



The 'Kosovo Precedent': Russia's justification of military interventions and territorial revisions in Georgia and Ukraine

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While Russia has offered a mixture of rationalisations for its invasion of Ukraine—including 'denazification', 'demilitarisation' and the 'gathering of Russian lands'—it has clung to its core justification for engaging in military interventions and border changes in post-Soviet states. It refers to the 'Kosovo precedent'—NATO's 1999 military intervention in Kosovo without a UN Security Council backing and the West's recognition of its independence from Serbia in 2008.¹ Russia's interpretation does not only apply to the use of force itself, which it has usually justified in pre-emptive as well as preventive terms to deter or stop 'ethnic cleansing' and 'acts of genocide', but also to the conferring of state recognition on contested territories, such as Abkhazia and South Ossetia in Georgia in 2008 and Donetsk and Luhansk in Ukraine in 2022. Similarly, before annexing Crimea in 2014—and after staging a referendum—Russia had already recognised it as an independent country, using the Kosovo example as a source of legitimisation. Finally, Kosovo has been an important part of a broader anti-Western narrative, centring on US determination to preserve a unipolar order through a variety of unilateral actions designed to weaken Russia. These include military interventions in the former Yugoslavia, Iraq and, later, in Libya, as well as NATO's eastward expansion, with the prospective additions of Georgia and Ukraine.

In this paper, I discuss how Russia has used Western support of Kosovo to instrumentalise contested international norms for geopolitical gain. To further its foreign policy aims in Georgia and Ukraine, Russia has sought to do two things: first, to assert its power and authority over what it considers its own 'spheres of influence'—variously dubbed in euphemistic terms 'post-Soviet space', 'near-abroad', or 'regions of Russian privileged interest'; and second, to compete geopolitically with the West through mimicry or by framing its own actions as mirror images of Western ones.² To combine these separate, if interlinked, motivations for armed intervention, the creation of new states, and the annexation of territories, the Russians have turned concepts such as 'genocide' and 'sovereignty' into hollowed-out signifiers without fixed legal or political meanings. Thus, they have reconfigured, reinterpreted, and reframed these terms to fit each circumstance without the need to establish consistency or inner logic. Thus, paradoxically, even if Russia still refers to the Kosovo War as a breach of international law and reiterates its opposition to Kosovo's independence, it relies on the case of Kosovo to justify its own military interventions and territorial revisions in post-Soviet states.

Framing the Kosovo Case

In 1999, NATO rationalised the air war against Serbia on humanitarian grounds—that is, to put an end to ethnic cleansing operations against the Kosovo Albanian population. Subsequently, most Western states supported the solution for the future status of Kosovo proposed in 2007 by the UN Secretary-General's Special Envoy for Kosovo, Martti Ahtisaari, who recommended 'supervised independence' of the entity, which had been under direct UN rule since the conclusion of the war.³ When Russia and Serbia rejected the plan, the West backed Kosovo's unilateral declaration of independence in 2008. Prior to Kosovo's separation, Russia had consistently advocated against the right to unilateral secession and refused to recognise territorial changes. It pointed out that the Yugoslav ethno-federal system was modelled on the constitution of the Soviet Union, which, in theory, accorded secession rights only to republics but not to autonomous units.⁴ Thus, even if Russia was partly responsible for maintaining the 'frozen conflicts' in Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh, it refused to recognise any of these separatist territories as independent.⁵ Needless to say, other political explanations also played a role.⁶ Russia was able to maintain its preponderant influence in 'post-Soviet space' as a power broker in unrecognised territories

or independent states such as Georgia, Moldova, Armenia and Azerbaijan. Similarly, Russia wanted to cultivate its intimate historical relations with Serbia through its support on the Kosovo question.

The Western legal case for Kosovo's independence could be faulted for being legally and politically ambivalent. Kosovo was seen as a special case, *sui generis*, rooted in the violent disintegration of the former Yugoslavia, which did not apply elsewhere. Before Serbian President Slobodan Milošević's decision to deprive Kosovo of its autonomy in 1989 through extra-constitutional means, it had been part of the rotating collective presidency of Yugoslavia, which gave it an elevated constitutional status on par with the six republics. In addition, strengthening their case for self-determination, the two million Kosovo Albanians, who made up 90% of the population, had their own language, culture and history, with the Serbian minority constituting only 5%. Yet, secession rights of the former republics of Yugoslavia did not include Kosovo because it was a Serbian province. Hence, there were only two ways to rationalise its divorce from Serbia. First, it was argued, as by Ahtisaari, that after a sustained period of UN rule, during which Serbia's sovereignty was suspended, Kosovo's final status had to take the form of sovereignty; it was 'unrealistic' to contemplate Kosovo's return to Serbia, for it would provoke a violent reaction by the Albanians. It was also contended that Kosovo's position was constitutionally weaker as part of Serbia than it had been under the Yugoslav ethno-federal system, which made it more vulnerable to Serbian repression. Second, a remedial legal argument was put forward: that Serbia had forfeited its right to rule over Kosovo because of its abysmal human rights record.⁷ Indeed, many of the around 100 states that have so far recognised Kosovo's independence referred to victim-centred arguments, often colonial in

