warsaw Pact countries. Therefore, it was necessary to significantly modify or develop a new missile. Hence, in the mid-80s, NATO launched two new projects (NATO Frigate Replacement, NFR and NATO Anti-Air Warfare System, NAAWS), and the consortium decided to observe the development of these projects before taking further steps with their own system. At the same time, the participating nations attempted to develop a general plan for future improvements.

In 1991, NAVAIR decided to stop the production of the RIM7P version in favor of the RIM7R version, which had been read, wrongly as it turned out, by the members of the consortium as a proposal for wider involvement in the missile development program. In the same year it was decided to close the NAAWS project, but NATO SeaSparrow consortium members agreed that there was still an operational requirement of self-defense of the vessels too small for the Aegis system. A discussion on the development of the Evolved SeaSparrow Missile, ESSM, started, and was based on the involvement of a greater number of partners. The development of ESSM Block 1 started with the planning phase of the contract, the costs of which were covered by Australia, Belgium, Canada, Germany, the Netherlands, Norway, Portugal, and the USA. In time, Belgium with-

⁹ The US had especially restrictive rules in that respect.

¹⁰ The Brooks Bill, signed in 1972, imposed on the US Government a requirement to choose contractors based on their competence, experience and qualifications, rather than price. Cf. *ADP Procurement. Warner Amendment Has Not Reduced Defense's Acquisition Time*, Report to the Chairman, Committee on Government Operations, House of Representatives, July 1986.

drew, but its place was taken by Denmark, Greece, and Spain. In 1995, the nations signed the MOU on the development of the missile (with Belgium, Italy, and Portugal signing as non-contributing participants).¹¹ ESSM was to be integrated into a variety of combat systems of various ship classes (i.e. USN aircraft carriers, ANZAC frigates, German, and Dutch ships equipped with the APAR multifunction radar system, Danish STANFLEX ship class, ships equipped with the Aegis system from Norway, Spain, and the USA, and ships of various nations including Germany, Greece, Turkey, the Netherlands, and Canada, equipped with the traditional “Dutch Configuration” fire control systems). It was decided to retain the guidance section of the SeaSparrow missiles and improve their kinematic capabilities (and range) by replacing the existing rocket motors with much more capable propulsion stacks. Australia, Germany, and the United States (later joined by the Netherlands, Norway, Spain, and Turkey) also expanded the scope of cooperation to develop the Mk25 quadpack canister, which allowed the fitting of four ESSMs in one cell of the Mk41 Vertical Launching System.¹²

Currently, the system consists of two types of missiles for trainable and vertical launch, and five types of launchers (Mk48, Mk56, Mk41 and Mk57 Vertical Launching Systems and the trainable Mk29 launching system). The missile has continuously undergone (software) improvements expanding its capabilities to defeat a wider spectrum of the threats. In late 2014, an MOU has been signed for the development of ESSM Block 2, which reuses the propulsion stack of ESSM Block 1 and adds a state-of-the-art dual mode (active and semi-active homing) guidance section.

The NATO SeaSparrow project initiated over 45 years ago as an agreement between four states, the purpose of which was the development of a ship self-defence system, is one of the most successful and longest-running NATO projects. The project involves 12 countries and 17 defence companies. The system is deployed by navies of 19 countries on board of well over 25 different ship classes ranging from small frigates (<500 tons) to nuclear-powered aircraft carriers, making it a highly versatile and the most widely deployed weapons system in the world.¹³

Conclusion

Based on the analysis of the NSSMS project, several conclusions concerning the mechanism and the general principles of the project can be derived. These can serve as the base material for future international cooperation projects under the “Smart Defense” concept.

The mechanism of the project is very straightforward, making it possible to operate for nearly 50 years. In short it can be described as follows (Figure 2): a group of countries agree to develop, produce, deploy, and maintain a certain type of missile system to

¹¹ The ESSM production MOU was signed in 1997. Belgium and Portugal have observer status.

¹² Frank M. Cevalco, “NATO SeaSparrow: The Project Advances to Adolescence,” *Common Defense Quarterly* (2010): 10.

¹³ NSPO information materials.

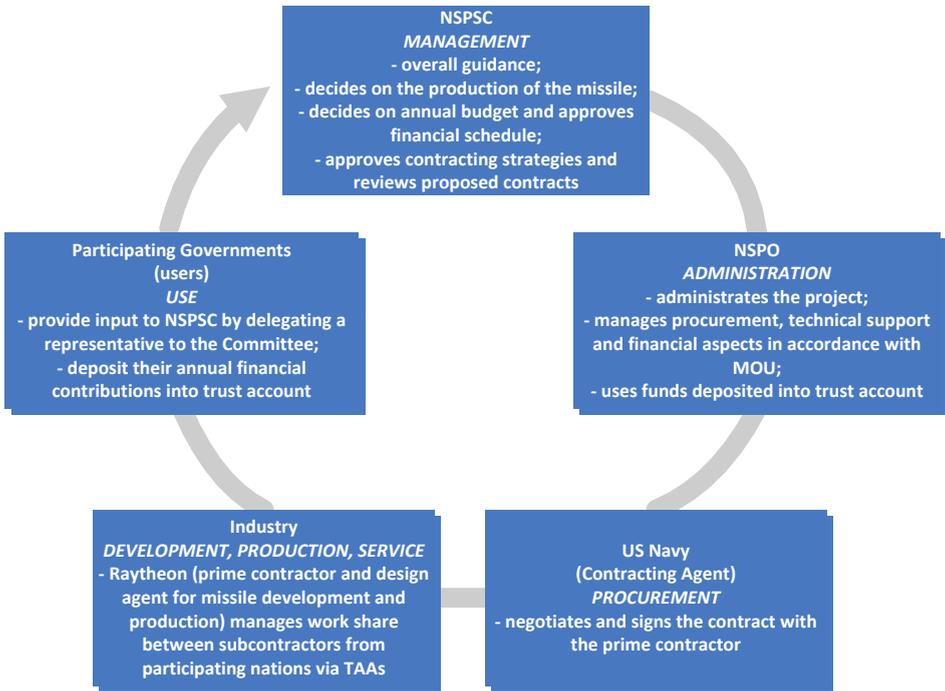


Figure 2: The Mechanism of the NSSMS Project.

defeat a specific threat set. To reduce the costs they adapt an existing weapons system. Each member nation deposits in the account of the consortium an amount proportional to the number of missiles and systems it wants to acquire. Then, one entity (the US Navy), on behalf of all members, carries out a tender procedure. The task of the company that wins the contract is to involve the industry from countries belonging to the consortium and to share the work so that the companies of each country got a job with a value proportional to the financial contribution paid by the member nation. Even if the unit cost of produced missiles would be slightly higher due to the production cooperation of several entities, the economies of scale as a consequence of the participation of twelve countries balance these costs and even reduce them significantly. This means that the contributions paid to the common budget return to the state in the form of a work share, which makes this solution attractive enough to apply the mechanism to successive modifications of the missile and attracting new members to the consortium. If Poland decided to join the program, Raytheon, as the prime contractor, would be tasked to split the work between all companies to offset the financial contribution paid by the Polish government by the workshare for Polish industry. Of course, this would result in less work for others, but at the same time governments would bear lower costs.

The analysis of the program's mechanism enables defining a number of so-called good practices (principles) with regard to the cooperation. These first of all include the aforementioned rules on which the consortium is based, including balancing financial commitment with the work share, the equal weight voting principle whereby members' votes are equal, and making key decisions unanimously. However, one must pay attention to other equally important solutions.

The use of the described mechanism is possible due to the existence of a strong network of military-industrial cooperation. Partners understand that fundraising may be easier if industry engages in the project, because seeing individual interest will lead companies to pressure the governments of their countries to participate and develop the program.

It is worth paying attention to another aspect of the cooperation, namely that the US Navy awards one contract on behalf of all member nations to a single contractor (now Raytheon), which definitely makes the procedure faster and easier.

Equally important is the fact that the member nations of the consortium are joint owners of the project, not customers. This allows for better cost control and product development according to the needs and requirements of collective defense (compared to the purchase of "off the shelf" products, or simply buying what is available).

However, the guiding principle is considered to be the one of trust. Thanks to this, it was possible to make the aforementioned solutions work and provide a basis for nearly 50 years of collaboration involving 12 countries and 17 defense companies.

The Terrorist Threats Against Russia and its Counterterrorism Response Measures

Joshua Sinai *

As of mid-2015, the primarily Islamist-based terrorist threats against Russia and its counterterrorism response measures continued to be in the spotlight. These Islamist terrorist threats, it must be pointed out, were unrelated to Russia's other national security problems emanating from its intervention in Ukraine, which will not be discussed in this article.

