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ARTUR SIMONYAN

Regional International Law in Eurasia

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ABBREVIATIONS

BYIL	–	Baltic Yearbook of International Law
CJEU	–	Court of Justice of the European Union
CIS	–	Commonwealth of Independent States
CoE	–	Council of Europe
CSTO	–	Collective Security Treaty Organization
EAEU	–	Eurasian Economic Union
EJIL	–	European Journal of International Law
EEC	–	Eurasian Economic Commission
EU	–	European Union
EurAzEs	–	Eurasian Economic Community
GUAM	–	Organization for Democracy and Economic Development
HYIL	–	Hague Yearbook of International Law
ICJ	–	International Court of Justice
ILC	–	International Law Commission
RF	–	Russian Federation
RSFSR	–	Russian Soviet Federative Socialist Republic
SCO	–	Shanghai Cooperation Organization
MSILR	–	Michigan State International Law Review
RTI	–	Revista Tribuna Internacional
UN	–	United Nations
UNGA	–	United Nations General Assembly
UNSC	–	United Nations Security Council
USSR	–	Union of Soviet Socialist Republics
WTO	–	World Trade Organization

1. INTRODUCTION AND THE OBJECT OF THE STUDY

'Three things hinder the progress of human consciousness: brut ignorance, some political and religious institutions, science based on presumptuous foundations.'[1] Abraham Anquetil Du Perron opened his 1778 treatise on '*Legislation Orientale*' with this statement to oppose the 'presumptuous science of Enlightenment philosophers,' particularly that of Montesquieu, on the nature of despotism in the Orient.[2] He then, by providing empirical testimonials, refuted the idea that as '[t]he government is despotic in the East, Princes are reproached for conduct opposed to what the *law of nations* dictates, the laws of humanity: therefore, this conduct is particular and inherent to Despotism.'[3]

This discourse on contrasts between 'oriental despots' and civilized Europeans, as conveyed by the French orientalist, is one of the early illustrations of how the civilizational arguments influenced not only the philosophical grounds of Eurocentrism but also the ontology of *jus gentium* and later also international law, as being based on the categorization of civilized, semi-civilized, and noncivilized nations formally up to the mass decolonization movement of the 1950–60s.[4]

The substantive analysis of Anquetil Du Perron's treatise on oriental legislation is criticized in the literature on the philosophy of law.[5] However, his methodological outlook leads us to the universal postulation that doubt is a virtue and international law – especially in its current Eurocentric outlook – is nothing more than what Du Perron called a presumptuous science.[6] The relevance of such a scholarly scepticism towards Eurocentrism is manifoldly reflected mainly in the

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1 Abraham Hyacinthe Anquetil Duperron, *Législation Orientale, Ouvrage Dans Lequel, En Montrant Quels Sont En Turquie, En Perse et Dans l'Indoustan Les Principes Fondamentaux Du Gouvernement.* (Marc-Michele Rey 1778) iii.

2 On critique of Montesquieu's philosophical arguments in Du Perron's book see e.g., F Whelan, 'Oriental Despotism: Anquetil Duperron's Response to Montesquieu' (2001) 22 History of Political Thought 619.

3 Anquetil Duperron (n 1) v–vi.

4 On this dichotomy between civilized and non-civilized nations, especially in Russian legal discourse, see Fyodor Martens, *Sovremennoe Mezhdunarodnoe Pravo Tsivilizovannikh Narodov [Contemporary International Law of Civilized Naitons]*, vol 1 (SPb 1882). However, it ought to be claimed that categorization remained vital even in the post-1991 period, as explained below.

5 See e.g., Franco Venturi, 'Oriental Despotism' (1963) 24 Journal of the History of Ideas 133, 140.

6 Recent TWAIL literature, particularly Onuma Yasuaki's transcivilizational perspective, captured the presumptuous categorizations in Eurocentric international law and tried to redefine them more comprehensively, visioning them through the civilizational or decolonial lens. See e.g., BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2nd edn, Cambridge University Press 2017); Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' [2023] 34 (1) Especially telling is Japanese scholar Onuma Yasuaki's take on this who begins his celebrated treatise with reference to Confucian and European philosophical resemblances on praising doubt. See Yasuaki Ōnuma, *International Law in a Transcivilizational World* (Cambridge University Press 2017) 1.

post-1991 'end of history' period, where liberalism[7] and democracy[8] have been recognized as the universal forces to guide the conduct of like-minded nation-states while also turning into the new ontological foundations of the international community within so-called liberal international law.[9] Classification of liberal, decent, and outlaw nations, subsequently followed and marked a new binary trend in international law, *de novo* revitalizing old remnants of civilized and non-civilized dichotomy.[10]

Eurasia, in this discourse, has become the 'New Orient' – full of decent and outlaw states – at well as a geographical pivot area from where US-based hegemony can be challenged.[11] In Eurasia, international law continued to be described as being authoritarian and despotic – to use Du Perron's classification – headed by rising superpower China and Russia's post-imperial/hegemonic revival.[12] Therefore, the clash between these new Eurasian 'despotic' powers and Western 'like-minded' states has also become more visible in international law and international relations.[13] In this clash, while Fukuyama's 'end of history' narrative of the final victory of liberalism has been accepted as a 'new universal' basis of international law, the emergence of New Great Powers – illiberal in nature – [14] has led to the promotion of regionalism based on emerging multipolar order. The clash between universal and regional in this sense returned to the international life of states after a short hiatus following the 1991 victory of Western liberal states.

Considering these geopolitical and ideological shifts and clashes, this dissertation's ontology may methodologically resemble Du Perron's academic endeavours but only to the point of better understanding the location of one specific

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[7] For discussion on the linkages between 'turn to history' and 1991's liberalism's triumph see Anne Orford (ed), 'Neoformalism and the Turn to History in International Law,' in *International Law and the Politics of History* (Cambridge University Press 2021).

[8] See e.g., Thomas M Franck, 'The Emerging Right to Democratic Governance' (1992) 86 The American Journal of International Law 46.

[9] Anne-Marie Slaughter, 'A Liberal Theory of International Law' (2000) 94 Proceedings of the ASIL Annual Meeting 240; For critique of liberal theory see JE Alvarez, 'Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory' (2001) 12 European Journal of International Law 183.

[10] On categorisation of liberal, decent, and outlaw states see John Rawls, *The Law of Peoples: With "The Idea of Public Reason Revisited"* (Harvard University Press 1999).

[11] Anthea Roberts in this aspect claims that 'whether it is China acting individually, or China and Russia acting collectively, the new assertiveness of these states is highly unsettling to the United States because one of its central foreign policy goals has traditionally been to stop a regional hegemon from developing in Eurasia that might threaten its global hegemony." See Anthea Roberts, *Is International Law International?* (Oxford University Press 2017) 287.

[12] See e.g., Tom Ginsburg, 'Authoritarian International Law?' (2020) 114 American Journal of International Law 221.

[13] Lauri Mälksoo, 'Russia and China Challenge the Western Hegemony in the Interpretation of International Law' (*EJIL: Talk!*, 15 July 2016) <https://www.ejiltalk.org/russia-and-china-challenge-the-western-hegemony-in-the-interpretation-of-international-law/> accessed 7 January 2023.

[14] ibid.

geographical space of the "Orient" – the post-Soviet Eurasian region – in the contemporary international law without the Eurocentric bias. In more decolonial/ desovietised language,[15] this dissertation aims to grasp the evolution of international law in Eastern Europe, South Caucasus, and Central Asia in the post-1991 period in line with Russia's post-imperial, post-hegemonic project to construct a regionally fragmented international law by including post-Soviet Eurasian states.[16] Finally, this doctoral project elucidates the positionality of this region and its states within the clash between universalism and regionalism, to which the ontology of contemporary international law relates a lot. Did they endorse universalist or regionalist causes of international law after the defeat of socialism in 1991? How is Russia's consolidation project to form a specific regional international law in that space perceived by post-Soviet states? Do they envision international law from a regional rather than a universal standpoint? If yes, what role does Russia's consolidation efforts play therein? These questions define the overall contours of this dissertation and localize its position in the literature of (regional) international law.

Therefore, the object of this PhD dissertation is to examine the structural ways and outcomes of Russia's consolidating practices while shaping regionally fragmented international law in the post-Soviet Eurasian region and to trace post-Soviet Eurasian states' reaction to it. On this process, in his study of 'Russian Approaches to International Law' (while observing Russia's specific, illiberal, and anti-Western vision of international law), Lauri Mälksoo has concluded that:

> '… the future may well belong to regional public orders more than to universal international law which will inevitably remain thin compared to regional orders such as the EU and the nascent Eurasian Union. In the Russian interpretation, the UN SC is anyway nothing more than the directorium of the regional hegemons with a veto power. Perhaps the appropriate way to think of the UN SC is not that it is the World's Council but that it is the Council of the Worlds, including *Russkyi Mir*. In such a future, Russia can claim its regional 'Russian-style regional international law' together with Belarus and Kazakhstan in the way that the EU itself is also a specific advanced manifestation of regional international law. The crucial political question for the next decades will be which other —former Soviet but not necessarily only— nations beyond the three already mentioned will be included in the regional order of the Eurasian Union and the CSTO, the Russian equivalent of NATO. Another crucial question relates to how the two regional orders—the EU, which is strong economically but not unanimous militarily, and the Russian-led

[15] The difference between decolonization and desovietization has been part of this doctoral project to be addressed. For more on this differentiation see Sub-section 6.4 and Artur Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (2024) 22 Baltic Yearbook of International Law (Brill).

[16] See e.g., Lauri Mälksoo, 'Post-Soviet Eurasia, Uti Possidetis and the Clash Between Universal and Russian– Led Regional Understandings of International' (2021) 53 New York University Journal of International Law and Politics; but also Artur Simonyan, 'Regional International Law Revisited: A Eurasian International Law' (2023) 31 Michigan State International Law Review 283.

> regional order, which is assertive militarily but less developed economically — will be able to shape their legal and political relationships with each other.'[17]

One of the central aims of this dissertation is to attest to the veracity of Lauri Mälksoo's claim regarding Russia's regional order construction in post-Soviet Eurasia. For that purpose, the study specifically scrutinizes Russia's (mis)use of international law in regional organizations such as the Eurasian Economic Union (EAEU), the Shanghai Cooperation Organization (SCO), the Collective Treaty Security Organization (CSTO), and the Commonwealth of Independent States (CIS), as well as at the bilateral level with post-Soviet Eurasian states in shaping regionally fragmentated international law. Its focus, however, is not centred on Russia. Instead, the examination patterns are constructed on how and to what extent post-Soviet Eurasian states are inclined toward Russia's consolidation attempt. Do they align with Russian understanding? Do they affirm that there is a certain post-Soviet Eurasian way of understanding international law? If they align with Russia's approach, the development of regional norms that deviate from universal ones would be visible, especially in the state practice of these states.[18] Thus, the centre of gravity of this research is not on Russia but on post-Soviet Eurasian states in their relations with Russia and its political project to construct a regional international law of '*Russkiy Mir*' within Russian-Eurasian spatiality.

As a secondary (minor) objective, however, this dissertation also aims to consider how the unification of forces at the regional level can contribute to the effectiveness of international law when it comes to its local applicability. In this respect, this dissertation does not concentrate solely on Russia's consolidation attempt but also on sociological forces – namely regional particularism inherent to post-Soviet space that relates to their culture, politics, and local agency of lawyers – that make regional legal norms necessary for the post-Soviet Eurasian states both in their mutual relations and in countering Russia's post-imperial project of consolidation. Principally, in this respect, it concentrates on norms that sustain a stable spatial guarantee that has been massively challenged since at least 2008 by Russia (but by other powers also), and especially after 2022 Russia's full-scale invasion of Ukraine.

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[17] Lauri Mälksoo, *Russian Approaches to International Law* (First Edition, Oxford University Press 2015) 194.

[18] This is (development of regional state practice) what characteristic for regional international law as described in Latin American context. See e.g., Alejandro Alvarez, *Le Droit International Américain: Son Fondement, Sa Nature D'après L'histoire Des États Du Nouveau Monde Et Leur Vie Politique Et Économique* (A Pedone 1910).