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nature, which were based on the notion that Serbia had lost moral authority to rule the territory.⁸

The counterargument was that the Kosovo case could hardly be interpreted as unique in this regard because other independence movements around the world could claim that they had been subjected to similar human rights violations. Yet, given the changed realities on the ground, with a strong US and NATO presence in Kosovo, the Serbs realised that there was no chance of evoking the status quo ante. Hence, in 2007, they were prepared to accept continued UN administration of Kosovo for 20 years as well as extensive Kosovo Albanian autonomy rights to retain formal control over it. To the Albanians, this sounded like institutionalising a neo-colonial rule under UN auspices, which they firmly rejected.⁹

Russia's Intervention in Georgia

Russia's abrupt decision to abandon its long-standing policy on secession after the Georgian crisis erupted in August 2008 was justified by referring to Western acceptance of Kosovo's declaration of independence six months earlier. According to the new interpretation, former autonomous units in 'post-Soviet space' could have a right to secede based on the 'Kosovo precedent', especially, if not exclusively,

on the grounds of 'remedial secession'.¹⁰ What prompted Russia's reversal was Georgia's failed invasion of South Ossetia, leading to a Russian military intervention. Shortly thereafter, Russia recognised both Abkhazia and South Ossetia, with populations of 230,000 and 50,000, respectively, as independent states. Russia accused Georgia of having breached the UN charter, with the aim, in President Dmitry Medvedev's words, of taking over South Ossetia 'at the price of exterminating a whole people'—and preparing the same fate for Abkhazia, which was mostly spared in the 2008 conflict.

Even if the whole argument for intervention and recognition was based on the Kosovo case, Russia initially sought to distance itself from this justification in an uneasy attempt to accommodate the new policy with the old. It cited its historical mediating and peacekeeping roles in the conflict since the disintegration of the Soviet Union and its respect for Georgia's territorial integrity, even after Kosovo's declaration of independence. Russia's discourse soon, however, became fully aligned with its policy reversal; it contained ample references to UN 'responsibility to protect' norms developed after the wars in Rwanda and the former Yugoslavia, where collective action was justified to protect populations against 'ethnic cleansing', 'war crimes' and 'genocide'.¹¹ Engaging in mimetic geopolitics, Russia argued that if Kosovo was a unique case,

South Ossetia and Abkhazia were also *sui generis*. To counter the accusation that Russia was pursuing a double standard because it refused to recognise Kosovo's independence, the Georgian situation was described as being far more serious, spanning more than 17 years during which ethnic cleansing and genocidal actions took place.¹²

Such an argument may have squared with Russia's new-found enthusiasm for 'humanitarian warfare' after abandoning the principle of territorial integrity of states. But given Russia's patronage of the secessionist regions,¹³ it raised the question of why the Russians had not intervened earlier to stop a genocide. There was, in fact, nothing that suggested that the Abkhazian and South Ossetian populations were facing an existential threat. The South Ossetians were the ones who had initiated the skirmishes, which prompted Georgian retaliation in August 2008. Georgia's failed attempt to bring the South Ossetians to heel by invading the territory in attempt to reclaim it gave the Russians the perfect pretext to intervene.

Russia's policy reversal on secession, of course, has to be seen as part of a broader goal to exert political influence in Georgia and Ukraine, reverse their Western orientation, and prevent them from joining NATO. Thus, Russia was not only determined to teach the Georgians a lesson, which it claimed was borrowed

from a Western playbook, but also to deter US geopolitical ambitions in the former Soviet republics. At the Bucharest summit in April 2008, NATO stated that Georgia and Ukraine would eventually become members of the alliance.¹⁴ Yet, France and Germany vetoed a fast-track membership route for the countries because they feared that it would be seen by Russia as a provocation. But to soothe the United States, which was pushing for NATO's expansion, the open-ended wording of the statement on Georgia and Ukraine, which contained no timetable, suggested a far more realistic prospect for accession than was the case. Finally, Russia was aware that any Western encroachments in this region would spoil its own efforts to facilitate the integration of former Soviet states into a political and economic bloc modelled on the EU. One such institutional body is the Eurasian Economic Union (EEU), made up of Russia, Belarus and Kazakhstan, which Russian President Vladimir Putin described, loftily, as being a supranational association capable or becoming one of the poles in the modern world.¹⁵