As with other Western countries, the latest phase of the terrorist threats against Russia has become even more complicated than before, with large-scale involvement by a reported 1,700 "homegrown violent extremists" (HVE),¹ primarily North Caucasus-based, many of whom have travelled to Syria and Iraq to join the Islamic State's insurgents and to fight the Moscow-supported Bashar al-Assad government as well as the Shi'ite government in Baghdad (which is also backed by Tehran – Russia's close ally), with their violent extremism also directed against the Russian state. As part of this phase, although unrelated to the involvement of the aforementioned Russian Islamists in Syria, Russian airpower was deployed in Syria in September 2015 to support the besieged al-Assad regime against the Islamic State.

The earlier phase of the terrorist threats against Russia was highlighted by the April 15, 2013 Boston Marathon bombings, which were perpetrated by two brothers of ethnic Chechen origin (one of whom was reportedly monitored by Russia's security services during his stay in Dagestan), as well several significant terrorist attacks in late 2013 during the lead-up to the Sochi Winter Olympics, which were held in February 2014 without a terrorist incident.

Overall, the primary terrorist threats against the Russian Federation are presented by the Islamist insurgents in the North Caucasus, who are organized into several groups that are loosely allied with al-Qaeda's global Jihad. Fortunately for Russia, in their most significant threat over the past several years, these Islamist militants were thwarted in their intent to exploit the worldwide media attention associated with the February 2014 Olympic sporting events, which were located close to the North Caucasus, several hundred miles from the Republic of Dagestan, where they were mounting an insurgency to establish an Islamic state in that region. In response, Russia greatly boosted its counter-

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¹ Damien Sharkov, "Up to 1,700 Russians Fighting for ISIS, Says Head of Secret Service," *Newsweek*, 20 February 2015.

terrorism measures in the North Caucasus republics as well as in other parts of the country, thereby preventing these insurgents from succeeding in their terrorist plots. Nevertheless, the attraction of jihadi groups such as the Iraq- and Syria-based Islamic State in radicalizing hundreds of Russian Islamists into joining their insurgency expanded the geographical scope of the terrorist threats against Russia, particularly upon the return of some of them to Russia to carry out attacks in light of Moscow's support of the Syrian and Iraqi regimes and their call to establish an Islamist caliphate in the North Caucasus.

Terrorist Threats

Russia's primary terrorist threats originate in the turbulent North Caucasus's republics of Chechnya, Dagestan, Ingushetia, and Kabardino-Balkariya, where extremist ethno-nationalist and Islamist militants have been waging an insurgency for the past decades against Russian rule, which they regard as an occupying force and which they seek to replace with a Taliban-like Islamist regime.² Aside from attacking non-Muslim Russian targets (and their local agents) in order to spread fear and intimidation throughout their own communities, they also resort to assassinating moderate Islamist religious figures, whom they try to replace with their own religious supporters who adhere to a stricter form of Salafist Islam.

Russia has confronted several categories of terrorism since the period of the Russian Empire, particularly in the North Caucasus, ranging from the 19th century's revolutionary anarchists³ to today's secessionist Islamic extremist ethno-nationalists, who seek to liberate the North Caucasus from continued Russian presence in order to establish a Taliban-type Islamist regime. This represents a sharp reversal in the nature of the terrorist threats against Russia, considering that at the height of the Cold War, the former Soviet Union (and its Eastern European allies, such as East Germany and Cuba) was a major state sponsor of terrorism, with its security services providing active support to Palestinian, Armenian, and South American terrorist groups.⁴

² For overviews of the Islamist insurgencies in the North Caucasus, see Mark Galeotti, *Russia's Wars in Chechnya 1994–2009* (Oxford, UK: Osprey Publishing, 2014); Gordon M. Hahn, *Russia's Islamic Threat* (New Haven, CT: Yale University Press, 2007); Gordon M. Hahn, *The Caucasus Emirate Mujahedin: Global Jihadism in Russia's North Caucasus and Beyond* (Jefferson, NC: McFarland, 2014); Robert W. Schaefer, *The Insurgency in Chechnya and the North Caucasus: From Gazavat to Jihad* (Santa Barbara, CA: Praeger Security International, 2011); and Robert Bruce Ware and Enver Kisriev, *Dagestan: Russian Hegemony and Islamic Resistance in the North Caucasus* (Armonk, NY: M.E. Sharpe, 2010).

³ For an overview of Russia's 19th century anarchist terrorists, see Anna Geifman, *Thou Shalt Kill: Revolutionary Terrorism in Russia, 1894–1917* (Princeton, NJ: Princeton University Press, 1995).

⁴ For accounts of the Soviet Union's state-sponsorship of terrorism during the Cold War, see Roberta Goren, *The Soviet Union and Terrorism*, ed. Jillian Becker (London, UK: George Allen & Unwin, 1984), and Nick Lockwood, "How the Soviet Union Transformed Terrorism," *The Atlantic*, 23 December 2001.

In recent times, significant terrorist incidents against Russia originating in the North Caucasus have included the following:

- In September 1999, Chechen insurgents attacked apartment buildings in Moscow, killing some 200 people and injuring several hundred. In retaliation, Russian troops invaded Chechnya.
- On October 23, 2002, Chechen insurgents attacked the crowded Dubrovka Theater in Moscow. An estimated 129 people were killed during the rescue attempt by the Russian security forces.
- On December 27, 2002, Chechen suicide bombers attacked the Chechen administration complex in Groznyy, killing 78 people and injuring 150.
- Between February and August 2004, a series of suicide bombings by North Caucasus insurgents in the Moscow subway killed an estimated 80 people.
- On August 24, 2004, Chechen and Ingush insurgents attacked Russian interior forces in Nazran, Ingushetia, killing 80 troops, while on the same day two Russian passenger aircraft were blown up almost simultaneously, killing 90 people.
- On September 1–3, 2004, Chechen and Ingush insurgents attacked a school in Beslan, North Ossetia, holding more than 1,100 of them hostage. Russia's rescue operation resulted in more than 300 deaths, including 186 children.
- On November 27, 2009, Chechen insurgents bombed a high-speed train from Moscow to St. Petersburg, killing 26 people and injuring 100.
- On March 29, 2010, Chechen terrorists conducted a double suicide bombing of the Moscow subway, killing 40 and injuring more than 100.
- On January 24, 2011, a Chechen terrorist conducted a suicide bombing at the Domodedovo airport international arrivals hall, killing more than 36 people and injuring around 180.
- In mid-September 2013, three Russian police officers were killed and five wounded by a suicide bomber who detonated a bomb in a car outside a police station in Chechnya.
- On October 21, 2013, 30-year-old Naida Asiyalova carried out a suicide bombing of a bus near the southern city of Volgograd, which killed six people and injured 30. Asiyalova (also known as "Amaturahman"), a Dagestani native, was the wife of Dmitry Sokolov, 21 years old, an ethnic Russian (whom she was responsible for converting to radical Islam). Both were members of a North Caucasus Islamist militant group, for whom Sokolov (also known as "Abdul Jabbar") had served as one of their explosives experts – he was involved in building the suicide vest for his wife. Sokolov, who had gone into hiding, was suspected by Russian security services of making explosives that were used in several attacks in the Dagestani city of Makhachkala in early 2013.
- On December 29, 2013, a female suicide bomber killed at least 15 people and injured more than 40 at the train station in the southern Russian city of

Volgograd. The bomber was identified as Iksana Aslanova, a Dagestani citizen, who had previously been married several times to Islamist terrorist operatives (who had been killed).

- On January 15, 2014, in a shootout in Dagestan between Russian police and Islamist militants (suspected of involvement in car bombings in Pyatigorsk in December 2013), four of the militants were killed, with three of the policemen killed and five wounded.

Within the largely Muslim North Caucasus region, the Islamist insurgency has taken on a global jihadist nature—with al-Qaeda affiliated groups and, in the latest phase, those affiliated with the Islamist State—providing funding, fighters, and materials to the Chechen separatists. This explains how the Chechen-American Tsarnaev brothers (and, reportedly, their mother) allegedly became adherents of the global Salafist militancy, which was one of their motivations for attacking the Boston Marathon.

The threats by these Islamist militants intensified in mid-2013, as demonstrated by a video message posted online in early July 2013 by Doku Umarov, the Chechen-born leader (and “Emir”) of the Caucasus Emirate (CE), the self-proclaimed virtual state “successor” to the Chechen Republic, which has been waging the insurgency against the Russian Federation, declared that it is the duty of Muslims in the North Caucasus region to attack the February 2014 Winter Olympics in Sochi, Russia. In a video message, Umarov declared that “They [Russia] plan to hold the Olympics on the bones of our ancestors, on the bones of many, many dead Muslims, buried on the territory of our land on the Black Sea, and we as Mujahideen are obliged to not permit that, using any methods allowed us by the almighty Allah.”⁵

By early 2015, as the nature and scope of the CE’s insurgency underwent a transformation with a large segment of its recruits and fighters joining the Islamic State’s insurgency in Syria and Iraq, the frequency and number of its terrorist attacks in the Russian Federation declined, particularly compared with previous years. During the period of 2010 to 2014, the number of such attacks by the CE, according to Gordon M. Hahn, declined from 583 in 2010 to 546 in 2011, 465 in 2012 and 439 in 2013.⁶ This decline was also a result of intensified Russian counterterrorism measures, particularly the killing and detaining of those suspected of terrorist activity, exemplified by one significant shootout incident in January 2014 (listed earlier).