2. LITERATURE REVIEW: AN OVERVIEW OF THE STATE OF THE ART

This dissertation does not focus on a single discipline, considering its generality in scope and critical engagement in method. Therefore, both substantially and methodologically, it can be situated on the nexus of international law and international relations, although normative considerations are the primary objectives of this doctoral project to observe. Therefore, '[t]hough some measure of politics is inevitable' in this dissertation, 'it [is] constrained by non-political rules,'[19] centering the discussion of findings on the legal aspect rather than political repercussions. In a more empirical sense, I engage in a critical examination of the state and function of international law in post-Soviet Eurasian space within Russia's consolidation attempt to form a specific, regionally fragmentated international law. Substantially, therefore, the dissertation enriches the comparative international law framework by contextualizing regional comprehension of international law in a specific region – the post-Soviet Eurasia.[20]

In a broader scholarly context, this analysis delves into the study of regionalism and its ramifications in the domain of international law and international relations. However, from a micro-level regional perspective, it contributes to a more profound understanding of the exceptionalities of the post-Soviet Eurasian approach(es) to international law, especially following the dissolution of the Union of Soviet Socialist Republics (USSR) and political developments that followed the dissolution. From those aspects, this dissertation can be equally regarded as a contribution to the broader literature on the interplay between regionalism and international law and an empirical investigation of the post-Soviet Eurasian conception of it.[21] Both aspects, therefore, require specific treatment in this section to locate this dissertation in the state of the art.

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[19] Martti Koskenniemi, 'The Politics of International Law' (1990) 1 European Journal of International Law 4, 5.

[20] For more recent discussions on comparative international law as a framework to look developments of international law in different localities see e.g., A Roberts and others (eds), *Comparative International Law* (Oxford University Press 2018); For earlier contributions on this field see e.g., William E Butler and VN Kudriavetsev (eds), *Comparative Law and Legal System: Historical and Socio-Legal Perspectives* (New York: Oceana Publications 1985); Boris Mamlyuk and Ugo Mattei, 'Comparative International Law' (2011) 36 Brooklyn Journal of International Law.

[21] Kurbanov has written one similar work, but apart from being in Russian, both in form and content, it is far different from the doctoral project I have completed. It not only differs from a methodological perspective but also substantially. It is primarily a doctrinal analysis of existing law (*lex lata*) without any consideration of Russia's consolidation efforts. See e.g., RA Kurbanov, *Evraziĭskoe pravo: teoreticheskie osnovy [Eurasian Law: Theoratical Basis]* (ÎUNITI 2015).

2.1 Regionalism and international law

Regionalism is a much-discussed topic in international law and international relations literature both from substantial and methodological perspectives.[22] In this section, I discuss how regionalism relates to international legal literature both from geopolitical, functional, and historical perspectives.

First, following geopolitical shifts in any region, scholars (especially from affected regions) usually claim and demonstrate how regionally specific international law is formed following the liberation from imperialism or colonial rule. Latin America,[23] Africa,[24] and Asia,[25] in this respect, are cases much discussed in the literature of (regional) international law.[26] In their scholarly deliberations, these scholars predominantly focus on how spatial differences enshrined in regional or local legal culture affect international law and its system. Based on these differences, the ontology of regional international law is formed and reflects how regional particularism relates to the universality principle.

Second, the legal discourse on regionalism and its relation to international law goes far beyond the spatially visible differences and can also be based on religious and civilizational contrasts (although this is not exclusive ground but can act in tandem with spatial dimensions), such as Islam's[27] or Christianity's relation to

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[22] See e.g., Ján Klučka, *Regionalism in International Law* (Routledge 2018); Stéphane Doumbé-Billé, *La Régionalisation Du Droit International* (Bruylant 2012); Paul TV (ed), *International Relations Theory and Regional Transformation* (Cambridge University Press 2012); Robert Stewart-Ingersoll and Derrick Frazier, *Regional Powers and Security Orders: A Theoretical Framework* (Routledge 2012).

[23] See e.g., Alvarez, *Le Droit International Américain: Son Fondement, Sa Nature D'après L'histoire Des États Du Nouveau Monde Et Leur Vie Politique Et Économique* (n 18); Alejandro Alvarez and LS Rowe, 'American International Law' (1909) 3 Proceedings of the American Society of International Law at Its Annual Meeting (1907– 1917); JM Yepes, 'La Contribution De L'amérique Latine Au Développement Du Droit International Public Et Privé' (Hague Lectures 1930)

[24] See e.g., JM Bipoun – Woum, *Le Droit International Africain – Problèmes Généraux, Règlement Des Conflits* (Libraire Generale de Droit et de Jurisprudence 1970); TO Elias, *Africa and the Development of International Law* (2nd rev. ed, M Nijhoff ; Sold and distributed in the USA and Canada by Kluwer Academic Publishers 1988).

[25] See e.g., Simon Chesterman, 'Asia's Ambivalence about International Law and Institutions: Past, Present and Futures' (2016) 27 European Journal of International Law 945; M Salter, 'Law, Power and International Politics with Special Reference to East Asia: Carl Schmitt's Grossraum Analysis' (2012) 11 Chinese Journal of International Law 393.

[26] UN Regional courses are also formed along those geographical lines, focusing on Africa, Latin America, and Asia. *See* 'United Nations Regional Courses in International Law' <https://legal.un.org/poa/rcil/> accessed 27 February 2024. However, post-Soviet Eurasia, in this respect, is not separated as separate geographical area in the courses.

[27] See e.g., Marie-Luisa Frick and Andreas Th Müller, *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives* (Brill | Nijhoff 2013); Awn S Al – Khasawneh, 'Islam and International Law' in Marie-Luisa Frick and Andreas Th Müller (eds), *Islam and Internatinal Law: Engaging Self – Centrism from a Plurarity of Perspectives* (Brill | Nijhoff 2013).

international law.[28] From this civilizational perspective, regionalism (re)joins the discourse of how religious and cultural bases define the foundations of international law, which is very similar to the generalizing biases that Du Perron discussed in his treatise. These civilizational discourses then become part of the conversation of how fragmentation, clash, and division between different civilizational, religious, and cultural groups interrelate with the idea of global versus regional legal order(s) and, most importantly, drive us into discussions of what could be the inter-civilizational alternatives to these dividing lines.[29]

These discussions – be they observation and demonstration of spatial or civilizational differences – mean that literature on international law is full of discussions on regionalism and its role in constructing the global legal order. Yet what unites these scholarly observations is the need to demonstrate regional particularism to better understand the international legal system from a multi-vector perspective. Therefore, in the literature on international law, there is always the need to understand how different actors view and understand international law, both in their own localities and also in their conversation with the external world. As Leo Tolstoy warned in his letter to immanent Russian jurist Baron Taube – who asked the latter's opinion about his treatise 'Christianity and Organization of International World' – to have a universal picture of international law, it is a *sine qua non* to include other civilizational discourses rather than focusing on single civilizational and religious narrative.[30]

Finally, the relationship between regionalism and global legal order can be perceived through methodological perspectives. For instance, regionalism is highly relevant for realist approaches to international law.[31] In the history of international law, regionalism also shaped realist traditions of international law, primarily visible in the scholarships of Carl Schmitt and Wilhelm Grewe.[32] From the Russian consolidation perspective, the history of international law is instrumentalized specifically. As Lauri Mälksoo claims, '[i]n post-Soviet Russia, there is also a tendency to link the history of international law with the general ideological tendency to emphasise that the world is fragmented and multipolar, that the West is not

[28] For more recent discussion on this aspect see Pamela Slotte and John D Haskell (eds), *Christianity and International Law: An Introduction* (Cambridge University Press 2021); For earlier disucssion on Christianity's relation to international law, especially from Russian perspective, see e.g., Baron Michel de Taube, *Khristianstvo I Organizatsiya Mezhdunarodnogo Mira* (Kirsbauma 1902).

[29] See Yasuaki Ōnuma, *A Transcivilizational Perspective on International Law: Questioning Prevalent Cognitive Frameworks in the Emerging Multi-Polar and Multi-Civilizational World of the Twenty-First Century* (Martinus Nijhoff 2010).

[30] Leo Tolstoy, 'Pis'ma grafa L'va Nikolaevicha Tolstova ot' 18– 19 Dekabrya 1903 g.' (1903).

[31] For realist methdology of international law see e.g., SD Krasner, 'Realist Views of International Law' (2002) 96 Proceedings of the Annual Meeting (American Society of International Law) 265.

[32] See e.g., Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (GL Ulmen tr, Telos Press 2003); Wilhelm G Grewe, *The Epochs of International Law:* (DE GRUYTER 2000).

universal and beside it exist, with equal rights, Russia, China, India and other civilisation states.'[33] The relevance of Mälksoo's finding on the post-Soviet Russian narrative of the history of international law is central for post-Soviet Eurasian states as that observation reaffirms that regionalism in a historiographical sense also is anchored in a political project to construct a *Russkiy Mir* as a civilization-state that goes beyond contemporary Russia's borders and subsumes the 'peripheral states' by negating their own standing with their own histories separate from Russia. In that regard, there is an unavoidable clash between post-Soviet states and Russia while interpreting histories of international law, as in the post-1991 period, these independent polities also started to observe their own local histories that offer alternative, more local narratives on historical developments of international law.[34] Mälksoo on this clash claims that:

> '[r]egionalism also implies that the history of international law is more about geographic fragmentation and less about universality and unity. This goes well together with Moscow's current geopolitical agenda of the multi-polarity of the world, that the idea of universal man or history has been a myth and that instead there have been and are independent regional power centres, each with their own histories and heroes, and that this is also reflected in international law.'[35]

This historiographical aspect, although not part of the overall research within this dissertation, generally goes in line with the sources discussed in this dissertation and particularly in the article on 'Historic(al) Rights in Eurasia: A Regional International Law Perspective.' Therefore, the findings of this dissertation, if not primary, then at least at a complementary level, relate and also contribute to this legal historical literature as it traces continuities and discontinues while observing Imperial Russian and Soviet vision of international law and its impact on contemporary Russia's consolidation tactics in the post-Soviet Eurasian region.

Finally, in recent legal literature, discussions on regionalism in international law started to shift specific focus on the proliferation of different legal regimes under fragmentation debates – be it human rights, trade, or the environment.[36] In these discussions, regionalism is not much discussed from the spatial perspective but from a functional standpoint. This dissertation also contributes to that scholarship. Nevertheless, its discussions focus on the spatial vision of this functional

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[33] Lauri Mälksoo, 'The Historiography of International Law in Russia and Its Successor States', *Cambridge Historigraphy of International Law* (Cambridge University Press 2024) 287.

[34] ibid 289–290.

[35] ibid 291.

[36] See e.g., Siobhán McInerney-Lankford, 'Fragmentation of International Law Redux: The Case of Strasbourg†' (2012) 32 Oxford Journal of Legal Studies 609; William Thomas Worster, 'Competition and Comity in the Fragmentation of International Law' (2008) 34 Brooklyn Journal of International Law 119; Mario Prost and Paul Kingsley Clark, 'Unity, Diversity and the Fragmentation of International Law: How Much Does the Multiplication of International Organizations Really Matter?' (2006) 5 Chinese Journal of International Law 341.

fragmentation instead of doctrinally assessing how functional regimes work (although that part is also examined).

In contrast to this vast array of scholarly literature demonstrating regional and cultural exceptionalism, scholarly appreciation of regional international law has been somewhat skeptical, especially in the Western world.[37] Even institutionally, it has been challenged. As such, the International Law Commission's (ILC) Study Group on fragmentation claimed '…any specific normative (in contrast to historical, sociological, or technical– legislative) debate about regionalism superfluous.'[38] Hence, on the one hand, legal literature is full of scholarly optimism in observing regional divergence.[39] On the other hand, we notice a conspicuous institutional disinclination to embrace regionalism above the interplay between *lex specialis* and *lex generali,* fearing its social function may transcend the successful incorporation of regional particularism in the international legal system but disturb international law's unity and universality.[40]

Overall, this dissertation joins these discussions of regionalism's role in international law from a specific and multilayer standpoint. First, it revisits regionalism from a specific angle in tandem with the 'turn to history narrative' and in consideration of new geopolitical shifts that recent scholarship observes to be pivotal for international law's functionality.[41] In such a way, this dissertation is positioned as 'a realistic pursuit of universality' where regionalism has a particular standing[42] – it can be in line with understanding imperialist tendencies within regionalism (the major task of the dissertation to demonstrate) but can also contribute to the effective realization of norms and principles of international law in post-Soviet Eurasian spatiality (the minor task). This dissertation has a specific interrelation with geopolitical studies. Based on the specific theoretical framework of geopoliticization of international law, it enriches the literature on the

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[37] In an encyclopaedic note, French legal scholar Mathias Forteau contended that 'regional international law has become, in legal terms, no more than special law... Regional international law reveals itself as being no more than a factual, not a legal, concept. There is still regionalism, but there is no (more) regional international law.' See Mathias Forteau, 'Regional International Law', *Max Planck Encyclopedias of International Law* (2006) 5–7.