While de facto independent, Abkhazia and South Ossetia depend politically and economically on Russia and have failed to gain international recognition.¹⁶ Thus, in contrast to Kosovo, only four states have done so: Venezuela, Syria, Nicaragua, and Nauru. This shows that Russia's argument for secession

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based on this precedent without any involvement of the state it formally belonged to, Georgia, was viewed with scepticism. Hardly viable as a state, South Ossetia never professed any desire to remain independent, a stance that also has to do with the fact that North Ossetia is part of the Russian Federation. Following the Russian invasion of Ukraine, South Ossetia declared that it would schedule a referendum on its integration with Russia in the summer of 2022; while it subsequently withdrew its plan pending further discussion with Russia, its goal of eventually becoming part of Russia has not changed.¹⁷ South Abkhazia, which is economically stronger, has shown no such interest, while continuing to rule out any constitutional ties with Georgia. The Abkhazians, however, are deeply reliant on Russia for external representation, with those of its citizens who do not have Russian passports being, in effect, stateless.

Using Ukraine as a Case for Territorial Revisions

After occupying Crimea in the wake of the fall of the pro-Russian government in Ukraine, Russia's aim was much bolder than was the case in Georgia. It did not only want to grant Crimea independence but also to absorb it quickly into the Russian Federation. In its proclamation of independence, Crimea reserved the right to apply to Russia for inclusion as a separate subject. The proclamation itself was clearly modelled on Kosovo's declaration of independence,¹⁸ but there was one sharp departure: Kosovo's constitution explicitly stated that it 'shall have no territorial claims against, and shall seek no union with, any State or part of any State'.¹⁹ What this really meant was that Kosovo was prohibited from joining Albania, which Western states believed could lead to regional instability.

Russia's decision to recognise Crimea as an independent state was rationalised by referring to the 2010 judgement of the International Court of Justice (ICJ) that Kosovo's independence declaration did not violate international law. While it may be argued that the ruling did not preclude such a legal interpretation, it was, in fact, more narrowly framed. It specifically focused on Kosovo within the context of UN Security Resolution 1244, which was adopted after the Kosovo War and which created the temporary exceptional legal regime that superseded the Serbian legal order in Kosovo. The failure to come to a negotiated settlement on Kosovo's future status, as required by the resolution, paved the way for a unilateral decision on independence.

Thus, in the case of Crimea, Russia continued to use the Kosovo precedent, but tweaked its meaning to fit different circumstances. The ICJ, in fact, stated unequivocally that 'declarations of independence are illegal when connected with the unlawful use of force', which could be said to have applied in Russia's case.²⁰ Thus, as if realising that it needed a stronger argument to justify its annexation policy, Russia also referred to historical rights and to the correction of a historical wrong: that Crimea had belonged to Russia for centuries until it was illegally transferred to Ukraine in the

1950s. Such an argument may have buttressed support for incorporating Crimea into the Russian Federation, but it had no basis in international law.²¹ And given Ukraine's strong opposition to the Crimean annexation, only about 15 states have recognised it—some of them formally and others through supporting statements.

The Crimean intervention was a dress rehearsal for Russia's 2022 war against Ukraine. The day before the invasion, Russia recognised the independence of Donetsk and Luhansk in the Donbas region. Using the same methods as in Abkhazia and South Ossetia, Russia claimed that the decision had been made on humanitarian grounds to protect civilians, including Russian ones, facing what it termed the 'threat of direct physical annihilation by the Ukrainian government', whose military actions in the Donbas were 'nothing short of a genocide against Ukraine's own people'.²² As was the case in Georgia, there was nothing to support this claim. While it is estimated that the civil conflict in the region cost over two thousand civilian lives between 2014 and February 2022—the vast majority of which occurred in 2014 and 2015—it could not by any means be squared with the definition of a genocide as an attempt to systematically annihilate a group of people. In April 2022, Putin justified Russia's recognition of the 'republics of Donbass' by referring to the

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independence of Kosovo, which had been recognised by many Western states. And, as the Russians did with respect to Crimea, he also mentioned the ICJ ruling on Kosovo: that in exercising the right to self-determination, there was no obligation to apply for permission to declare independence to the central government or that of Ukraine.²³