The decline in recent CE terrorist activity in the Russian Federation, however, according to Hahn, should not be attributed to any supposed decline in their motivation or capability, “but rather [to] its de-territorialization, globalization, and further evolu-

⁵ Mark Corcoran, “Sochi Winter Olympics: Terrorist Threat Hangs Over Games as ‘Combat-Ready’ Vladimir Putin Steps Up Security,” 22 January 2014, available at www.abc.net.au/news/2014-01-22/shadow-of-terrorism-hangs-over-sochi-games/5211586.

⁶ Gordon M. Hahn, “Is Putin Winning His War Against the Caucasus Emirate or is ISIL?,” 18 February 2015, available at <http://gordonhahn.com/2015/02/18/is-putin-winning-his-war-against-jihadism>.

tion”⁷ as a Russian affiliate of the Islamic State. To this, one could add that upgraded Russian counterterrorism tactics also played a role in suppressing CE terrorist activity. Further, in a parallel development of great concern to Russian counterterrorism campaign planners, “the Islamic State, represented by the CEIS [a blend of CE and IS], ha[d] come to Russia”—including the potential for a sizeable proportion of these fighters to “return to the North Caucasus and destabilize the region again.”⁸

Assessing Russia’s Counterterrorism Campaign

As demonstrated by the previous section, terrorist attacks by Islamist militants were being waged on a frequent basis against Russian and locally-administered forces until late 2013. In response, the Russian government responded with a spectrum of what are considered harsh counterterrorism measures by its military, intelligence, judicial, and law enforcement agencies, which at least until early 2015 largely succeeded in substantially reducing the frequency and lethality of such incidents after their escalation throughout 2013.

Such Russian success in counterterrorism was relatively recent, following its ineffectual response to the 2004 Beslan school siege, when its special forces incurred heavy casualties, exposing significant deficiencies in its counterterrorism capability at the time, especially in areas such as incident command, intelligence management, and disseminating public information about such events. This led to an overhaul of its counterterrorism-related security and law-enforcement agencies, including establishing new counterterrorism coordinating bodies. These changes were codified in March 2006 by “The Law on Counteraction to Terrorism,” which replaced the previous 1998 version. In accordance with the law, the Federal Security Service (FSB), Russia’s intelligence service (and successor to the KGB), serves as the chief agency to combat terrorism, with a new National Antiterrorist Committee (NAK)—comparable to the American National Counterterrorism Center (NCTC)—established as the top coordinating body. The NAK is tasked with coordinating the counterterrorism policies and operations of 17 federal security agencies, with additional regional counterterrorism committees carrying out its functions in the country’s administrative regions.

Like other nations’ counterterrorism agencies, the NAK attributes success in countering terrorism to the three elements of preventing terrorist attacks, arresting suspected terrorists, and minimizing the damage from terrorist incidents – all of which are driven by efficient coordination between intelligence and law enforcement agencies. In early 2015, Alexander Bortnikov, the FSB’s Director since May 2008, continued to serve as the NAK’s Chairman.

Complementing the FSB, the Ministry of Internal Affairs (MVD) also employs counterterrorism units, as well as units tasked to counter extremism, a task previously performed by the FSB. As of mid-2015, however, Russia’s counter extremism campaign was not considered effective, as it was not feasible for a federal government that had be-

⁷ Ibid.

⁸ Ibid.

come increasingly authoritarian to engage in “softer” conciliatory tactics that, at least in theory, are intended to counter an insurgency’s extremist narrative and address the root causes that underlie such grievances, which, in any case, were complicated by that insurgency’s basic extremist and unyielding nature.

As an example of how the primarily military and law enforcement components of Russia’s counterterrorism campaign operated, to keep Islamist militants on the defensive as Russia prepared to ensure safety for the Sochi Olympics, towns in the North Caucasus considered hotbeds of Islamist militancy were placed under what was termed a “KTO regime” (the Russian initials for a counterterrorism operation), which permitted its security forces to set up checkpoints leading into a town, conduct random searches, impose curfews, and detain any foreigners who did not carry a special visitor’s permit. According to one report, these included “About 25,000 police officers, 30,000 soldiers and 8,000 special forces and members of the FSB security service,”⁹ who were deployed to safeguard the games.

In another measure to safeguard the Sochi Olympics, the FSB conducted several anti-terrorist exercises in the Krasnodar Territory area, including Sochi, to train law-enforcement agencies and local governments in conducting joint responses to potential terrorist incidents.

Finally, in a demonstration of the sophistication of the counterterrorism technologies that were deployed to protect the games, low- and high-tech security technologies were also deployed, ranging from hand-held metal detectors to check car trunks to reconnaissance drones and command and control centers that analyzed in real-time information from an estimated 1,400 closed-circuit cameras and other sensors that were deployed throughout the Sochi region.¹⁰

Like other governments that engage in targeted killings of the leaders of their terrorist adversaries, Russian counterterrorist forces also engage in such tactics against the leaders of the Islamist insurgency being waged against it in the volatile North Caucasus region. Although exact numbers of such targeted killings are unavailable, several leaders of the Islamist insurgency have been killed by them. This includes the early 2012 killing of 35-year-old Dzhamaileil Mutaliyev, one of the leaders of the Caucasus Emirate, who was in charge of organizing several suicide bombing attacks. Mutaliyev was reportedly a close ally of Umarov, as well as of Shamil Basayev, the Islamist terrorist leader who was responsible for organizing the 2004 Beslan school massacre, and who was also reportedly killed by Russian forces in mid-2006. In March 2012, Russian security forces killed Alim Zankishiyev (known as “Ubaida”), a leader of the Islamic insurgency in the Republic of Kabardino-Balkaria, a region of the North Caucasus.

Like other counterterrorism organizations, Russian security agencies also monitor extremist websites to investigate their agendas, key players, and future targeting plans. With some of these websites posting their material outside Russian borders, these are

⁹ Anshel Pfeffer, “Sterilizing Sochi for the ‘Big Brother Games,’” *Ha’aretz*, 31 January 2014.

¹⁰ *Ibid.*

monitored, as well. The effectiveness of such monitoring of terrorist-affiliated websites, however, is not known.

In a move to bolster its anti-terrorism legal measures, in early November 2013 the Russian government implemented a series of stricter anti-terrorism laws that would provide prison terms of up to 10 years for anyone undergoing training “aimed at carrying out terrorist activity,” as well as compel the relatives of Islamist militants who engage in terrorism to compensate the government for any damage they cause. The law also permits the government to seize property of relatives as well as “close acquaintances” of suspected militants if they refuse to provide documents proving their legal ownership.

Conclusion

The bombing of the Boston Marathon by Chechen-American extremists demonstrated that the terrorist threats against Russia also affect Western countries that have sizeable Chechen and North Caucasian diasporas. German and Austrian authorities, in particular, were concerned about the radicalization into violent extremism by their Chechen diaspora populations, with a number of such Chechens joining the al-Nusra and ISIS insurgents in Syria.¹¹ To prevent Boston Marathon-type attacks by members of the Chechen diaspora from recurring, it is likely that Russian-Western cooperation in counterterrorism will continue to expand (in spite of Russia’s intervention in Ukraine, which led to Western sanctions against Moscow), with frequently held working group meetings and other forms of intelligence-related exchanges, now that the involvement of global Salafi jihadism in the North Caucasus’s ethno-nationalist secessionist movements has become a major concern for Western counterterrorism planners. This will also likely be the case with Western-Russian security cooperation in tracking the involvement of Islamist networks connected to the al-Nusra and Islamic State insurgencies in Syria and Iraq (and possibly elsewhere, as well).

¹¹ “Germany Reportedly Concerned About Radicalization of Chechen Diaspora,” *Radio Free Europe/Radio Liberty*, 8 December 2014.

GAO Report on Combating Terrorism

Foreign Terrorist Organization Designation Process and U.S. Agency Enforcement Actions^{*}

Highlights

Why GAO Did This Study

The Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has the authority to designate a foreign organization as an FTO. Designation allows the United States to impose legal consequences on the FTO or on individuals who support the FTO. As of June 1, 2015, 59 organizations were designated as FTOs.