[38] Martti Koskenniemi, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law Report of the Study Group of the International Law Commission' 48.

[39] See also Apollin Koagne Zouapet, 'Regional Approaches to International Law (RAIL): Rise or Decline of International Law?' (1 March 2021) KFG Working Papers; Alvarez and Rowe (n 23); Artur Simonyan, 'Science of International Law and Regional Orders: A Critical Appraisal of Alejandro Alvarez and Carl Schmitt' (2023) 12 Revista Tribuna Internacional 19.

[40] See e.g., Forteau (n 37).

[41] See e.g., Anne Orford, 'Regional Orders, Geopolitics, and the Future of International Law' (2021) 74 Current Legal Problems 149; Malcolm Jorgensen, 'Equilibrium & Fragmentation in the International Rule of Law: The Rising Chinese Geolegal Order' (1 November 2018) KFG Working Papers; Simonyan, 'Regional International Law Revisited' (n 16); Simonyan, 'Science of International Law and Regional Orders' (n 39).

[42] The discourse of 'realistic pursuit of universality' is borrowed from Marti Koskenniemi. See in Roberts (n 11) xiv.

nexus of regional geopolitical studies and international law.[43] From this perspective, therefore, its contributions to the literature of regional international law are also manifold. From one respect, it presents the tactics and ways of how Russia uses regionalism as a discourse to consolidate a regional international law – that part enriches regionalism studies generally within international law from a theoretical perspective. Yet, from a more nuanced perspective, it adds a new specific, micro-regional framework to understand regional particularism in the post-Soviet Eurasian context.

2.2 Post-Soviet Eurasia and international law

Following the dissolution of the Soviet Union, international legal scholars' attention shifted to developments of regional (integration) law in post-Soviet space.[44] Several legal analyses were published on the legal nature of regional integration projects in the region: Commonwealth of Independent States (CIS) and, Collective Security Treaty Organization (CSTO), Shanghai Cooperation Organization (SCO), both from a general international law perspective[45] and from a more nuanced and in-depth examination of specific fields like international economic law,[46] nexus of constitutional and international laws,[47] politics of international

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43 Simonyan, 'Regional International Law Revisited' (n 16) 299–312.

44 That observation included both developments of Russian law and post-Soviet regional (integration) law generally. See e.g., George Ginsburgs, *From Soviet to Russian International Law: Studies in Continuity and Change* (Martinus Nijhoff Publishers 1998); Dimitri K Simes, 'America and the Post-Soviet Republics' (1992) 71 Foreign Affairs 73; Rein Müllerson, *International Law, Rights and Politics: Developments in Eastern Europe and the CIS* (Routledge 1994).

45 See e.g., Zhenis Kembayev (ed), *Legal Aspects of the Regional Integration Processes in the Post-Soviet Area* (Springer Berlin Heidelberg 2009); Stephen Aris, *Eurasian Regionalism: The Shanghai Cooperation Organisation* (Softcover reprint of the hardcover 1st edition 2011, Palgrave Macmillan 2011); Rein Müllerson, *Dawn of a New Order: Geopolitics and the Clash of Ideologies* (IB Tauris & Co Ltd 2017); Sergei A Voitovich, 'The Commonwealth of Independent States: An Emerging Institutional Model' (1993) 4 European Journal of International Law 403; David Suter, *The Shanghai Cooperation Organisation: A Chinese Practice of International Law* (Schulthess 2015).

46 See e.g., Oxana M Balayan, *Institutionelle Struktur Der Wirtschaftsintegration in Der Gemeinschaft Unabhängiger Staaten (GUS)* (Duncker und Humbolt 1999); Aseeva A and Gorski J, 'The Law and Policy of New Eurasian Regionalization: Economic Integration, Trade, and Investment in the Post-Soviet and Greater Eurasian Space', in *The Law and Policy of New Eurasian Regionalization* (Brill Nijhoff 2021); Vera Kot and others, 'International Trade in the Post-Soviet space: Trends, Threats, and Prospects for the Internal Trade within the Eurasian Economic Union' (2023) 16 Journal of Risk and Financial Management 16.

47 See e.g., Roman A Petrov and Peter van Elsuwege (eds), *Post-Soviet Constitutions and Challenges of Regional Integration: Adapting to European and Eurasian Integration Projects* (Routledge 2019); Cindy Wittke and Maryna Rabinovych, 'Troubled Nexuses Between International and Domestic Law in the Post-Soviet space' (2022) 47 Review of Central and East European Law 249.

law.[48] Finally, certain scholarly investigations focused on examining international law within the context of microregions – Central Asia, South Caucasus, and Eastern Europe. In this respect, Central Asia's geojuridical location in international law has been extensively researched lately.[49]

Research on regional integration law in post-Soviet Eurasian space intensified in last decade, especially after the establishment of the EAEU in 2015. Most notably, a recent publication by Maksim Karliuk titled 'The Emerging Autonomous Legal Order of the Eurasian Economic Union' discusses historical and institutional trajectories of Eurasian integration law based on the 'concept of legal order autonomy.'[50] Other legal studies on Eurasian integration – more restricted in scale than Karliuk's books – continue to grow in legal literature, too.[51] A more comprehensive book on the EAEU, encompassing history, politics, and legal dimensions, was published in 2024 by Libman and Vinokurov.[52]

No overarching English language publication, however, ever examined the development of the concept of regional international law in the post-Soviet Eurasian region in line with Russia's consolidation efforts, albeit both historical, (geo)political, and legal processes intuitively speak in favour of the existence of synergy between post-Soviet Eurasian specific geopolitical location and post-1991 international law fragmentation debates.[53] This dissertation aims to cover that missing aspect in the literature, albeit in a restricted manner, acting as a theoretical and empirical basis for further examination of this region's relation to

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48 Müllerson, *Dawn of a New Order* (n 45).

49 See e.g., Rein Müllerson, *Central Asia* (Routledge 2007); Sergey Sayapin, *A Central Asian Perspective on International Law* (Bloomsbury Academic 2025); Sergey Sayapin, 'International Law in Central Asia: Practices and Doctrines' (2022) 47 Review of Central and East European Law 322.

50 Maksim Karliuk, *The Emerging Autonomous Legal Order of the Eurasian Economic Union* (Cambridge University Press 2023).

51 See e.g., Sergey Sayapin, 'The Eurasian Economic Union (EAEU)' in Anne van Aaken and others (eds), *The Oxford Handbook of International Law in Europe* (Oxford University Press 2024); Rilka Dragneva, 'The Eurasian Economic Union: Balancing Sovereignty and Integration', *Post-Soviet Constitutions and Challenges of Regional Integration* (Routledge 2017); Ekaterina Diyachenko and Kirill Entin, 'The Court of the Eurasian Economic Union : Challenges and Perspectives' (2017) 5 Russian Law Journal 53.

52 Evgeny Vinokurov and Alexander Libman, *The Elgar Companion to the Eurasian Economic Union* (Edward Elgar Publishing 2024).

53 On fragmentation debate see e.g., Joost Pauwelyn, 'Bridging Fragmentation and Unity: International Law as a Universe of Inter– Connected Islands' [2004] Michigan journal of international law; Paul B Stephan, *Comparative International Law, Foreign Relations Law, and Fragmentation*, vol 1 (Oxford University Press 2018); Gerhard Hafner, 'Pros and Cons Ensuing from Fragmentation of International Law' (2004) 25 Michigan Journal of International Law 849; Eyal Benvenisti and George W Downs, 'The Empire's New Clothes: Political Economy and the Fragmentation of International Law' (2007) 60 Stanford Law Review 595; Anne Peters, 'The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization' (2017) 15 International Journal of Constitutional Law 671; Anne – Charlotte Martineau, 'The Rhetoric of Fragmentation: Fear and Faith in International Law' (2009) 22 Leiden Journal of International Law 1.

international law in light of Russia's consolidation attempts and decolonization/ desovietization processes.

Along these scholarly deliberations, however, closer to this dissertation's objectives, comes Rima Tkatova's dissertation defended at the University Jean Moulin Lyon 3 on 'Approches post-soviétiques du droit international: essai sur le renouvellement de la doctrine et de la pratique internationales' in 2011.[54] Tkatova located her study alongside civilizational lines, describing notably how the Russian and Belarusian discourse on multipolarity and Central Asian ethno-religious particularism define post-Soviet approaches to international law in the post-1991 globalized world.[55] Tkatova, subsequently, represented the post-Soviet space not as a homogeneous entity but as a spatial reflection of the historical reality that postdates the Soviet experience, subsuming states of different cultures, political agendas, and development trajectories.[56] It is then noticeable that Tkatova used plurality rather than singularity in defining the post-Soviet Eurasian approaches. Based on that peculiarity, she doctrinally observed the emergence of regional order in post-Soviet space by focusing on the legal institutions and practices of the CIS, the Eurasian Economic Community (EurAzEs), CSTO, and the Organization for Democracy and Economic Development (GUAM).[57] Finally, she observed the overall state practice of post-Soviet states in international institutions, notably in the United Nations (UN), World Trade Organisation (WTO), and Council of Europe (CoE).[58]

Overall, this dissertation has the same line of inquiry as Tkatova's thesis, especially concerning the geographical component – even there, this dissertation, however, proposes a more restrictive and geopoliticized definition of 'post-Soviet Eurasia' than Tkatova did. This dissertation, nonetheless, comes with several differences in comparison with Tkatova's profound analysis. The first difference is temporal. Tkatova's dissertation included observations of events until 2011 when the dissertation was defended. Although the examination of pre-2011 developments is part of this work, my dissertation also focuses on the post-2011 period to a large extent. The empirical evidence provided within six articles is generally supported by events that occurred in the post-2011 period – notably, the Russia-Ukrainian ongoing conflict, the Second Karabakh war between Armenian and Azerbaijan (also border delimitation and demarcation between Armenia and

[54] R Tkatova, 'Approches post– soviétiques du droit international. Essai sur le renouvellement de la doctrine et de la pratique internationale.' (Defended, University Jean Moulin Lyon 3 2021).

[55] ibid 15–137.

[56] On this aspect see also R Tkatova, 'Central Asian States and International Law: Between Post-Soviet Culture and Eurasian Civilization' (2010) 9 Chinese Journal of International Law 205.

[57] Tkatova (n 54) 211–283.

[58] ibid 283–415.

Azerbaijan), and the 2022 CSTO's intervention in Kazakhstan.[59] Similarly, regional integration law has been developing unprecedentedly in the post-2011 period in post-Soviet Eurasian space. The EAEU was founded in 2015, marking a new institutional period in the post-Soviet legal integration landscape with trends of judicialization and supranationalism.[60] The second difference is thematical. Alongside doctrine and practice, in my thesis, I consider the everyday life of international lawyers in the region – a missing point both in Tkatova's examination and in broader literature generally.[61] From the thematical standpoint, therefore, my consideration of issues is more interdisciplinary and encompasses critical engagement with the existing legal literature besides the doctrinal analysis. Third, alongside my *lex lata* examination, I also offer *de lege ferenda* conclusions, particularly on the regional application of *uti possidetis juris* principle. In that 'future law' considerations, I observe the desovietization process, which is less relevant in Tkatova's work.[62] Fourth, I offer a specific analytical and theoretical framework for the understanding of developments of international law in the region, encapsulated in the geopoliticization of international law framework.[63] Fifth, methodologically, the two dissertations are different; while Tkatova's analysis is a pure doctrinal analysis with historical and descriptive methods included, this dissertation, although focuses on doctrine and practice, also is a critical engagement with law applicable to the post-Soviet Eurasian space – it is a law in context examination of the state and function of international law in one particular region. Considering that specificity, therefore, this dissertation is written based on comparative international law, which as a legal methodological framework was formed particularly from 2015 onward (its substantial aspect has a lengthier history).[64]

Finally, Tkatova does not touch profoundly on Russia's consolidation efforts component, whereas in this dissertation, that agenda forms the core part of understanding if a specific Russian-Eurasian vertical-apologetic regional international law has been developed in the post-Soviet Eurasian region supported by Russia's vision of regional integration law and geopolitical interpretation of legal norms and principles.

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[59] For that aspect see, subsections 6.1, 6.2. and also Simonyan, 'Regional International Law Revisited' (n 16); Artur Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' 36 Hague Yearbook of International Law (Brill).

[60] See subsection 6.2.2 and Artur Simonyan, 'Eurasian Supranationalism: From Academic Discourse to the Eurasian Economic Union' (2022) 20 Baltic Yearbook of International Law Online 45.