Since the Russian invasion of Ukraine, the goal of territorial aggrandisement has become far more explicit. To be sure, the Russians had to abandon their original war objective of staging a ‘regime change’ and of imposing a direct rule over the whole of Ukraine, but they are still committed not only to the secession from Ukraine of Luhansk and Donetsk together with additional territories they claim in the Donbas region, but also of other areas in Ukraine, which are currently under their occupation control. And, again, the Russians are referring to Kosovo. In mid-May 2022, former President Medvedev put it, sarcastically, this way: ‘[O]ur country doesn’t care about G7’s non-recognition of the new borders [of Ukraine]; what matters is the true will of the people living there. Do not forget the Kosovo precedent, our Western friends’.²⁴ Putin went further in dividing states into true sovereign states, which had to fulfil strict ‘military-political’ and ‘technological-social’ criteria to qualify as such, and ‘colonies’, which are unable to make sovereign decisions.²⁵

What this suggests is that Russia has abandoned any pretence of making newly proclaimed states viable as separate entities. This could include the annexation of Donetsk and Luhansk in eastern Ukraine, whose separatist leaders have already expressed their wish to join Russia, and parts of Kherson and Zaporizhia in the southern part, possibly after referendums. Russia may even want to go further and create a land bridge to Transnistria, the Russian proxy region in Moldova, even

though it is doubtful that it currently has the military capability to seize the parts of Ukraine, including Odessa, that would make this possible. Yet, a potential future scenario might involve the annexation of Transnistria or its recognition as an independent state as part of Russia's broader occupation goals in Ukraine. No matter how the war in Ukraine ends, enforced border changes have been made part of a Russian discourse that has jettisoned territorial integrity in favour of self-determination. Yet, it is not a universal legal doctrine; while Russia refers to the Kosovo case, the doctrine only applies it to post-Soviet states with Russian-speaking minorities.

Conclusion

Russia has relied so extensively on the Kosovo trajectory that it has even used it to justify an act that has nothing to do with that case: the incorporation of Crimea—after recognising it as a new 'state'—into the Russian Federation. Moreover, Russia is poised to do the same with additional post-Soviet territories in Ukraine. This raises the question of how unique the Kosovo experience really is, and whether it has been used as a precedent in other situations. While the bungled Western intervention in Libya was steeped in humanitarian warfare rhetoric, and secession movements such as that in Catalonia have mentioned Kosovo's path

to statehood, Kosovo did not become a key reference point in either case. That no claim to statehood has been supported by more states gives some validity to the argument that Kosovo is, indeed, a different case. As noted, just a few states have followed in the footsteps of Russia and recognised the secession of Abkhazia, South Ossetia, Crimea, Donetsk and Luhansk or their potential or actual absorption into the Russian Federation.

Yet, Kosovo's independence is still contested because of the example it could set for other secessionist movements. And the West's rhetoric on the territorial integration of states has become, in many ways, similar to that of Russia prior to Ukrainian crisis. Kosovo is not a universally recognised state and is not a member of key international organisations, such as the United Nations. In addition, five EU member states still refuse to recognise its sovereignty for self-interested political reasons, involving real or imagined secessionist threats in their own countries or neighbouring ones: Romania does not want to do anything that could embolden the Russians in Transnistria and undermine Moldova, a stance that has much salience within the context of the war in Ukraine; Slovakia is worried about potential nationalist stirrings of its Hungarian minority; Greece and Cyprus are thinking of the unrecognised Turkish state claim in Northern Cyprus; and

Spain is worried about strengthening Catalan and Basque separatism.

Russia's post-2008 policy reversal has not pleased Serbia, which has refused to recognise the independence of the states Russia has created, since doing so would undermine its continued territorial claim to Kosovo. Paradoxically, Russia's legal stance invites autonomous regions within Russia itself where a strong remedial case could be made, such as Chechnya, to demand secession rights on the basis of self-determination. In short, Russia is trying to have it both ways. The instrumental use of the Kosovo case has served the purpose of providing political cover dressed up as a legal one for Russia's efforts to reassert its authority in those countries that belonged to the Soviet Union, and to engage through mimicry in a geopolitical competition with the West. Thus, contested terms associated with intervention or secession have assumed new meanings in the Russian vocabulary as part of a political means to justify expansionist military ends. ■

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The 'Kosovo Precedent': Russia's Justification of Military Interventions and Territorial Revisions in Georgia and Ukraine

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In this latest Strategic Update, Valur Ingimundarson explores Russia's use of the 'Kosovo precedent', in order to instrumentalise its violation of international norms for geopolitical gain in the post-Soviet space. Ever since Kosovo's 2008 unique and contested independence process, Russia has increasingly relied paradoxically on the Kosovo case to legally justify support for secession within, and now overt military expansionism into, post-Soviet territory: from its invasion of Georgia and support for South Ossetia and Abkhazia, to the incorporation of Crimea into the Federation, its invasion of Ukraine, and current effort to absorb the Donbass region.

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