GAO was asked to review the FTO designation process. This report provides information on the process by which the Secretary of State designates FTOs. Specifically, this report addresses (1) the process for designating FTOs, (2) the extent to which the Department of State considers input from other agencies during the FTO designation process, and (3) the consequences that U.S. agencies impose as a result of an FTO designation.

To address these objectives, GAO reviewed and analyzed agency documents and data, and interviewed officials from Departments of Defense, Homeland Security, Justice, State, and the Treasury, as well as the intelligence community.

Separately, GAO also reviewed the duration of the designation process for FTOs designated between 2012 and 2014. That information was published in April 2015 in a report for official use only.

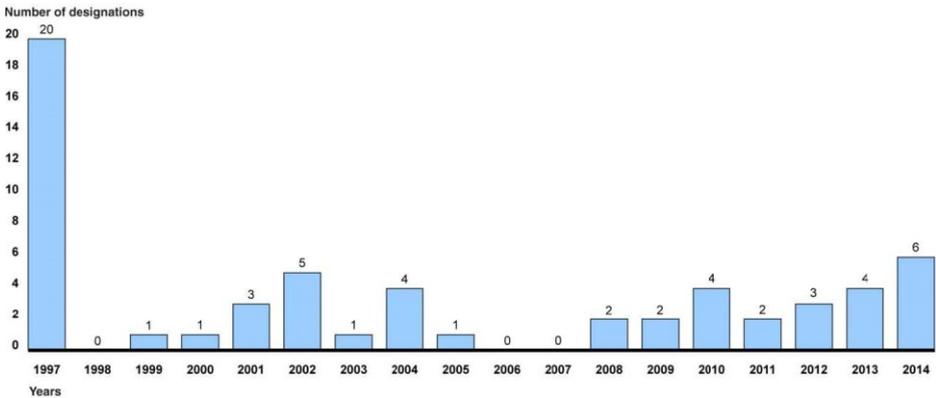
GAO is not making recommendations in this report.

Main Findings

The Department of State (State) has developed a six-step process for designating foreign terrorist organizations (FTO) that involves other State bureaus and agency partners in the various steps. State's Bureau of Counterterrorism (CT) leads the designation process for State. CT monitors terrorist activity to identify potential targets for designation and also considers recommendations for potential targets from other State bureaus, federal agencies, and foreign partners. After selecting a target, State follows a six-step process to designate a group as an FTO, including steps to consult with part-

^{*} The report under the title "Combating Terrorism: Foreign Terrorist Organization Designation Process and U.S. Agency Enforcement Actions" (GAO-15-629) was presented to the relevant committees in the U.S. Congress by the United States Government Accountability Office in June 2015. The full text of the original report is available at www.gao.gov/products/GAO-15-629.

ners and draft supporting documents. During this process, federal agencies and State bureaus, citing law enforcement, diplomatic, or intelligence concerns, can place a “hold” on a potential designation, which, until resolved, prevents the designation of the organization. The number of FTO designations has varied annually since 1997, when 20 FTOs were designated. As of December 31, 2014, 59 organizations were designated as FTOs, with 13 FTO designations occurring between 2012 and 2014.



Source: GAO analysis of State documents. | GAO-15-629

Figure 1: Number of Designated Foreign Terrorist Organizations, 1997 through 2014, by Year of Designation.

State considered input provided by other State bureaus and federal agencies for all 13 of the FTO designations made between 2012 and 2014, according to officials from the Departments of Defense, Homeland Security, Justice, State, and the Treasury, and the Office of the Director of National Intelligence, and GAO review of agency documents. For example, State used intelligence agencies’ information on terrorist organizations and activities to support the designations.

U.S. agencies reported enforcing FTO designations through three key legal consequences—blocking assets, prosecuting individuals, and imposing immigration restrictions—that target FTOs, their members, and individuals that provide support to those organizations. The restrictions and penalties that agencies reported imposing vary widely. For example, as of 2013, Treasury has blocked about \$22 million in assets relating to 7 of 59 designated FTOs.

Abbreviations

CT	Bureau of Counterterrorism
Defense	Department of Defense
DHS	Department of Homeland Security
E.O. 13,224	Executive Order 13,224
FTO	Foreign Terrorist Organization
ISIL	Islamic State of Iraq and the Levant
ISIS	Islamic State of Iraq and Syria
Justice	Department of Justice
ODNI	Office of the Director of National Intelligence
OFAC	Office of Foreign Assets Control
SBU	Sensitive But Unclassified
State	Department of State
Treasury	Department of Treasury

Introduction

U.S. agencies, including components of the Departments of Defense, Homeland Security, Justice, State, and the Treasury, and the intelligence community, have implemented procedures to collect and share information about and take action on terrorists posing a threat to the national security of the United States. The Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, may identify and designate certain groups as foreign terrorist organizations (FTO), a designation that can result in criminal and civil penalties, as well as other financial and immigration consequences for designated FTOs or those who provide support to FTOs. Congress has recently expressed concerns about the designation process.

You asked us to provide information on the designation of FTOs. In this report, we provide information on (1) the process for designating FTOs, (2) the extent to which the Department of State (State) considers input from other agencies during the FTO designation process, and (3) the consequences that U.S. agencies impose as a result of an FTO designation.

To identify the FTO designation process, we identified the steps in the FTO designation process by reviewing the legal requirements for designation and the legal authorities granted to State and other U.S. agencies to designate FTOs. In addition, we reviewed State documents that identified and outlined State's process to designate an FTO. To assess the extent to which State considered input from other agencies during the FTO designation process, we interviewed officials from the Departments of Defense (Defense), Homeland Security (DHS), Justice (Justice), State, and the Treasury (Treasury), as well as officials from the intelligence community, to determine for the 13 FTOs designated between 2012 and 2014 when information on organizations considered for FTO designation is provided to State by its consulting partners, as well

as the nature of that information. We defined consideration as any action of State to request, obtain, and use information from other federal agencies, as well as letters of concurrence from those agencies. To identify the consequences U.S. agencies impose as a result of FTO designation, we (1) reviewed Treasury reports on blocked funds for FTOs from 2008 through 2013, (2) reviewed data on the public/unsealed terrorism and terrorism-related convictions to identify individuals who provided material support or resources to an FTO or received military-type training from an FTO between 2009 and 2013, and (3) analyzed data from State's Bureau of Consular Affairs reports on visa denials between fiscal years 2009 and 2013. We also reviewed the U.S. Customs and Border Protection enforcement system database on arrival inadmissibility determinations between fiscal years 2009 and 2014, and information from DHS's Immigration and Customs Enforcement on deportations between fiscal years 2013 and 2014. In each instance, we analyzed the data provided by the agencies, performed basic checks to determine the reasonableness of the data, and discussed the data with relevant agency officials to confirm the totals presented. We determined that these data were sufficiently reliable for the purposes of our report. See appendix I for more details on our scope and methodology.

We conducted this performance audit from April 2015 to June 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This report is a public version of a sensitive but unclassified (SBU) report that was issued on April 21, 2015. State regarded some of the material in that report as SBU information, which must be protected from public disclosure and is available for official use only. This public version of the original report does not contain certain information regarding the duration of FTO designations between 2012 and 2014 that State deemed to be SBU.

Background

FTO Designation Authority

Under section 219 of the Immigration and Nationality Act, as amended, the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, is authorized to designate an organization as an FTO.¹ For State to designate an organization as an FTO, the Secretary of State must find that the organization meets three criteria:

1. It is a foreign organization.

¹ 8 U.S.C. § 1189.

2. The organization engages in terrorist activity or terrorism, or retains the capability and intent to engage in terrorist activity or terrorism.²
3. The organization's terrorist activity or terrorism threatens the security of U.S. nationals or the national security of the United States.

Designation of a terrorist group as an FTO allows the United States to impose certain legal consequences on the FTO, as well as on individuals that associate with or knowingly provide support to the designated organization. It is unlawful for a person in the United States or subject to the jurisdiction of the United States to knowingly provide "material support or resources" to a designated FTO, and offenders can be fined or imprisoned for violating this law.³ In addition, representatives and members of a designated FTO, if they are not U.S. citizens, are inadmissible to and, in certain circumstances, removable from the United States.⁴ Additionally, any U.S. financial institution that becomes aware that it has possession of or control over funds in which a designated FTO or its agent has an interest must retain possession of or control over the funds and report the funds to Treasury's Office of Foreign Assets Control.⁵

Other Terrorist Designation Authorities

In addition to making FTO designations, the Secretary of State can address terrorist organizations and terrorists through other authorities, including listing an individual or entity that engages in terrorist activity under Executive Order 13,224 (E.O. 13,224).⁶ E.O. 13,224 requires the blocking of property and interests in property of foreign persons the Secretary of State has determined, in consultation with the Attorney General and the Secretaries of the Departments of Homeland Security and the Treasury, to have committed or to pose a significant risk of committing acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.⁷ E.O. 13,224 blocks the assets of organizations and individuals designated under the executive order. It also authorizes the blocking of assets of persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretaries of State and Homeland Security, to assist in; sponsor; or provide financial, material, or technological support for, or financial or other services to or in support of, designated persons, or to be otherwise associated with those persons. In practice, when State designates an organization as an FTO, it also concurrently desig-

² Terrorist activity is defined at 8 U.S.C. § 1182(a)(3)(B). Terrorism is defined at 22 U.S.C. § 2656f(d)(2).