[61] See subsection 6.4 and also Artur Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (2024) 35 (1) European Journal of International Law.

[62] See subsection 6.5 Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

[63] Simonyan, 'Regional International Law Revisited' (n 16).

[64] See Section 4 on Methodology.

2.3 Position of research problem in the literature

The location of this dissertation within legal scholarship necessitates a multi-faceted viewpoint. To begin with, the key assertations relating to the existence and consolidation of regional international law in post-Soviet Eurasia draw their normative justifications from critical legal studies. This is where an in-depth analysis of the dissimilarities in international law's applicability across different places is brought to life, especially when amalgamated with political discourse.[65] To that end, this dissertation and its empirical basis also contribute to what Martti Koskenniemi and David Kennedy inaugurated as new approaches to international law because it serves as an 'impulse to step back from contemporary common sense about the nature of global order and the available paths for reform, as well as a recognition that despite decades of careful study, we still lack a good picture of how we are, in fact, governed at the global [*in case of this dissertation also in regional*] level.'[66]

However, its encounters with new approaches are not exclusive, as it is intellectually nourished by Harvard Legal Process and New Haven schools, where international law is described as part of the decision-making process.[67] The geopoliticization of international law – one of this thesis's central theoretical and methodological frameworks – is based on critical legal studies and theoretical findings that both legal process schools provide.[68] With that in mind, the central inquiry when reading this dissertation, the reader can legitimately ask: Is this dissertation descriptive or normative? As demonstrated in different parts of the dissertation, it is both. Although each article more profoundly engages with descriptive versus normative dichotomy, in totality, I claim that the first five postulates are represented both in descriptive and normative senses, while in the last article, the normative grounds of *de lege ferenda* conclusions are more highlighted.[69] When I describe, I use *lex lata* (law as it is) considerations, although in no sense do I remain Kelsenian in my attempts to delineate pure law from the political process.[70] In contrast to the pure theory of law, I describe the central tenets based

[65] David Kennedy, 'The Disciplines of International Law and Policy' (1999) 12 Leiden Journal of International Law 9, 17.

[66] José María Beneyto and David Kennedy (eds), *New Approaches to International Law* (T M C Asser Press 2013) vii.

[67] More profound analysis of these schools in Andrea Bianchi, 'The New Haven School', *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford University Press 2016).

[68] On discussions of how both are incorporated in that theoretical framework see subsection 6.2.1. and 6.2.2 as well as Simonyan, 'Regional International Law Revisited' (n 16) 299–206.

[69] See subsection 6.4 but also Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

[70] Discussion of pure theory of law in Hans Kelsen, *Pure Theory of Law* (Lawbook Exchange 2005).

on empiricism and historicism[71] – thus, arguments may seem (geo)politicized (which is done for descriptive rather than normative purposes).[72] The dissertation, however, normatively prescribes when it comes to *de lege ferenda* conclusions.[73] By separating benign and hostile forms of regional international laws,[74] the dissertation sets forth regionally valid future law interpretations based on benign form.[75] These future law conclusions, however, are not mere deliberations of legal imagination,[76] but their validity is searched and reflected upon concrete historical and empirical arrangements that make post-Soviet Eurasian region *sui generis* vis-à-vis the global legal order.

Finally, another field where this dissertation can be situated in the state of the art is the nexus of geopolitics, international law, and history in a post-Soviet Eurasian regional context. The scholarly literature lacks a deep exploration of how geopolitical, historical, and legal dynamics intersect and influence each other, specifically in the post-Soviet Eurasian context.[77] For the most part, therefore, I describe the process of how Russia attempts to consolidate spatially fragmented international law in post-Soviet Eurasia through two legal tactics: regional integration law and geopolitically motivated (mis)use of international law.[78] From that perspective, therefore, this dissertation also contributes to scholarly debates on 'Russian approaches to international law.'[79]

Overall, therefore, this research project contributes to wider scholarship on understanding regionalism as a phenomenon in international law and enriches scholarship that discusses what form the specificities of international legal developments in post-Soviet Eurasian space.

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71 On critique of Kelsenian monism and importance to observe history and empirical facts, especially when observing international law see Boris Mirkine– Guetzévitch, *Droit International Et Droit Constitutionnel* (Recueil des cours / Académie de droit international de La Haye 1931).

72 On engaged discussion of politics of international law see M Koskenniemi, 'The Politics of International Law – 20 Years Later' (2009) 20 European Journal of International Law 7.

73 See e.g., Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

74 On that division see my article 1. Simonyan, 'Science of International Law and Regional Orders' (n 39).

75 Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

76 On legal imagination and scholars role therein see Martti Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870* (Cambridge University Press 2021) 1–17.

77 On that missing point I reflect in the first article. See Simonyan, 'Science of International Law and Regional Orders' (n 39) 19–21.

78 For overall discussion see Simonyan, 'Regional International Law Revisited' (n 16).

79 Mälksoo, *Russian Approaches to International Law* (n 17).

3. FORMULATING THE RESEARCH TASK

There are two central research tasks in this dissertation – major and minor. The major research task of this dissertation is to apprehend if Russia succeeded in consolidating a specific understanding of international law in the post-Soviet Eurasian region. The first five postulates of this dissertation are discussed to complete that research tasks by addressing following aspects:

1. observation of existing theories on regional international law,
2. examination of Russia's consolidation tactics,
3. study of concepts, principles, and legal discourses that form part of Russia's consolidation tactics,
4. examination of post-Soviet Eurasian international lawyers' role in Russia's consolidation efforts.

The last postulate is addressed as part of a minor research task.

1. Within the minor research task, I examine how the particularities that define a single region (regional integration, common historical past, culture, politics) can be instrumentally utilized to boost effectiveness of international law as applied to that region. Out of that minor task, several conclusions of *de lege ferenda* nature are proposed.

Overall, at a broader level, the fundamental link between major and minor objectives is the need for comprehension of the normative impact of regionalism on modern international law generally and in the post-Soviet Eurasian context specifically. These tasks are completed by addressing the research questions via empirical investigation of numerous questions and conundrums that emerge due to Russia's consolidation efforts.

3.1 Research questions

Based on these major and minor research tasks, the following research questions are part of this dissertation that need to be addressed:

1. Does the science of international law offer a unitary understanding of regional international law? If not, what readings of regionalism are deducible from the theory of international law?
2. What type of regional international law does Russia promote and aim to consolidate in the post-Soviet Eurasian region? What are its common characteristics?
3. Does such consolidation of regional international law set forth new post-Soviet Russian-Eurasian doctrines, practices, or regional norms?

4. What role do international lawyers play in post-Soviet Eurasian space in Russia's consolidation attempts?
5. How can post-Soviet Eurasian states benefit from the regional international law framework as opposed to Russia's consolidation efforts?

3.2 Statements presented for defense

Based on these research questions, the following postulates are defended, scrutinized, and deliberated in six articles and this compendium. The central postulates are:

1. The science of international does not offer a unitary understanding of regional international law. Its deliberations can be both a) hostile based on imperialism and b) benign based on regional particularism. While the hostile form of regional international law is based on imperial practices and necessitates critical engagement, the benign form of regional international law can boost the effectiveness of the international legal system rather than being viewed as a challenge to its unity.
2. Russia promotes a hostile form of regional international law based on Schmittian *grossraum* (greater space) ordering, where central postulates of international law are undermined while the post-imperial practices of Russia directly affect how international law is understood, applied, and interpreted in post-Soviet Eurasian space.
3. By promoting a *grossraum* type of ordering, Russia, both normatively and semantically, has been altering the meaning of different international legal concepts, most notably the concepts/principles of historic(al) rights (semantic and normative change), *uti possidetis juris* (normative alteration), and supranationalism (normative alteration).
4. To consolidate regional understanding of international law, Russia may use social arrangements (language, publication houses, educational establishments, places of legal practice) available under its financial, political, and cultural disposal to form a divisible college of post-Soviet Eurasian international lawyers in order to form a group of sympathetic scholars in charge of defending Russian attempt of consolidation of Russian-Eurasian international law.
5. Even if Russia is successful and some of the post-Soviet Eurasian lawyers form a divisible epistemic community of international lawyers, they generally (although not exclusively) do not act as Russia-apologetics and do not contribute to the promotion or consolidation of Russia-centered regional international law when it comes to their formal activity.
6. In paired with Russia's hostile form of regional international law, the science of international law offers a more benign form of regionalism – based on solidarity, common historical past, and regional specificity – which post-Soviet Eurasian states can use to complete the desovietization process and have a more viable spatial guarantee in the form of *uti possidetis juris à la Eurasienne*.

4. METHODOLOGY

Methodologically, this is primarily a comparative international law project where I – within the research scope of this dissertation – elucidate how post-Soviet Eurasian states approach, analyze, understand, and apply international law under Russia's consolidation attempt to regionalize international law.[80] There are a number of caveats, however, that need to be addressed when the comparative international law framework is concerned. First, during the elaboration of the articles, the possible bias that can exist because of the pre-comparative tertium of Eurocentrism – especially when discussing norms, principles, and discourses – has been acknowledged and addressed by means of interdisciplinarity and recognition of specificities of legal culture divergent across post-Soviet Eurasia.[81] Second, considering the specific regional context, the bias towards understanding the Russian approach more than the description of the normative aspect of consolidation is also acknowledged in order to distinguish my positionality from the attitude of *Russlandversteher* (one who not only understands Russia but also justifies it).[82] To be more precise, the rationale of articles is formulated in a manner that makes the distinction between description and prescription apparent. Third, one of the main counterarguments against the comparative international law framework is the possibility that by using this framework, there is possible scholarly terrain to revoke power politics not only for description but sometimes for prescription.[83] For that purpose, a separation between benign and hostile forms of regional international law has been formulated in article 1, which later acts as methodological guidance when discussing Russia's consolidation attempts from one respect and regional particularism that unites post-Soviet Eurasian states from another perspective.

Additionally, when providing *de lege ferenda* conclusions, the dissertation not only opted for comparative methodology but added traces of a sociological approach to international law with an attempt to strategize the instrumental usage

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[80] On conceptualisation of comparative international law framework see Anthea Roberts and others (eds), 'Conceptualizing Comparative International Law', in *Comparative International Law* (Oxford University Press 2018) 6.

[81] On such possible bias in comparative international law see Jean D'Aspremont, 'Comparativism and Colonizing Thinking in International Law' (2020) 57 Canadian Yearbook of international Law/Annuaire canadien de droit international 89, 100–112.

[82] On how my articles treat Russia-apologetic argumentations see particularly Simonyan, 'Regional International Law Revisited' (n 16) 288; Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (n 61).

[83] The debate between Salter and Koskenniemi regarding the prescriptive usage of *grossraum* theory is an empirical testimonial of how international law in comparative dimension can challenge the universality principle and how scholars perceive that challenge. See M Salter, 'Law, Power and International Politics with Special Reference to East Asia: Carl Schmitt's Grossraum Analysis' (2012) 11 Chinese Journal of International Law 393; M Koskenniemi, 'Letter in Response to Michael Salter's Recent Paper on Carl Schmitt's Grossraum' (2013) 12 Chinese Journal of International Law 201; M Salter, 'A Reply to Koskenniemi's Letter' (2013) 12 Chinese Journal of International Law 203.

of international law by weak states in their struggle against powerful ones.[84] Such an agenda added a certain level of interdisciplinarity, reflected in methodological terms when the selection of sources was completed.

This research, however, even if having in its foundation's critical legal studies of international law,[85] also benefited from the doctrinal, library-based analysis. Most library-based research was conducted in five major libraries: Cujas Library of Pantheon-Sorbonne University, National Library of Finland, Peace Palace Library in the Hague, University of Tartu Library, and the Free University of Berlin Library. The places of research itself may shape specific biases of Eurocentrism – all these libraries are situated in the Western world. However, that bias is controlled as these sources have been analysed compared to online and printed sources written in Russian, Armenian, and Kazakh languages. The doctrinal analysis of norms and case law, however, is also addressed from a critical perspective, leading to a more in-context examination of international legal practices that exist in the post-Soviet Eurasian region about Russia's post-imperial/ hegemonic behaviour.