³ 18 U.S.C. § 2339B.

⁴ 8 U.S.C. §§ 1182(a)(3)(B), 1182(a)(3)(F), 1227(a)(4)(B).

⁵ 31 C.F.R. § 597.201 and 18 U.S.C. § 2339B(a)(2).

⁶ Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

⁷ Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001), as amended by Exec. Order No. 13,284, 68 Fed. Reg. 4,075 (Jan. 28, 2003).

nates the organization under E.O. 13,224.⁸ Once State designates an organization under E.O. 13,224, Treasury is able to make its own designations under E.O. 13,224 of other organizations and individuals associated with or providing support to the organization designated by State under E.O. 13,224. These designations allow the U.S. government to target organizations and individuals that provide material support and assistance to FTOs.⁹

State Uses a Six-Step Process for Designating Foreign Terrorist Organizations

State has developed a six-step process for designating foreign terrorist organizations. State's Bureau of Counterterrorism (CT) leads the designation process for State, and other State bureaus and agency partners are involved in the various steps. While the number of FTO designations has varied annually since the first 20 FTOs were designated in 1997, as of December 31, 2014, 59 organizations were designated as FTOs.

FTO designation activities are led by CT, which monitors the activities of terrorist groups around the world to identify potential targets for designation.¹⁰ When reviewing potential targets, CT considers not only terrorist attacks that a group has carried out but also whether the group has engaged in planning and preparations for possible future acts of terrorism or retains the capability and intent to carry out such acts. CT also considers recommendations from other State bureaus, federal agencies, and foreign partners, among others, and selects potential target organizations for designation. For an overview of agencies and their roles in the designation process, see appendix II. After selecting a target organization for possible designation, State uses a six-step process it has developed to designate a group as an FTO (see Figure 2).

⁸ Designations made using E.O. 13,224 go through a somewhat similar yet separate approval process.

⁹ E.O. 13,224 imposes financial sanctions on persons who have been determined to have committed or pose a significant risk of committing acts of terrorism, as well as on persons determined to be owned or controlled by such persons or to provide support to such persons or acts of terrorism. It prohibits transactions or dealings in property or interests in property of any person designated under its authority, including the donation of funds, goods, or services, and it blocks all property in the United States or within the possession or control of a U.S. person in which there is an interest of any designated person. As of December 31, 2013, 806 individuals and entities, including all FTOs, have been designated by Treasury and State. Treasury can designate individuals and entities as "Specially Designated Global Terrorists" without an FTO designation by State.

¹⁰ The FTO designation list is one of many U.S. government lists used to identify terrorist organizations and associated individuals, including the list of "specially designated global terrorists" and the "terrorist exclusion list." Some of the organizations and individuals on these lists overlap, and the U.S. government may implement sanctions and penalties depending on applicable legislative authority and the purpose of the sanction. In addition, terrorist lists are also maintained by the United Nations and other foreign governments.



Figure 2: State’s Six-Step Process for Designating Foreign Terrorist Organizations (FTO).

- **Step 1: Equity check** – The first step in CT’s process is to consult with other State bureaus, federal agencies, and the intelligence community, among others, to determine whether any law enforcement, diplomatic, or intelligence concerns should prevent the designation of the target organization. If any of these agencies or other bureaus has a concern regarding the designation of the target organization, it can elect to place a “hold” on the proposed designation, which prevents the designation from being made until the hold is lifted by the entity that requested it. The equity check is the first step where an objection to a designation can be raised; however, in practice, a hold can be placed at any step in the FTO designation process prior to the Secretary’s decision to designate.

- Step 2: Administrative record – As required by law, in support of the proposed designation, CT is to prepare an administrative record, which is a compilation of information, typically including both classified and open source information, demonstrating that the target organization identified meets the statutory criteria for FTO designation.¹¹
- Step 3: Clearance process – The third step in CT’s process is to send the draft administrative record and associated documents to State’s Office of the Legal Adviser and then to Justice and Treasury for review and approval of a final version to submit to the Secretary of State. For clearance, Justice and Treasury are to review the draft administrative record prepared by State and may suggest that State make changes to the document. The interagency clearance process is complete once Justice and Treasury provide State with signed letters of concurrence indicating that the administrative record is legally sufficient. CT is then to send the administrative record to other bureaus in the State Department for final clearance.
- Step 4: Secretary of State’s decision – Materials supporting the proposed FTO designation are to be sent to the Secretary of State for review and decision on whether or not to designate. The Secretary of State is authorized, but not required, to designate an organization as an FTO if he or she finds that the legal elements for designation are met.
- Step 5: Congressional notification – In accordance with the law, State is required to notify Congress 7 days before an organization is formally designated.¹²
- Step 6: Federal Register notice – State is required to publish the designation announcement in the Federal Register and, upon publication, the designation is effective for purposes of penalties that would apply to persons who provide material support or resources to designated FTOs.¹³

Fifty-nine Organizations Are Currently Designated as FTOs

As of December 31, 2014, there were 59 organizations designated as FTOs, including al Qaeda and its affiliates, Islamic State of Iraq and the Levant (ISIL),¹⁴ and Boko Haram. See appendix III for the complete list of FTOs designated, as of December 31, 2014. The number of FTO designations has varied annually since the first FTOs were designated, in 1997.¹⁵ State designated 13 groups between 2012 and 2014. Figure 2

¹¹ 8 U.S.C § 1189(a)(3)(A).

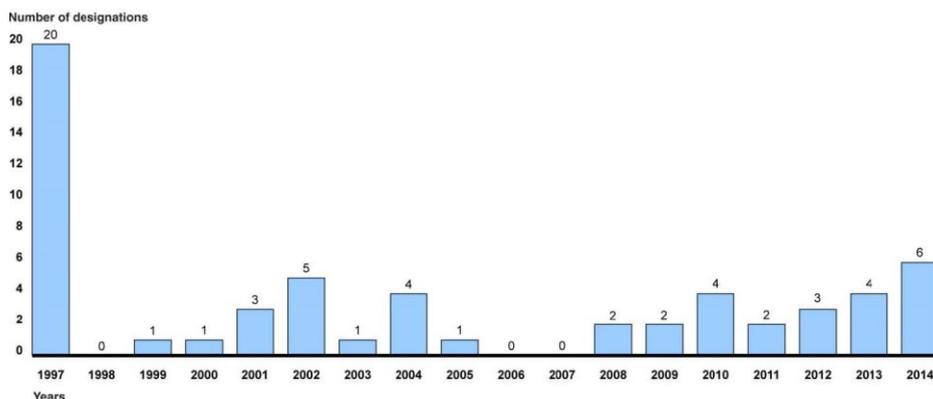
¹² 8 U.S.C § 1189(a)(2)(A)(i).

¹³ 8 U.S.C § 1189(a)(3)(A)-(B).

¹⁴ This organization is also commonly referred to as the Islamic State of Iraq and Syria (ISIS).

¹⁵ The Secretary of State has designated a total of 69 FTOs since 1997, but 10 of the organizations have been removed from the list of designated FTOs.

shows the number of organizations designated by year of designation, as of December 31, 2014.



Source: GAO analysis of State documents. | GAO-15-629

Note: This figure includes the 59 FTOs designated as of December 31, 2014. It does not include 10 organizations that were previously designated and whose designations were subsequently revoked by the Secretary of State. The Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, may revoke a designation if the Secretary finds that the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation, or if the national security of the United States warrants a revocation.

Figure 3: Number of Designated Foreign Terrorist Organizations (FTO), 1997 through 2014, by Year of Designation.

State Considered Input from Other Agencies in All FTO Designations between 2012 and 2014

According to State officials and our review of agency documents, State considered information and input provided by other State bureaus and federal agencies for all 13 designations made between 2012 and 2014. State considered this input during the first three steps in its designation process: conducting the equity check, compiling the administrative record, and obtaining approval in the clearance process.

During our review of the 13 FTO designations between 2012 and 2014, officials from the Departments of Defense, Homeland Security, Justice, and the Treasury, and the Office of the Director of National Intelligence (ODNI) reported that State considered their input when making designations. Specifically, we found that State considered information during the first three steps in the FTO designation process, including the following:

- Step 1: Equity check – According to State officials, regional bureaus at State and other agencies provided input to CT during the equity check step by identifying, when warranted, any law enforcement, diplomatic, or intelligence equities that would be jeopardized by the designation of the target organiza-

tion.¹⁶ Officials from Defense, DHS, Justice, Treasury, and the intelligence community also confirmed that they provided input during the equity check. According to State officials, other bureaus and agencies participating in the equity check included the Central Intelligence Agency, the National Counterterrorism Center, the National Security Agency, and the National Security Council Counterterrorism staff.