Finally, in several instances, a historical analysis of international and regional events was conducted, trying to capture possible continuities and discontinuities between post-Soviet Eurasian practices and discourses of international law with Soviet or Imperial legacy. However, to not engage in an anachronistic analysis of events from the international legal perspective – which is considered a 'mortal sin' at least in the Anglo-American context[86] – throughout the research, 'attention to context, and the interaction between multiple contexts,'[87] was considered largely. Nevertheless, even if the historical method is employed, this study does not form part of studies of (global) histories of international law with a post-Soviet Eurasian focus. Instead, the historical method is employed to more concretely assess the relevance and normative differences of certain concepts, principles, and discourses in the post-Soviet Eurasian context. One specific discussion of the history of international law is considered in article 6, where desovietization is discussed as a separate process from decolonization.[88] But in that case, again, the observation is done for normative rather than historiographical purposes.

From a methodological perspective, however, spatial and temporal limitations require more specific discussion in this compendium.

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[84] See e.g., Moshe Hirsch, 'The Sociological Perspective on International Law' (15 October 2018) 16 <https://papers.ssrn.com/abstract=3266862> accessed 8 September 2023.

[85] More on critical legal studs of international law in Anthony Carty, 'Critical International Law: Recent Trends in the Theory of International Law' (1991) 2 European Journal of International Law 66; Backett Jason, 'Critical International Legal Theory', (Oxford Bibliographies, 2022).

[86] Martti Koskenniemi, 'Histories of International Law: Significance and Problems for a Critical View' (2013) 27 Temple International and Comparative Law Journal 215, 227.

[87] Andrew Fitzmaurice, 'Context in the History of International Law' (2018) 20 Journal of the History of International Law / Revue d'histoire du droit international 5, 30.

[88] See section 6.4 as well as Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

4.1 Geographical scope: defining (post-Soviet) Eurasia

What does the term' post-Soviet Eurasia' mean? Where do its geographical limits lie? Can one understand post-Soviet Eurasia as a more imaginary concept rather than spatial? In general, in the literature, it is discussed mostly as a political and cultural term rather than merely a geographical connotation. These complexities suggest that various interpretations of the terms 'post-Soviet' and 'Eurasia' are feasible. The different interpretations regarding the term 'post-Soviet' and its instrumental usage are addressed in article 6, where the desovietization of international law is discussed.[89] Therefore, in this compendium, more attention is given to the term 'post-Soviet Eurasia' as an encompassing term that unites all articles.

The term Eurasia is contested both in international relations and international law literature irrespective of the author's focus: historical – that is temporal – or micro-regional – that is spatial.[90] Its anthropological value could encompass mythical Russian-Eurasian super-ethnos,[91] its cultural reference could encapsulate distinctive location of Eurasia between Western and Eastern civilizations,[92] while its geographical scope could be used for geopolitical considerations encapsulated in Mackinderian heartland theory.[93] In describing the civilizational diversity of states, it has been used mainly by Japanese, Turkish, and Russian authors,[94] which makes the term more 'Oriental' or Asiatic – a civilization denomination that opposes European (or Western in contemporary context) civilization but coexists with that. In different educational establishments, especially in US universities, the Centers on Eurasian Studies are also focused on the non-Western European geographies, primarily including observation of post-socialist spaces: Caucasus, Eastern Europe, and Central Asia.[95]

In this dissertation, however, my legal and political focus is on the Russian narrative of the Eurasian idea, yet not necessarily in the sense that Dugin's concept of Eurasianism (although sometimes such references can be traced in different

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89 ibid.

90 For usage of the term Eurasia in international law and its spatial and temporal significance in Russian context see Simonyan, 'Regional International Law Revisited' (n 16) 312 *et. seq*.

91 See e.g., LN Gumilev, *Ritmy Yevrazii. Epokhi i Tsivilizatsii [Rhythms of Eurasia. Epochs and Civilizations]* (AST 2008).

92 See e.g., Evgeny Vinokurov and Alexander Libman, 'Eurasia and Eurasian Integration: Beyond the Post-Soviet Borders' (2012) Eurasian Integration Yearbook 80, 83.

93 HJ Mackinder, 'The Geographical Pivot of History' (1904) 23 The Geographical Journal 421.

94 As claimed by Ayşe Zarakol, *Before the West: The Rise and Fall of Eastern World Orders* (Cambridge University Press 2022) 246.

95 See e.g., 'History & Mission | Center for Russian, East European and Eurasian Studies' <https://creees.stanford.edu/about/history-mission> accessed 28 February 2024; 'About | Davis Center' <https://daviscenter.fas.harvard.edu/about> accessed 28 February 2024; 'Russian and Eurasian Studies Centre' (*St Antony's*) <https://www.sant.ox.ac.uk/russian-and-eurasian/russian-and-eurasian-studies-centre/> accessed 28 February 2024.

articles for descriptive purposes) is described.[96] In this thesis, the term is used for more in-context understanding that focuses on separating Russia from the West while viewing Eurasianism as an alternative vision and framework to that separation, which in legal terms could be translated as an anti-Western idea of regional international law that Russia promotes and (aims to) consolidates in the post-Soviet Eurasian region.

On defining Eurasia, scholars propose various conceptual chains. For instance, Vinokurov claim that 'there are three main concepts of Eurasia [in Russian discourse]: a) …a convenient substitute for the concept of 'post-Soviet area' or (as it is often called in Russia) 'nearest neighbourhood'…. b) …Eurasia …. as an ideological concept, stressing (quite often) the *differences* between Russia and its neighbours and the European world and, partly, the *commonalities* between Russia and the Eastern states… c) … Eurasia…. as *including* both *Europe* and *Asia, [which is]* 'pragmatic Eurasianism' [that] describe[s] Russia's desire to accentuate its political and economic presence in Asia.'[97] In this definitional dilemma, Zarakol rightly notes that ''Eurasian'…narrative played a double function: [Russian theorists on Eurasianism] aimed at propping up the dignity of their countries vis-à-vis Europe/the West, while simultaneously justifying their colonial and expansionist projects in Asia.'[98] Nevertheless, such an understanding of Eurasianism may be only justified for instrumental and political purposes – also while examining the law as just one but not a central social construct of Eurasianism – but less for normative engagements.

In this thesis, therefore, I am not interested in ethno-cultural aspects of this term, or even if I use them, I do that for descriptive purposes. In my dissertation, post-Soviet Eurasia has two concrete meanings apart from the overarching claim that the Eurasian idea is about Russia's consolidation of a non-Western form of regional international law in post-Soviet space. First, for the most part, it is used for pragmatic and instrumental purposes. Within all regional organizations in the Eurasian continental space, only the EAEU contains the term 'Eurasia.' Therefore, the core membership of EAEU could induce the Eurasian idea. Based on that narrative, I consider CSTO, CIS, and SCO to be 'Eurasian organizations' as their core membership is identical to that of EAEU, although reservations are considered, especially concerning China (but also Uzbekistan, Turkmenistan, and Azerbaijan). From that pragmatic and instrumental perspective, post-Soviet Eurasia subsumes the following states: Armenia, Kazakhstan, Kyrgyzstan, Tajikistan, Russia, and Belarus. However, to provide complete argumentation, sometimes Georgia, Ukraine, Turkmenistan, Uzbekistan, and Moldova are also examined,

[96] On Dugin's concept of Eurasianism see Aleksandr Gel′evič Dugin, *Eurasian Mission: An Introduction to Neo-Eurasianism* (1st edition, Arktos 2014).

[97] Evgeny Vinokurov, *Eurasian Integration: Challenges of Transcontinental Regionalism* (Palgrave Macmillan 2012) 16–24.

[98] Zarakol (n 94) 246.

considering their post-Soviet (but not Eurasian) state identity.[99] In that regard, solely the Baltic States are excluded in all examinations concerning Russia's consolidation attempt, considering their state continuity doctrine,[100] and how such doctrine instrumentally used as manifestation of Baltic's 'return to Europe.'[101] That does not mean that the international legal standing of the Baltic states is not analyzed. For instance, article 5 examines how, by differentiating the Baltic states from other post-Soviet states, the everyday life of international lawyers has been impacted. Nevertheless, in that sense, Baltic states are examined solely for comparative purposes rather than as part of the (post-Soviet) Eurasian idea.

This instrumental definition is also vital for assessing the possible de-sovietization of international law in post-Soviet Eurasia. As such, in several parts of this compendium and article 6, the specific spatial reach of the term post-Soviet Eurasia allows us to contextually analyze specific interpretations of norms when conflicts of this region are concerned.[102] In other words, to understand what unites conflicts in Nagorno-Karabakh, Transnistria, Ukraine, Abkhazia, and other conflicts (also their legal dimension), one needs to see the geographical and geo-political links between them. The term 'Eurasia' provides that structural milieu.

Second, as already claimed, post-Soviet Eurasia is viewed as a term that describes the Russian political project to consolidate post-Soviet states around one single idea, which then (could) alter the region's appreciation of international law.[103] In this more Russia-centered sense, Iskandarian claims that '[t]he post-Soviet space exists as long as there are disputes about it.'[104] As our further observations would illustrate, Russia has been acting as a dispute moderator in post-Soviet space and its consolidation attempt (sometimes) has shaped or at least influenced the normative outcome of how these disputes have been solved.[105] In other words, in the post-Soviet period, the Russian narrative of international law is relevant for any major conflict in the region, even if it is morally or politically,

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[99] On idea of post-Soviet state identity and its relation to international law see Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (n 61).

[100] L Mälksoo, *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR: A Study of the Tension between Normativity and Power in International Law* (M Nijhoff Publishers 2003).

[101] Peter Van Elsuwege, 'The Baltic States on the Road to EU Accession: Opportunities and Challenges.' (2002) 2 European Foreign Affairs Review 171.

[102] Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

[103] More concretely it is discussed in Simonyan, 'Regional International Law Revisited' (n 16) 316 *et. seq*.

[104] Alexander Iskandaryan, 'Former Post– USSR' (*Valdai Club*) <https://valdaiclub.com/a/highlights/former-post-ussr/> accessed 1 February 2024.

[105] For a comprehensive analysis of how Russia conducts its foreign policy with respect to territorial conflicts in post-Soviet Eurasia see also Johannes Socher, *Russia and the Right to Self-Determination in the Post-Soviet space* (First edition, Oxford University Press 2021).

is not what the international community would like to be.[106] Post-Soviet Eurasia, then, is the geographical space of such mediation efforts and spatial order where Russia's concept of international law is constructed.

Considering the complexities of defining post-Soviet Eurasia and the specific agency of the author at hand, this dissertation should be read only by combining these two aspects of defining post-Soviet Eurasia. Additionally, although it is visible that the usage of the term has certain caveats and to a certain degree of political bias, the observation frameworks in each article provided more in-context examination and definition of what is understood by post-Soviet Eurasia when a specific question was at hand to be discussed. This approach may add certain fragmented and loose conceptualisation of the term 'post-Soviet Eurasia,' but in all these cases, both pragmatic, instrumental, and political aspects of defining Eurasia, which has been demonstrated in this part, are kept intact.

These definitions, however, are never used for prescriptive purposes because neither do I aim to illustrate an emerging Russian-Eurasian epoch of international law (at least at a regional scale), [107] nor do I act as a Russia-apologetic who not only try to understand but also justify Russian actions.[108] Even if some of my articles sometimes align with realist tendencies through which I conceptualized the Russian-Eurasian international law concept,[109] it is not about promoting that Russian-Eurasian vision. This justification, however, does not also mean that I generalize regional international law as a threat to the unity and universality of international law. Quite the contrary, by elaborating on Eurasian international law as Russia's post-imperial/hegemonic concept, I also, in article 6, demonstrate that regional international law can be an alternative sustainable framework to solve long-lasting conflicts that remain at the center of the desovietization process of post-Soviet Eurasian space.

Finally, by defining and characterizing post-Soviet Eurasia, I have created a non-Eurocentric framework to look into the relevance and functionality of international law in a specific region.[110] This does not mean that I challenged the premises of Eurocentrism and proposed Eurasianism as an alternative but simply demonstrated how regional particularism matters for scholarly examination of post-Soviet Eurasian space both for descriptive and prescriptive purposes irrespective how one deconstructs the terms 'post-Soviet' or 'Eurasia.'

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[106] On Russian impact see section 6.2 and Simonyan, 'Regional International Law Revisited' (n 16).

[107] On epochs of international law see Grewe, *The Epochs of International Law* (n 32).

[108] On *Russlandversther* discourse in post-Soviet Eurasian science of international law see Mälksoo, 'Post-Soviet Eurasia, Uti Possidetis and the Clash Between Universal and Russian-Led Regional Understandings of International' (n 16) 792; Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (n 61).

[109] Simonyan, 'Regional International Law Revisited' (n 16) 331–332.

[110] Zarakol also uses this approach, but if she is interested in macro-historical analysis, my analysis is more microregional with a particular focus on a bunch of states that form the post-Soviet Eurasian spatiality. *See* Zarakol (n 94) 267–272.

4.2 Temporal scope

The dissertation focuses on the post-1991 period and the events that unfolded since the dissolution of the USSR. Although, in some cases, references to Soviet and Imperial Russia's practice of international law are made to trace certain continuities and discontinuities, the central timeframe of this dissertation remains between 1991 and 2024 when the dissertation is submitted. On a temporal dimension, it should be noted that during the elaboration of this dissertation, the war in Ukraine is still ongoing. Although the war is examined in different articles, its repercussions for post-Soviet Eurasian regional international law are guiding to trace specific rise and fall in Russia's consolidation attempt to reconstruct international law regionally in post-Soviet Eurasian space. As such, the war can be regarded as the end of regional international law (at least one phase as it may be circular) in post-Soviet Eurasian space. Even if I agree with this conclusion in some respect, I also consider that the fall of Russia-centered regional international law in post-Soviet Eurasia very much depends on the outcome of the war in Ukraine rather than the contemporary temporal *status quo*.

Empirically, recent events – the 2020 Nagorno Karabakh war, the 2022 CSTO's intervention in Kazakhstan, 2014 and the ongoing war between Russia and Ukraine – have been examined more intensely.[111] However, regarding regional integration law, the overall historical evolution is described from 1991 to current developments.[112] In that regard, this dissertation is not constructed based on specific chronological order. That being said, even if the events, cases, figures, and legal instruments examined are mostly post-1991, they only, within their generality and totality, provide answers to what extent Russia achieved consolidation of regional international law in post-Soviet Eurasian space. From that respect, the temporal dimensions of this dissertation are not chronological but are framed somewhat inconsistently, which is typical of the rise and fall narrative.

4.3 Sources Used

Various primary and secondary sources have been utilized and scrutinized throughout the dissertation. Given the interdisciplinary nature of this work, some emphasis has been placed on philosophical, historical, and political literature. However, these non-legal sources were only used as a supplementary means to trace normative deliberations. Through that acknowledgment, certain measures are considered in

[111] For recent events see articles 2 and 4. Simonyan, 'Regional International Law Revisited' (n 16); Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[112] See e.g., Simonyan, 'Eurasian Supranationalism' (n 60); see also Artur Simonyan, 'Institutional Balance as a Driver of the Development of the EAEU Law', *Obespecheniye Yedinoobraznogo Primeneniya Prava Yevraziyskogo Ekonomicheskogo Soyuza: Rol' Suda [ensuring the Uniform Application of the Law of the Eurasian Economic Union: The Role of the Court]* (EAEU Court Publication 2022).

articles to avoid any non-juridical alteration of the meaning of legal norms, principles, and discourse in the form of separating legal process, discourse, and analysis from a non-legal one. Therefore, the main focus of this dissertation remains firmly anchored on legal material, while the supplementary literature was employed to provide a more profound and extensive examination of Russia's attempts to establish a regionally fragmented international law in post-Soviet Eurasia.[113]

4.3.1 Primary sources

Primary sources comprise a significant part of this analysis regarding the observation of empirical evidence. Alongside cases of the International Court of Justice (ICJ), international treaties, and UN legal instruments (UNGA resolution, UNSC resolutions), more focus is given to regional legal instruments adopted within EAEU, SCO, CIS, and CSTO. Notably, in the article on Eurasian supranationalism, EAEU Court practice is examined alongside other instruments of the EAEU law.[114] In articles 2,3,4,5 and 6, treaties and conventions signed under the auspices of the SCO, EAEU, CSTO, and CIS, and at a bilateral level are examined.[115] Declarations and resolutions of these organizations were also scrutinized in several instances. In some cases, bilateral agreements between Russia and post-Soviet Eurasian states are examined separately.[116]

Specific attention was given to Russia's President Putin's speeches and declarations in different contexts. This approach is taken within the Russian legal-political landscape, where the President acts as a *de facto* monarch, and his (pseudo) historical narratives may influence legal discourse and affect domestic and even international law.[117] From a methodological viewpoint, that approach leads to a certain '*turn to presidentialism*' in Russia's concept of international law, where the President's personal (political) narratives may turn into normative claims. In that respect, it is noteworthy that scholarship defines '*Putin's concept of international law*'[118] as full of *tu quoque* argumentation and unilaterally interpreted

[113] The relevance of this non-normative literature for legal analysis is discussed in all articles separately from different perspectives.

[114] Simonyan, 'Eurasian Supranationalism' (n 60).

[115] Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59); Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (n 61).

[116] Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[117] This has been particularly visible in recent 2020 constitutional amendments in Russia. For further analysis of these amendments and Putin's personal role therein see Lauri Mälksoo, 'International Law and the 2020 Amendments to the Russian Constitution' (2021) 115 American Journal of International Law 78.

[118] The idea that there exists a specific 'Putin's concept to international law' belongs to Lauri Mälksoo.

historical narratives.[119] Although that aspect is not considered within articles in this thesis, I claim that methodologically, such argumentation based on logical fallacy has some normative relevance for Russian consolidation efforts. Instead of viewing these whataboutist tactics as a logical fallacy,[120] the articles within this dissertation considered Putin's concept of international law and whataboutist tactics from a dialectical logical system viewpoint, at least when Putin's encounters with post-Soviet Eurasian states are concerned. In a dialectical logical system,

> '…the participants themselves determine the reasonableness of the interlocutor's moves and they do so by applying their own standards. Discussants do not need a universal or shared standard of rationality; they need to observe the standards of their respective interlocutor because it is her resistance that launched the discussion in the first place. If we are to convince any interlocutor, we can succeed only if she is given arguments that are convincing to her. Perhaps, we might call this trans-subjective.'[121]

From that perspective, sympathies among elites (including lawyers, as discussed in article 5) in several post-Soviet Eurasian countries may bolster Russian (Putin's) narratives on how international law should be interpreted regionally and universally. This aspect becomes more instrumental for regional consolidation, considering that the president's role in defining how international law ought to be interpreted and applied is a common practice also in other post-Soviet Eurasian states – notably in Central Asia.[122]

4.3.2 Secondary Sources

Secondary sources formed another big part of this research project. Particularly, the examination of foreign language legal literature was central to this dissertation. Several books, articles, and dissertations written in native languages by post-Soviet Eurasian legal scholars were examined, most of them written in Russian. These included scholarly pieces written in English, Russian, French, and Armenian. Minimally, some sources in Kazakh and German languages were used with the help of online translation. When such online tools were employed, the translation content was confirmed informally with a native speaker. However, to eliminate any possible misinterpretation, the translations were combined with other

[119] See e.g., Eliav Lieblich, 'Whataboutism in International Law' (22 October 2023) 4 <https://papers.ssrn.com/abstract=4609679> accessed 27 February 2024, 4.

[120] On philosophical discussion of whataboutism and its relation to the concept of logical fallacy see Tracy Bowell, 'Whataboutisms: The Good, the Bad and the Ugly' (2023) 43 Informal Logic 91.

[121] Wouter H Slob, 'How to Distinguish Good and Bad Arguments: Dialogico– Rhetorical Normativity' (2002) 16 Argumentation 179, 185.

[122] See e.g., Marina Girshovich, 'Central Asian States' in Simon Chesterman, Hisashi Owada and Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (Oxford University Press 2019) 703.

sources (mainly in English, Russian, and Armenian) so as not to rely solely on these translations.

In the article on divisible college, where the publication patterns of post-Soviet Eurasian lawyers in Russian legal periodicals are examined, some quantification has been carried out to trace what post-Soviet Eurasian legal scholars publish in Russian law journals. However, it does not amount this dissertation to quantitative analysis but is used for analytical purposes.[123]

Finally, although the secondary sources also included non-juridical literature, these sources were mainly used to more comprehensively grasp the patterns of legal argumentations set forth by Russia in its consolidation tactics and how post-Soviet Eurasian states react to that process.

[123] Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (n 61).

5. STRUCTURE OF DISSERTATION

This dissertation is based on six postulates that, in combination, will demonstrate a) whether Russia has achieved its political aim of consolidation of post-Soviet Eurasian states around a single vision of regional international law (major task: means, tactics, and repercussions), b) and if regional international law as a framework can be utilized to address regional peculiarities that make post-Soviet Eurasian region specific (the minor task). These postulates have been scrutinized and researched within six articles. Although several other publications by the author are also included in this compendium, they have a very minimal role in addressing main statements of this dissertation. They are only considered as auxiliary sources, albeit all written and published as part of this research project.[124]

The first two articles analyze how regional international law as a concept is perceived both within the wider science of international law and contemporary developments of fragmentation of international law. Based on that examination, in articles 1 and 2, I conclude that in international legal scholarship, there is no uniform definition of regional international law that requires direct endorsement or rejection.[125] Notably, in article 1, I claim that within the science of international law, regional international law hinges on two different patterns: vertical-apologetic and horizontal-utopian, to use Koskenniemi's typology.[126] Article 1 demonstrates that while vertical-apologetic regional international law relates to great power politics and ultimately hinges on imperialism, horizontal-utopian regional international law reflects common historical past and cultural similarities between regional states that may boost solidarity within the specific region with a solidifying effect in regionalizing international law in that space to achieve more common goods.[127] Article 2 then continues the examination of regional international law under contemporary (post-1991) fragmentation debates and showcases that Russia has aimed to consolidate regional international law based on vertical-apologetic patterns, which is examined through Schmittian *grossraum* theory.[128]

Articles 3 and 4 reflect the normative repercussions of such consolidation of regional international law in post-Soviet Eurasian space when different concepts

[124] Most notably these two publications were used for auxiliary purposes. See Artur Simonyan, 'Symposium on Classism and the International Legal Profession: The Marginality of Post – Proletarian Societies in the Processes of Reconstruction of (Their) International Law' (*Opinio Juris*, 20 December 2022) <http://opiniojuris.org/2022/12/20/symposium-on-classism-and-the-international-legal-profession-the-marginality-of-post-proletarian-societies-in-the-processes-of-reconstruction-of-their-international-law/> accessed 7 February 2023; Simonyan, 'Institutional Balance as a Driver of the Development of the EAEU Law' (n 112).

[125] Simonyan, 'Science of International Law and Regional Orders' (n 39); Simonyan, 'Regional International Law Revisited' (n 16).

[126] On that differentiation see *ibid*, 35–36; for utopian and apologetic argumentation in international law see M Koskenniemi, *From Apology to Utopia the Structure of International Legal Argument* (Cambridge University Press 2006) 58–69.

[127] Simonyan, 'Science of International Law and Regional Orders' (n 39) 35–36.

[128] Simonyan, 'Regional International Law Revisited' (n 16) 312 et seq.

are concerned. By examining the legal-institutional specificities of the Eurasian Economic Union[129] and Russia's reconstruction of historic(al) rights arguments to conquer territories,[130] both articles represent how Russia aimed to alter the normative meaning of certain principles, norms, and legal discourses to further consolidate its political power over post-Soviet Eurasia by establishing (or at least aiming to) – still embryonic – regional legal system in form of Eurasian *grossraum*.

Article 5 addresses the role of international lawyers from the region in Russia's consolidation attempts.[131] It demonstrates that post-Soviet Eurasian lawyers are generally represented in Russia-dominated social arrangements (publication houses and journals, educational establishments, and places of legal practice) and form a specific divisible college of international lawyers in post-Soviet Eurasian space.[132] Meanwhile, it also argues that membership in that divisible college does not come with an apologetic stance towards Russia's revisionist ideas on international law applicable to post-Soviet Eurasian space, at least when their formal activity is concerned.[133]

The last article addresses the final postulate of using the regional international law framework for instrumental purposes. In view of searching how horizontal-utopian regional international law can be used in post-Soviet space, the article reflects on common historical past, cultural and political connectivity that exists in the post-Soviet Eurasian region, and based on that, it offers *de lege ferenda* conclusions.[134] Particularly, by examining the specificities of the desovietization process and the role of local expertise in countering Russia's post-imperial behavior, the article offers normative conclusions as to how the post-Soviet Eurasian states can opt for regional international law framework in order to cement spatial guarantee of their existence with a particular interpretation of *uti possidetis principle,* in its *a la Eurasienne* standing.[135]

Finally, this compendium offers conclusions on a) to what extent and how Russia has been successful or not in consolidating specific regional approaches to international law, and b) to what extent regional international law can be used in order to provide efficient *de lege ferenda* conclusions on diverse issues that post-Soviet Eurasian states face in contemporary times. Additionally, it thoroughly examines several aspects of the research project (geographical and temporal scope, method, etc.) that bind six articles to determine the connectivity between them and depict the successes and failures of Russia's consolidation attempt.