- Step 2: Administrative record – Agencies provided classified and unclassified materials to State to support the draft administrative record. For example, officials from ODNI told us they provide an assessment and intelligence review, at the request of State, for any terrorist organization that is nominated for FTO designation. U.S. intelligence agencies may also provide information to State during the equity check and during the compilation of the administrative record to support the designation. Otherwise, State has direct access to the disseminated intelligence of other agencies and does not need to separately request such information, according to CT officials.
- Step 3: Clearance – In accordance with the law, Justice and Treasury review the draft administrative record for legal sufficiency and provide their input to State before the administrative record is finalized. Officials from Treasury and Justice told us that State considered their input during the clearance process for the administrative record for the 13 FTO designations we examined. This consultation culminates in and is documented through letters of concurrence in support of each FTO designation signed by Treasury and Justice. In all 13 FTO designations that we reviewed, Treasury and Justice issued signed letters of concurrence.

U.S. Agencies Impose a Variety of Consequences on Designated FTOs and Associated Individuals

The U.S. government penalizes designated FTOs through three key consequences. First, the designation of an FTO triggers a freeze on any assets the organization holds in a financial institution within the United States. Second, the U.S. government can criminally prosecute individuals that provide material support to an FTO, as well as impose civil penalties. Third, FTO designation imposes immigration restrictions upon members of the organization and individuals that knowingly provide material support

¹⁶ The Assistant Secretaries of the geographic bureaus and offices advise the Under Secretary for Political Affairs and guide the operation of the U.S. diplomatic missions within their regional jurisdiction. They are assisted by Deputy Assistant Secretaries, office directors, post management officers, and country desk officers. These officials work closely with U.S. embassies and consulates and with foreign embassies in Washington, D.C. For example, if the organization being considered for designation operates out of Venezuela, the Bureau of Western Hemisphere Affairs would be the regional bureau consulted. Under its current organization, State operates six regional bureaus.

or resources to the designated organization. Over the period of our review, we found that U.S. agencies imposed all three consequences.

Blocking of FTO Funds Held in U.S. Financial Institutions

U.S. persons are prohibited from conducting unauthorized transactions or having other dealings with or providing services to designated FTOs. U.S. financial institutions that are aware that they are in possession of or control funds in which an FTO or its agent has an interest must retain possession of or maintain control over the funds and report the existence of such funds to Treasury.¹⁷

As of December 31, 2013, which is the date for the most recently published Terrorist Assets Report, the U.S. government blocked funds related to 7 of the 59 currently designated foreign terrorist organizations, totaling more than \$ 22 million (see Table 1). As of December 2013, there were no blocked funds reported to Treasury related to the remaining 52 designated FTOs. According to Treasury, the reported amounts blocked by the U.S. government change over the years because of several factors, including forfeiture actions, reallocation of assets to another sanctions program, or the release of blocked funds consistent with sanctions policy.

Table 1: Blocked Funds in the United States Related to Designated Foreign Terrorist Organizations and Persons, as of December 31, 2013

<i>Foreign terrorist organization</i>	<i>Blocked funds (in U.S. dollars)</i>
al Qaeda	\$13,503,338
HAMAS	1,210,769
Hizballah	6,802,767
Lashkar I Jhangvi	1,551
Lashkar-e Tayyiba	14,890
Liberation Tigers of Tamil Eelam (LTTE)	599,224
Palestinian Islamic Jihad	63,828
Total blocked funds	\$22,196,367

Funds shown in the table above are blocked by the U.S. government pursuant to terrorism sanctions administered by Treasury, including FTO sanctions regulations and global terrorism sanctions regulations.¹⁸ The FTO-related funds blocked by the United

¹⁷ 18 U.S.C. § 2339B(a)(2), 31 C.F.R. § 597.201.

¹⁸ See, for example, E.O. 13,224, E.O. 12,947, and 31 C.F.R. Parts 594, 595, 597. Once State designates an entity under E.O. 13,224, Treasury may also make designations of other persons that provide support, assistance, or other services to foreign terrorist organizations or to support terrorist activities under additional authority provided in E.O. 13,224. Since FTOs

States are only funds held within the United States and do not include any assets and funds that terrorist groups may hold outside U.S. financial institutions. However, according to Treasury officials, while designation of FTOs exposes and isolates individuals and organizations, and denies access to U.S. financial institutions, in some cases, FTOs may also be sanctioned by the United Nations or other international partners, an action that may block access to the global financial system.

Prosecution of Individuals for Providing Support to FTOs

Designation as an FTO triggers criminal liability for persons within the United States or subject to U.S. jurisdiction who knowingly provide, or attempt or conspire to provide, “material support or resources” to a designated FTO.¹⁹ Violations are punishable by a fine and up to 15 years in prison, or life if the death of a person results. Furthermore, it is also a crime to knowingly receive military-type training from or on behalf of an organization designated as an FTO at the time of the training.²⁰

Between January 1, 2009, and December 31, 2013, which is the most recent date for which data are available, over 80 individuals were convicted of terrorism or terrorism-related crimes, that included providing material support or resources to an FTO or receiving military-type training from or on behalf of an FTO. The penalties for these convictions varied, and included some combination of imprisonment, fines, and asset forfeiture.²¹ For example, individuals convicted of terrorism or terrorism-related crimes, which included providing material support to an FTO, received sentences that included imprisonment lengths that varied between time served and life in prison, plus 95 years. In addition, sentencing for convicted individuals included fines up to \$125,000, asset forfeiture up to \$15 million, and supervised release for up to life.

In addition, Justice may also bring civil forfeiture actions against assets connected to terrorism offenses, including the provision of material support to FTOs.²² U.S. law authorizes, among other things, the forfeiture of property involved in money laundering, property derived from or used to commit certain foreign crimes, and the proceeds of certain unlawful activities. Once the government establishes that an individual or entity is engaged in terrorism, it may bring forfeiture actions by proceeding directly against the assets (1) of an individual, entity, or organization engaged in planning or

rarely have substantial assets in U.S. financial institutions held in the FTOs’ names, derivative designations allow Treasury to freeze the accounts and assets of individuals providing material support to the FTO.

¹⁹ 18 U.S.C. § 2339B. “Material support or resources” is statutorily defined as any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation, except medicine or religious materials. 18 U.S.C. § 2339A(b)(1).

²⁰ 18 U.S.C. § 2339D.

²¹ In addition to these penalties, there may be adverse immigration consequences against convicted individuals, including deportation.

²² 18 U.S.C. § 981(a)(1)(G).

perpetrating crimes of terrorism against the United States or U.S. citizens; (2) acquired or maintained by any person intending to support, plan, conduct, or conceal crimes of terrorism against the United States or U.S. citizens; (3) derived from, involved in, or used or intended to be used to commit terrorism against the United States or U.S. citizens or their property; or (4) of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism. According to Justice officials, there have not been any civil forfeiture actions related to FTOs. However, Justice officials said their department routinely investigates and takes actions against financial institutions operating in the United States that willfully violate the International Emergency Economic Powers Act. They added that Justice has, for example, imposed fines and forfeitures and installed compliance monitors in cases where banks have violated terrorism-related sanctions programs. Furthermore, according to Justice officials, there are numerous other investigative and prosecutorial tools available to the United States to confront terrorism and terrorism-related conduct, disrupt terrorist plots, and dismantle foreign terrorist organizations.²³

Enforcement of Immigration Actions for FTO Support

FTO representatives and members, as well as individuals who knowingly provide material support or resources to a designated organization who are not U.S. citizens are inadmissible to, and in some cases removable from, the United States under the Immigration and Nationality Act.²⁴ However, exemptions or waivers can be granted

²³ In addition to the material support statutes, 18 U.S.C. §§ 2339A-C, there are a number of other available statutes, including but not limited to the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-05, which criminalizes conduct in violation of executive orders prohibiting unlicensed transactions with, among other things, designated terrorist groups; conspiracy to commit an offense or to defraud the United States (18 U.S.C. § 371); unlawful acts related to firearms (18 U.S.C. §§ 922 and 924); conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country (18 U.S.C. § 956); making a false statement (18 U.S.C. § 1001); killing officers and employees of the United States (18 U.S.C. § 1114); false statement in application and use of a passport (18 U.S.C. § 1542); using weapons of mass destruction (18 U.S.C. § 2332a); receiving military-type training from a foreign terrorist organization (18 U.S.C. § 2339D); unlawful acts related to control of arms exports and imports (22 U.S.C. § 2778); and the federal crimes of terrorism listed in 18 U.S.C. § 2332b(g)(5).