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[129] Simonyan, 'Eurasian Supranationalism' (n 60).

[130] Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[131] Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (n 61).

[132] ibid.

[133] ibid.

[134] Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

[135] ibid.

6. CORE FINDINGS

The rest of the compendium discusses, systematizes, and demonstrates the interlinks of six postulates in four sections. Each section then analyzes postulates based on the written articles, occasionally summarizing them but mainly demonstrating the interconnections between them and how they showcase the consolidation or failures of such by Russia to promote a single vision of regional international law in post-Soviet Eurasian space. The last section (6.4) then furnishes a synopsis of article 6 on how unifying forces can thwart Russia's consolidation attempt to formulate a regional approach.

Particularly, subsection 6.1 tackles the first two postulates on how the science of international law treats the concept of regional international law and how it is internalized in Russia's consolidation tactics. Subsection 6.2 considers the third postulate to understand the core practices, (emerging) norms, and legal discourses observable in Russian consolidation efforts. Subsection 6.3 addresses the fourth and fifth statements to understand the roles of international lawyers from the region in this process. Finally, subsection 6.4 engages with the last postulate to understand the benign effects of using regional international law framework by post-Soviet Eurasian states.

6.1 Two types of regional international law: Classifying Russia's consolidation

In this part, based on articles 1 and 2, I illustrate that the science of international law does not provide a clear-cut definition of regional international law that demands either complete rejection or approval based on its normative prescription.[136] Particularly, I argue that even if in the science of international law, regional international law is imagined differently, and scholars have provided a number of theoretical frameworks to view it, its location – especially within contemporary debates on the fragmentation of international law – is marginally assessed when geopolitical shifts, spatial (global linear) thinking is concerned.[137]

Notwithstanding, in those discussions, I abstain from discussing human rights frameworks where regionalism bears a more distinctive function – particularly when regional human rights mechanisms in Europe, America, and Africa are

[136] Simonyan, 'Science of International Law and Regional Orders' (n 39); Koagne Zouapet (n 39).

[137] The concept of regionalism meanwhile is researched more profoundly and was part of ILC's study. See Koskenniemi, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law Report of the Study Group of the International Law Commission' (n 38).

examined.[138] In the meantime, functional fragmentation, based on regime types, is still examined but solely from a theoretical perspective and in line with how it can be used by great powers to 'secure a region' when they want to restructure and repurpose international legal order according to their own ideological markings.[139]

To that end, this section specifies and concretizes what should be understood by regional international law within this dissertation and subsequently addresses the first and second postulates mentioned above. Overall, based on a multilayer examination of the theory of regional international law, Russia's consolidation attempt to form a regional international law is then captured within a theoretical framework titled 'Russian-Eurasian international law' based on vertical-apologetic (Schmittian) reading.[140] The subsequent sections (6.2 and 6.3) explore the impact of that Russian-Eurasian international law on the (re)construction of international law in the post-Soviet Eurasian region.

6.1.1 Science of international law and regional orders

Description of the problem: In the legal literature, scholarly utilization of 'the discourse of international law has… always been careful to denounce anything that could undermine the universality and unity of international law, and in so doing, has developed new ideas and mechanisms that can help to curb any risk of fragmentation, supposed or real.'[141] In that intellectual process, regional international law, therefore, for the most part, has been framed as a threat to universality.[142] Remarkably, no matter what political project regional international law contains, scholars view this normative construct with scepticism or, at best, a normative banner by great powers to advance their hegemonic policies, especially if regionalism is based on (hard) power projection.[143] The concept of

[138] On discussions of regional human rights systems see e.g., Alexandra Huneeus and Mikael Rask Madsen, 'Between Universalism and Regional Law and Politics: A Comparative History of the American, European, and African Human Rights Systems' (2018) 16 International Journal of Constitutional Law 136; Burns H Weston, Robin Ann Lukes and Kelly M Hnatt, 'Regional Human Rights Regimes: A Comparison and Appraisal' (1987) 20 Vanderbilt Journal of Transanational Law 585; Tae-Ung Baik, *Emerging Regional Human Rights Systems in Asia* (Cambridge University Press 2012).

[139] C Cai, 'New Great Powers and International Law in the 21st Century' (2013) 24 European Journal of International Law 755.

[140] Simonyan, 'Regional International Law Revisited' (n 16) 331–332.

[141] Koagne Zouapet (n 39) 1.

[142] For instance, in recent scholarship, scholars view normativity of 'regional international law' as being superficial. See e.g., Forteau (n 37).

[143] More recent discussions on this respect have been Salter-Koskenniemi debate in the Chinese Journal of International Law on contemporary usage of Schmittian *grossraum* concept as applied to the East Asian space. See Koskenniemi, 'Letter in Response to Michael Salter's Recent Paper on Carl Schmitt's Grossraum' (n 83); See also Achilles Skordas, 'Russia's Eurasian Großraum and its Consequences' (2022) Verfassungsblog <https://verfassungsblog.de/russias-eurasian-groraum-and-its-consequences/> accessed 19 January 2023.

American international law developed by Alejandro Alvarez and Jesus Yepes[144] was rejected by the same Latin American scholars on the grounds that it attacked the principle of universality, which is inherent to international law.[145] Even if the decolonial scholarship on regional international law in the African context is regarded more positively,[146] in the post-colonial period, regionalism as a concept is observed and internalized somewhat sceptically even by the ICJ.[147]

However, scholarly views on regional international law also reach another extremity, where regional international law not only reflects factual developments on the ground (power politics aspect) but is somewhat desirable in normative sense. From that perspective, it is claimed that '[t]here is no inherent superiority in either regionalism or universalism. The admittedly difficult task is to apply the best principles of federalism to international law by trying to find the level best equipped to deal with a specific problem.'[148] Therefore, when regional (international) law has been viewed as an effective panacea to *sui generis* questions, scholars are more open to incline towards it.[149]

Statement set forth to defend: As there is no outright definition of regional international law, there cannot be outright rejection or endorsement of this concept. Instead, the science of international law on regional orders requires case-by-case examination. Where imperialism is concerned with regard to regional international law, critical engagement with imperialist behavior is necessary.[150] This observation is crucial to separate modern Russia's usage of international law to construct its own 'greater space' from the *sui generis* nature of regional particularism of post-Soviet Eurasian legal issues where regional solutions may have more effective standing.

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[144] Yepes (n 23); Alvarez, *Le Droit International Américain: Son Fondement, Sa Nature D'après L'histoire Des États Du Nouveau Monde Et Leur Vie Politique Et Économique* (n 18).

[145] See e.g., Manoel Alvaro de Souza Sá Vianna, *De la non existence d'un droit international américain: presentée au Congrès Scientifique Latino-Américain* (Figueredo 1912).

[146] For instance, T.O. Elias book on Africa and development of international law has received positive connotations by such leading figures as T. Franck and C. Alexandrowicz. See Thomas M Franck, 'Review of Africa and the Development of International Law.' (1974) 68 The American Journal of International Law 758; CH Alexandrowicz, 'T.O. Elias, Africa and the Development of International Law' (1973) 25 Revue internationale de droit comparé 453.

[147] For instance, this has been in the Burkina Faso v Mali case, where the court rejected claims about the specific regional origin of the *uti possidetis* principle, instead claiming that it ought to be considered as a general principle of international law. See *Affaire Du Différend Frontalier (Burkina Faso v République Du Mali)* (Merits) [1986] ICJ paras. 20–21.

[148] Christoph Schreuer, 'Regionalism v. Universalism' (1995) 6 European Journal of International Law 477, 498.

[149] See e.g., Koagne Zouapet (n 39) 1.

[150] This is what Tzouvalaa and Kotova propose as overarching schema for viewing imperialism in international law. See Anastasiya Kotova and Ntina Tzouvala, 'In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law' (2022) 116 American Journal of International Law 710.

Reasoning: Historically, the existence of regional orders can be traced back to the expansion of the Eurocentric order and times that even predate that.[151] However, political projects of regional international law as part of the science of international legal and political thought have generally been linked to Monroe Doctrine in modern international law.[152]

1823 US President Monroe's speech at the US Congress highlighted the ban on the intervention of spatially alien powers in America, which has become a benchmark to classify any imperialist project, its territorial scope (regional orders aspect), and its relation with the principle of universality.[153] The Doctrine was even incorporated into the Covenant of the League of Nations.[154] Although the UN Charter erased any direct link to that Doctrine, contemporary scientists consistently refer to the Monroe Doctrine to trace the existence of regional orders in this or that space following the establishment of the UN system.[155] Anne Orford even thinks that the remnants of the Doctrine persisted to be formally existent in the UN Charter.[156]

Considering the overarching relevance of Monroe Doctrine, in article 1, I discuss this Doctrine and its relation to theorizations on regional international law by observing the legal scholarship of Chilean jurist Alejandro Alvarez and German constitutionalist Carl Schmitt.[157] I particularly argue that both scholars are paradigmatic in the regionalist discourse of international law. When Alvarez's scholarship constructed so-called American international law,[158] Carl Schmitt further generalized the Monroe Doctrine-based discourse of regionalism in international law within his *grossraume* theory.[159] Using the Monroe Doctrine's central tenets, I demonstrate how both scholars envisioned fragmented international law

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[151] On different regional orders see e.g., Ōnuma (n 6); CH Alexandrowicz, '"Jus Gentium" and the Law of Nature in Asia (1956)', in *The Law of Nations in Global History*, vol 1 (Oxford University Press 2017) 72.

[152] See e.g., Alejandro Alvarez, *The Monroe Doctrine: Its Importance in the International Life of the States of the New World* (WS Hein 2003).

[153] See e.g., Carl Schmitt, 'Großraum versus Universalism: The International Legal Struggle over the Monroe Doctrine' in Stephen Legg (ed), *Spatiality, sovereignty and Carl Schmitt: geographies of the Nomos* (Routledge 2011).

[154] The Covenant of the League of Nations particularly proclaimed that '[n]othing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.' See The Covenant of the League of Nations [1919] art 21; See also Philip Marshall Brown, 'The Monroe Doctrine and the League of Nations' (1920) 14 The American Journal of International Law 207.

[155] E.g., Orford, 'Regional Orders, Geopolitics, and the Future of International Law' (n 41); Jorgensen (n 41).

[156] Orford, 'Regional Orders' 165.

[157] Simonyan, 'Science of International Law and Regional Orders' (n 39).

[158] Alvarez and Rowe (n 23).

[159] Carl Schmitt, 'The Großraum Order of International Law with a Ban on Intervention for Spatially Foreign Powers: A Contribution to the Concept of Reich in International Law (1939–1941)' in Timothy Nunan (tr), *Writings on War* (Polity 2011).

within their theories applicable to the American hemisphere and Eastern and Central Europe, respectively.[160] Most notably, I demonstrate how both scholars separated the healthy core of the Monroe Doctrine – that is, non-intervention of spatially alien powers in specific regions – yet, based on that, elaborated different theoretical tactics to defend regional international law as a normative construct in the science of international law.[161]

I particularly focus on how both scholars constructed their theories to counter the principle of universality. Notably, I argue that from the Schmittian perspective, the uneasy relationship between regionalism and universalism stems from the cynical expansionist discourse of liberalism that is encapsulated in the principle of universality of international law.[162] I showcase that regionalism in the Schmittian understanding is necessary to curb nihilistic liberalism in the spatial dimension, as in the post-WWI period, the ontology of liberalism and universality principle interfused, leading to complete disregard of spatially determined *der nomos der erd* (Schmitt's 1950 book is called as such Nomos of the Earth).[163] For Alvarez, meanwhile, I argue that the universality principle needed to be restricted through regionalism because the latter's absolutist predisposition did not allow effective regulation of *sui generis* questions at a regional scale.[164] I conclude that the assessment of the interrelationship between the principle of universality and regionalism by both scholars, though centered over the Monroe Doctrine, was diametrically different from each other and provided different systematizations on how the principle of universality ought to be constrained through regional international law.

As their approaches to the interrelation between universality and regionalism differed, both scholars also functionalized the methods of constraining universal international law differently. If in Schmittian *grossraum* order, the central power (*Reich*) is paradigmatic to oppose the universalism of other central powers (the hard power vision),[165] Alvarez concluded that only continental (or regional) solidarity could help to contain absolutist universality in international law (the regional solidarity vision).[166]

Further, I observed how both scholars provided different functionalities for regional international law concerning the internal (geo)politics within a region. I particularly conclude that while for Schmitt, the central aspect of regional order is attached to the most powerful actor – the *Reich*– Alvarez considered that only regional solidarity can act as a functional milieu where *sui generis* regional issues

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160 Simonyan, 'Science of International Law and Regional Orders' (n 39) 23.