²⁴ 8 U.S.C. § 1182(a)(3)(B), 8 U.S.C. § 1182(a)(3)(F), and 8 U.S.C. § 1227 (a)(4)(B). Under the Immigration and Nationality Act, as amended, individuals who are inadmissible for terrorist activities include aliens who (1) are members of a designated FTO; (2) received military-type training from an FTO, or solicited funds or other things of value for, recruited for; or (3) provided an FTO or an FTO member material support. Under the definition of “engaging in terrorist activity” the following activities would render an individual inadmissible or deportable regardless of whether the activity or association involved an FTO: (1) to commit or incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity; (2) to prepare or plan a terrorist activity; or (3) to gather information on potential targets for terrorist activity.

for certain circumstances, according to State and DHS officials.²⁵ For example, DHS may grant eligible individuals exemptions in cases where material support was provided under duress. Individuals found inadmissible or deportable without an appropriate waiver or exemption under these provisions are also barred from receiving most immigration benefits or relief from removal. State and DHS are responsible for enforcing different aspects of the immigration restrictions and ensuring that inadmissible individuals without an appropriate waiver or exemption do not enter the United States.

State consular officers at U.S. embassies and consulates are responsible for determining whether an applicant is eligible for a visa to travel to the United States. In instances where a consular officer determines that an applicant has engaged or engages in terrorism-related activity, the visa will be denied.²⁶ According to State Bureau of Consular Affairs data, between fiscal years 2009 and 2013, which was the most recent period for which data are available, 1,069 individuals were denied nonimmigrant visas and 187 individuals were denied immigrant visas on the basis of involvement in terrorist activities and associations with terrorist organizations.²⁷

DHS develops and deploys resources to detect; assess; and, if necessary, mitigate the risk posed by travelers during the international air travel process, including when an individual applies for U.S. travel documents; reserves, books, or purchases an airline ticket; checks in at an airport; travels en route on an airplane; and arrives at a U.S. port of entry. For example, upon arrival in the United States, all travelers are subjected to an inspection by U.S. Customs and Border Protection to determine if the individual is eligible for admission under U.S. immigration law. According to U.S. Customs and Border Protection data, between fiscal years 2009 and 2014, which was the most recent period for which data were available, more than 1,000 individuals were denied admission to the United States for various reasons, and were identified for potential connections to terrorism or terrorist groups, including being a member of or supporting an FTO. In addition, U.S. Immigration and Customs Enforcement is responsible for deporting individuals determined to be engaged in terrorism or terrorism-related activities. Between fiscal years 2013 and 2104, which was the most recent period for which data are available, Immigration and Customs Enforcement officials indicated that 3

²⁵ Both the Secretary of Homeland Security and the Secretary of State, in consultation with the Attorney General and with each other, have used the discretionary authority under 8 U.S.C. § 1182(d)(3)(B)(i) to allow for exemptions in specific instances. Depending on the application type and the specific exemption, either State consular officers, or U.S. Citizenship and Immigration Services, in consultation with U.S. Immigration and Customs Enforcement, may be responsible for applying exemptions from terrorism-related inadmissibility grounds. Additionally, in limited circumstances, State in consultation with DHS may also temporarily waive terrorism-related inadmissibility grounds for temporary admission of a nonimmigrant. See 8 U.S.C. § 1182(d)(3)(A).

²⁶ 8 U.S.C. § 1182(a)(3)(B).

²⁷ The United States government issues nonimmigrant visas, which are U.S. travel documents that foreign citizens must generally obtain before entering the country temporarily for business, tourism, or other reasons, and immigrant visas, which are travel documents granted to people who intend to immigrate to the United States.

individuals determined to be associated with or to have provided material support to designated FTOs were removed from the United States.

Further, U.S. Citizenship and Immigration Services is responsible for the adjudication of immigration benefits. An individual who is a member of a terrorist organization or who has engaged or engages in terrorist-related activity, as defined by the Immigration and Nationality Act, is deemed inadmissible to the United States and is ineligible for most immigration benefits.²⁸ The law grants both the Secretary of State and the Secretary of Homeland Security unreviewable discretion to waive the inadmissibility of certain individuals who would be otherwise inadmissible under this provision, after consulting with each other and the Attorney General.²⁹

Additionally, according to DHS officials, an exemption may be applied to certain terrorist-related inadmissibility grounds if the activity was carried out under duress, or under certain circumstances, such as the provision of material support in the form of medical care. Such exemptions, if applied favorably, may allow an immigration benefit to be granted. DHS officials stated that these exemptions are extremely limited.

Concluding Observations

Terrorist groups, such as al Qaeda and its affiliates, Boko Haram, and ISIL, continue to be a threat to the United States and its foreign partners. The designation of FTOs, which can result in civil and criminal penalties, is an integral component of the U.S. government's counterterrorism efforts. State's process for designating FTOs considers input and information from several key U.S. agency stakeholders, and allows U.S. agencies to impose consequences on the organizations and individuals that associate with or provide material support to FTOs. Such consequences help U.S. counterterrorism efforts isolate terrorist organizations internationally and limit support and contributions to those organizations.

Agency Comments and Our Evaluation

We provided draft copies of this report to the Departments of Defense, Homeland Security, Justice, State, and the Treasury, as well as the Office of the Director of National Intelligence, for review and comment. The Department of Homeland Security provided technical comments, which we incorporated as appropriate. The Departments of Defense, Justice, State, and the Treasury, as well as the Office of the Director of National Intelligence, had no comments.

If you or your staff have any questions about this report, please contact me at (202) 512-7331 or johnsoncm@gao.gov. GAO staff who made key contributions to this report are listed in appendix IV.

Charles Michael Johnson, Jr. Director, International Affairs & Trade

²⁸ 8 U.S.C. § 1182(a)(3)(B).

²⁹ 8 U.S.C. § 1182(d)(3)(B).

Appendix I: Objectives, Scope, and Methodology

This report examines the Department of State's (State) process for designating foreign terrorist organizations (FTO) and the consequences resulting from designation. We report on (1) the process for designating FTOs, (2) the extent to which the State considers input from other agencies during the FTO designation process, and (3) the consequences that U.S. agencies impose as a result of an FTO designation.

To identify the steps in the FTO designation process, we reviewed the legal requirements for designation and the legal authorities granted to State and other U.S. agencies to designate FTOs. In addition, we reviewed State documents that identified and outlined State's process to designate an FTO, from the equity check through publishing the designation in the Federal Register. We interviewed State officials in the Bureau of Counterterrorism to confirm and clarify the steps in the FTO designation process and to identify which agencies are involved in the process and at what steps they are involved. We also interviewed officials from the Departments of Defense, Homeland Security, Justice (Justice), and the Treasury (Treasury), as well as officials from the intelligence community, to determine each agency's level of participation in the process.

To assess the extent to which State considered information from other agencies in the designation process, we interviewed officials from the Departments of Defense, Homeland Security, Justice, State, and the Treasury, as well as officials from the intelligence community, to determine when information is provided to State on organizations considered for FTO designation, as well as the nature of that information. We defined consideration as any action of State to request, obtain, and use information from other agencies, as well as letters of concurrence from those agencies. We reviewed both Justice's and Treasury's letters of concurrence for all 13 designations made between 2012 and 2014. We also interviewed State officials to determine how information provided by other agencies is considered during the FTO designation process.

To identify the consequences U.S. agencies impose as a result of FTO designation, we reviewed the legal consequences agencies can impose under U.S. law, including the Immigration and Nationality Act, as amended. Specifically, we reviewed the FTO funds and assets related to FTOs that are blocked by U.S. financial institutions, as reported by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury. We reviewed the publicly available Terrorist Assets Reports published by Treasury for calendar years 2008 through 2013, which identify the blocked assets identified and reported to Treasury related to FTOs, as well as organizations designated under additional Treasury authorities. U.S. persons are prohibited from conducting unauthorized transactions or having other dealings with or providing services to the designated individuals or entities. Any property or property interest of a designated person that comes within the United States or into the possession or control of a U.S. person is blocked and must be reported to OFAC. The Terrorist Assets Reports identify these reported blocked assets held within U.S. financial institutions that are tar-

geted with sanctions under any of the three OFAC-administered sanctions programs related to terrorist organizations designated as FTOs, specially designated global terrorists, and specially designated terrorists under various U.S. authorities. We verified the totals reported in each of the reports and identified the funds blocked for organizations designated as FTOs. We also interviewed Treasury officials to discuss the reports of blocked assets and the changes in the assets across years. We did not analyze blocked funds for organizations that were designated under other authorities or by the United Nations or international partners. To assess the reliability of Treasury data on blocked funds, we performed checks of the year-to-year data published in the Terrorist Assets Reports for inconsistencies and errors. When we found minor inconsistencies, we discussed them with relevant agency officials and clarified the reporting data before finalizing our analysis. We determined that these data were sufficiently reliable for the purposes of our report.

We also reviewed the Department of Justice National Security Division Chart of Public/Unsealed Terrorism and Terrorism Related Convictions to identify the individuals convicted of and sentenced for providing material support or resources to an FTO or receiving military-type training from or on behalf of an FTO between January 1, 2009, and December 31, 2013, which was the period for which the most recent data were available. Designation as an FTO introduces the possibility of a range of civil penalties for the FTO or its members, as well as criminal liability for individuals engaged in certain prohibited activities, such as individuals who knowingly provide, or attempt or conspire to provide, “material support or resources” to a designated FTO. We reviewed Justice data of only public/unsealed convictions from January 1, 2009, to December 31, 2013. For the purposes of our report, we analyzed the Justice data on the convictions and sentencing associated with individuals who were convicted of knowingly providing, or attempting or conspiring to provide, “material support or resources” to a designated FTO. We also reviewed the data to identify the individuals who were convicted of knowingly receiving military-type training from or on behalf of an organization designated as an FTO at the time of the training. The data did not include defendants who were charged with terrorism or terrorism-related offenses but had not been convicted either at trial or by guilty plea, as of December 31, 2013. The data included defendants who were determined by prosecutors in Justice’s National Security Division Counterterrorism Section to have a connection to international terrorism, even if they were not charged with a terrorism offense. To assess the reliability of the convictions data, we performed basic reasonableness checks on the data and interviewed relevant agency officials to discuss the convictions and sentencing data. We determined that these data were sufficiently reliable for the purposes of our report.

To identify the immigration restrictions and penalties imposed on individuals associated with or who provided material support to a designated foreign terrorist organization, we analyzed available data from State Bureau of Consular Affairs reports on visa denials between fiscal years 2009 and 2013, the U.S. Customs and Border Protection enforcement system database on arrival inadmissibility determinations between fiscal years 2009 and 2014, and information from the U.S. Immigration and Customs Enforcement on deportations between fiscal years 2013 and 2014. The Immigra-

tion and Nationality Act, as amended, establishes the types of visas available for travel to the United States and what conditions must be met before an applicant can be issued a particular type of visa and granted admission to the United States. For the purposes of this report, we primarily included the applicants deemed inadmissible under section 212(a)(3) of the Immigration and Nationality Act, which includes ineligibility based on terrorism grounds. We did not include the national security inadmissibility codes that were not relevant to terrorism. In each instance, we analyzed the data provided by the agencies and performed basic checks to determine the reasonableness of the data. We also spoke with relevant agency officials to discuss the data to confirm the reasonableness of the totals presented for individuals denied visas, denied entry into the United States, or deported from the United States for association with a designated foreign terrorist organization. We determined that these data were sufficiently reliable for the purposes of our report.

We conducted this performance audit from April 2015 to June 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Agencies and Their Roles in the Foreign Terrorist Organization (FTO) Designation Process

<i>Organization</i>	<i>Relevant component</i>	<i>Role in FTO process</i>
Department of Defense	Office of the Secretary of Defense	Provides input during equity check
Department of Homeland Security	Office of Policy	Provides input during equity check
	U.S. Citizenship and Immigration Services	Adjudicates immigration benefits
	U.S. Customs and Border Protection	Determines eligibility for admission at U.S. border
	U.S. Immigration and Customs Enforcement	Enforces immigration restrictions
Intelligence community	Central Intelligence Agency	Provides input during equity check
	National Counterterrorism Center	Provides input during equity check
	National Security Agency	Provides input during equity check
Department of Justice	Federal Bureau of Investigation	Provides input during equity check
	National Security Division	Consultative partner in FTO designations and prosecutes individuals for FTO-related offenses
National Security Council	National Security Council Counterterrorism staff	Provides input during equity check
Department of State	Bureau of Counterterrorism	Leads FTO designation process
	Consular Affairs	Adjudicates visa applications
	Office of the Legal Adviser	Reviews the administrative record
	Relevant regional bureaus	Provide input during equity check
Department of the Treasury	Office of Foreign Assets Control	Consultative partner in FTO designations and blocks assets of FTOs

Source: GAO analysis of agency documents and interviews. | GAO-15-629

Note: The Secretary of State is required by law to consult with the Secretary of the Treasury and the Attorney General during the foreign terrorist organization designation process. Other interagency consultations occur as a matter of Department of State policy.

Appendix III: Designated Foreign Terrorist Organizations, as of December 31, 2014

	<i>Organization</i>	<i>Date designated</i>
1.	Abu Nidal Organization (ANO)	10/8/1997
2.	Abu Sayyaf Group (ASG)	10/8/1997
3.	Aum Shinrikyo (AUM)	10/8/1997
4.	Basque Fatherland and Liberty (ETA)	10/8/1997
5.	Gama'a al-Islamiyya (Islamic Group) (IG)	10/8/1997
6.	Hamas	10/8/1997
7.	Harakat ul-Mujahidin (HUM)	10/8/1997
8.	Hizballah	10/8/1997
9.	Kahane Chai (Kach)	10/8/1997
10.	Kurdistan Workers Party (PKK) (Kongra-Gel)	10/8/1997
11.	Liberation Tigers of Tamil Eelam (LTTE)	10/8/1997
12.	National Liberation Army (ELN)	10/8/1997
13.	Palestine Liberation Front (PLF)	10/8/1997
14.	Palestinian Islamic Jihad (PIJ)	10/8/1997
15.	PFLP-General Command (PFLP-GC)	10/8/1997
16.	Popular Front for the Liberation of Palestine (PFLF)	10/8/1997
17.	Revolutionary Armed Forces of Colombia (FARC)	10/8/1997
18.	Revolutionary Organization 17 November (17N)	10/8/1997
19.	Revolutionary People's Liberation Party/Front (DHKP/C)	10/8/1997
20.	Shining Path (SL)	10/8/1997
21.	al Qaeda (AQ)	10/8/1999
22.	Islamic Movement of Uzbekistan (IMU)	9/25/2000
23.	Real Irish Republican Army (RIRA)	5/16/2001
24.	Jaish-e-Mohammed (JEM)	12/26/2001
25.	Lashkar-e Tayyiba (LeT)	12/26/2001
26.	Al-Aqsa Martyrs Brigade (AAMB)	3/27/2002
27.	al Qaeda in the Islamic Maghreb (AQIM)	3/27/2002
28.	Asbat al-Ansar (AAA)	3/27/2002
29.	Communist Party of the Philippines/New People's Army (CPP/NPA)	8/9/2002
30.	Jemaah Islamiya (JI)	10/23/2002
31.	Lashkar i Jhangvi (LJ)	1/30/2003
32.	Ansar al-Islam (AAI)	3/22/2004
33.	Continuity Irish Republican Army (CIRA)	7/13/2004
34.	Islamic State of Iraq and the Levant (formerly al Qaeda in Iraq)	12/17/2004
35.	Libyan Islamic Fighting Group (LIFG)	12/17/2004

36.	Islamic Jihad Union (IJU)	6/15/2005
37.	Harakat ul-Jihad-i-Islami/Bangladesh (HUJI-B)	3/5/2008
38.	al-Shabaab	3/18/2008
39.	Revolutionary Struggle (RS)	5/18/2009
40.	Kata'ib Hizballah (KH)	7/2/2009
41.	al Qaeda in the Arabian Peninsula (AQAP)	1/19/2010
42.	Harakat ul-Jihad-i-Islami (HUJI)	8/6/2010
43.	Tehrik-e Taliban Pakistan (TTP)	9/1/2010
44.	Jundallah	11/4/2010
45.	Army of Islam (AOI)	5/23/2011
46.	Indian Mujahedeen (IM)	9/19/2011
47.	Jemaah Anshorut Tauhid (JAT)	3/13/2012
48.	Abdallah Azzam Brigades (AAB)	5/30/2012
49.	Haqqani Network (HQN)	9/19/2012
50.	Ansar al-Dine (AAD)	3/22/2013
51.	Ansaru	11/14/2013
52.	Boko Haram	11/14/2013
53.	al-Mulathamun Battalion	12/19/2013
54.	Ansar al-Shari'a in Benghazi	1/13/2014
55.	Ansar al-Shari'a in Darnah	1/13/2014
56.	Ansar al-Shari'a in Tunisia	1/13/2014
57.	Ansar Bayt al-Maqdis	4/10/2014
58.	al-Nusrah Front	5/15/2014
59.	Mujahidin Shura Council in the Environs of Jerusalem (MSC)	8/20/2014

Source: GAO analysis of Department of State information. | GAO-15-629

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contacts

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Staff Acknowledgments

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