161 ibid 19–22.

162 ibid 28–29.

163 ibid.

164 ibid 33–35.

165 Schmitt, 'The Großraum Order of International Law with a Ban on Intervention for Spatially Foreign Powers: A Contribution to the Concept of Reich in International Law (1939–1941)' (n 159) 101.

166 Alvarez and Rowe (n 23).

are addressed.[167] Therefore, while in Schmitt's *grossraum* theory, the discussion spins around policies of the *Reich*, in the case of Alvarez's scholarship, regional forums – conferences, congresses, and other regional arrangements – preoccupy central space, as it is there that questions of a regional nature and character could be discussed to find continental solutions.[168]

Based on these two distinctive patterns, I argue that two types of regional international laws can be recognized in the science of international law: vertical-apologetic (aka Schmittian) and horizontal-utopian (aka Alvarezian).[169]

However, the discussions over the theory of regional international law do not end with Schmitt and Alvarez. In article 2, I also demonstrate how debates around regional international law as a concept are targeted under contemporary discussions regarding the fragmentation of international law.[170] Particularly, I argue that the nexus between the two is complex. From one respect, the 'end of history' narrative, as propagated by scholars in the early 1990s, universalized the discourse of liberal theory of international law, making fragmentation only a functional rather than a territorial issue.[171] But from another perspective, with the crisis of that liberal narrative,[172] I also argue that the discourse on regionalism – in its spatial dimension – has started to be (geo)politicized by Great Powers who sought to reconstruct the international law based on tenants of multipolarity and their own non-Western ideological markings and biases.[173] Based on that complex relationship, I observe that what unites these diametrically opposing developments is the ontological bases where ideological markings determine how this or that actor views unity or fragmentation in defining global legal order.[174] I conclude that within the clash of liberalism and regionalism, the geopolitical divisions ultimately started to penetrate the field of international law, dictating the change of the semantic and normative language of how different actors view, interpret, understand, and apply international norms and principles.[175]

I deduce that regionalism as a (geo)politicization discourse has started shaping and remaking the normative corpus of fragmentation to a degree where its normative deliberations could align with vertical-apologetic international law. From that respect, regional international law can act as a framework for great powers (*Reich*) to 'secure a region' by using opportunities provided by functional

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[167] Simonyan, 'Science of International Law and Regional Orders' (n 39) 27–34.

[168] ibid.

[169] ibid 35.

[170] Simonyan, 'Regional International Law Revisited' (n 16) 288–299.

[171] Slaughter (n 9); Franck (n 8).

[172] See also Anne Orford, *International Law and the Politics of History* (Cambridge University Press 2021) 44.

[173] See on this also Cai, 'New Great Powers' (n 139).

[174] See also Anne Peters, 'The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization' (2017) 15 International Journal of Constitutional Law 671, 700.

[175] Simonyan, 'Regional International Law Revisited' (n 16) 299–306.

fragmentation available in international law. Within that space, such geopolitical viewing can alter the normative content of different norms, principles, or legal discourses according to the ideological marking of central geopolitical powers – Russia, in our case. In this thesis, I conceptualize that trend as a *geopoliticization of international law*.

Overall, based on the observations of articles 1 and 2, I claim that from a theoretical point of view, Russia's consolidation attempt to secure a regional (Russian-Eurasian) international law is vertical-apologetic and in line with the geopoliticization of international law trend. This theoretical observation as a hypothesis is then tested in the remaining parts of article 2 and wholly in articles 3, 4, and 5 in different contexts. In that process, I do not explicitly refer to the term 'vertical-apologetic regional international law'; instead, I claim that Russia's vision of international law as applied to post-Soviet Eurasian space can be understood through the Schmittian *grossraum* order. From that perspective, therefore, vertical-apologetic regional international law and *grossraum* are synonymous within this dissertation.

6.1.2 Russia's vertical-apologetic approach: grossraum ordering

Description of the problem: After the collapse of the Soviet Union, Russia attempted to consolidate its power in post-Soviet space through various political and legal means.[176] The ways through which this consolidation has occurred are the regional integration law (law of the CIS, CSTO, EAEU) and the direct involvement of Russia in conflict management of disputes across post-Soviet Eurasia space (Nagorno Karabakh, 2022 CSTO's Kazakhstan intervention, Transnistria etc.).[177] Political scientists observe Russia's foreign policy agenda in post-Soviet Eurasia as an authoritarian rule promotion,[178] while Tom Ginsburg represents it as part of authoritarian international law.[179] In that regard, Russia's foreign policy and promotion of a single vision of international law is linked with authoritarianism at large, and its foreign policy conduct is a struggle against democracies generally and democratic rule promotion in post-Soviet Eurasian space particularly.[180]

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[176] On Russia's vision to consolidate post-Soviet states through legal means see Mälksoo, *Russian Approaches to International Law* (n 17) 194.

[177] On political repercussions of Russia's post-imperial foreign policy conduct concerning post-Soviet space see e.g., Elias Götz, 'Near Abroad: Russia's Role in Post-Soviet Eurasia' (2022) 74 Europe-Asia Studies 1529; On legal developments on Russia's approach to self-determination principle as a foreign policy tool see Socher (n 105).

[178] Anastassia V Obydenkova and Alexander Libman, *Authoritarian Regionalism in the World of International Organizations: Global Perspective and the Eurasian Enigma* (1st edn, Oxford University Press 2019).

[179] Ginsburg, 'Authoritarian International Law?' (n 12).

[180] See also 'How to Respond to Russia's Attacks on Democracy | German Marshall Fund of the United States' <https://www.gmfus.org/news/how-respond-russias-attacks-democracy>

These discussions, however, lose sight while solely concentrating on the dichotomy of democracies versus authoritarians. The civilizational argument in such analysis is either not present or marginally assessed.[181]

Statement set forth to defend: This section, ultimately, aims to represent the civilizational vision of Russia's consolidation efforts by deconstructing 'Russian-Eurasian international law' as a byproduct of authoritarian rule promotion. Notably, the statement set forth to be defended is that Russia, using vertical-apologetic regional international law tactics (*grossraum*-based), has been attempting to advance specific Russian-Eurasian vision of international law in post-Soviet space that showcases distinctive patterns of Russia's post-imperial, hegemonic vision of regional integration law of the EAEU, CSTO, and CIS coupled with geopolitically motivated mediation efforts of Russia to legally curb conflicts in post-Soviet space.

Reasoning: In article 2, this statement is observed from a historical-chronological perspective.[182] The collapse of the Soviet Union is regarded as a geopolitical catastrophe in Russian political and legal discourse.[183] Therefore, in article 2, I argue that from the outset, Russia's geopolitical vision to replace itself as the continuator of the Soviet Union was reflected not only in matters of state succession[184] but also in how Russia framed the law and politics of the post-Soviet regional organizations, including within the CIS, EurAzEs (later it turned Customs Union and finally EAEU), and CSTO. This all happened in line with the politics of post-Soviet Eurasian states to distance themselves from Russia and construct independent statehood. As such, the CIS Agreement proclaimed that 'the Union of Soviet Socialist Republics as a subject of international law and a geopolitical reality no longer exists.'[185] Article 2, in this respect, demonstrates how Russia since then has attempted to alter that reality and reinstate its domination, both politically and legally, by constructing a post-Soviet Eurasian regional order where norms of international law ought to be interpreted according to Russian ideological markings.[186]

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accessed 6 March 2024; Nisneyvich Y and Ryabnov A, 'Post-Soviet Authoritarianism: The Influence of Russia in Its "Near Abroad": Post-Soviet Affairs: Vol 28, No 1'.

[181] Notable exceptions – especially as regards Russia's vision of international law – are provided by Lauri Mälksoo. See e.g, Lauri Mälksoo, 'Aggression and the "Civilizational Turn" in Russian Politics of International Law' (*Völkerrechtsblog*, March 2022) <https://voelkerrechtsblog.org/aggression-and-the-civilizational-turn-in-russian-politics-of-international-law/> accessed 12 December 2022.

[182] Simonyan, 'Regional International Law Revisited' (n 16) 312 et seq.

[183] Notably such vision is shared also by President Putin. See Andrew Osborn, Andrey Ostroukh and Andrew Osborn, 'Putin Rues Soviet Collapse as Demise of "Historical Russia"' *Reuters* (12 December 2021) <https://www.reuters.com/world/europe/putin-rues-soviet-collapse-demise-historical-russia-2021-12-12/> accessed 8 February 2024.

[184] On Russia being continuator state of the Soviet Union see Ian Brownlie and James Crawford, *Brownlie's Principles of Public International Law* (Oxford University Press 2012) 427.

[185] 'Agreements Establishing the Commonwealth of Independent States'[1991] CIS.

[186] Simonyan, 'Regional International Law Revisited' (n 16) 312–317.

As I argue in the article, the CIS was an early attempt to consolidate Russia's power project through regional integration.[187] In its early history, it marked some success, especially when it came to regional consolidation to support Russia's international legal choices. CIS's endorsement of opposition to NATO's intervention in Kosovo is one such example.[188] At the institutional level, it has also been developed relatively fast and comprehensively by establishing interparliamentary and intergovernmental bodies and even an Economic Court.[189] Over time, however, CIS turned into a dysfunctional organization, marked by mostly informality practices and politicized rather than legalized character.[190]

After the failure of the CIS, I then concentrated on a trend of Eurasianisation that defined Russian foreign policy discourse in post-Soviet space. Already, the 2008 foreign policy document of the Russian Federation proclaimed that '…[a] distinctive feature of Russian foreign policy is its balance and multi-vector nature. This is due to Russia's geopolitical position as the largest Eurasian power, its status as one of the leading states in the world, and a permanent member of the UN Security Council. The interests of the country in modern conditions dictate the urgent need to actively promote a positive agenda across the entire range of international problems.'[191] Subsequent foreign policy documents proclaimed the same Eurasianist argument.[192] This shift chronologically has also been paired with the proliferation of political and philosophical literature in Russian academic circles on the Eurasianist nature of contemporary Russia, whose most prominent figure is Alexander Dugin.[193] On this shift, I notably argue that although there is no apparent institutional link between Dugin's political thought (or Eurasianist intellectual movement at large) and Russia's consolidation attempt to construct a regional international law in the post-Soviet region, the idea of Eurasianism that Russia proclaims as part of the distinctive civilizational character of its foreign policy is instrumentally very sympathetic to Duginian thought on multipolar order of *grossraume*.[194] I conclude that as such, 'post-Soviet Eurasia,' as a title, has become a political vector for regional international law promoted by the Russian Federation.[195]

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[187] ibid 313.

[188] See e.g., Heike Kreiger, 'Declaration Adopted by the Inter– Parliamentary Assembly of States Members of the Commonwealth of Independent States, 3 April 1999, UN Doc A/53/920–S/1999/461, Annex II, 22 April 1999', *The Kosovo Conflict and International Law: An Analytical Documentation 1974–1999* (Cambridge University Press 2014).

[189] Simonyan, 'Regional International Law Revisited' (n 16) 313.

[190] VG Burkov, KE Mescheryakov and RG Shamgunov, 'The Commonwealth of Independent States as a Way to a «Civilized Divorce»' (2016) Eurasian Integration: Economics, Law, Politics 93.

[191] 'Kontseptsiya vneshney politiki Rossiyskoy Federatsii [The Concept of Foreign Policy of the Russian Federation]' [2008] <http://kremlin.ru/acts/news/785> accessed 27 January 2024.

[192] See e.g., 'The Concept of the Foreign Policy of the Russian Federation' [2023] <https://mid.ru/en/foreign_policy/fundamental_documents/1860586/> accessed 8 February 2024.

[193] Dugin (n 96).

[194] On Dugin's promotion of Schmittian orders see ibid 74.

[195] Simonyan, 'Regional International Law Revisited' (n 16) 317.

I particularly conclude that by opting for the fragmentation of international law and the possibility to benefit from the regionalization of international law, Russia, geopolitically using Chapter VII of the UN Charter and Article XXIV of GATT, started to construct a regional order in post-Soviet Eurasian space.[196] As such, the argument is that Russian-Eurasian international law has been constructed instrumentally and institutionally through these regional integration projects.

The subsequent parts of this compendium, drawn from articles 2, 3, 4, and 5, provide more in-concrete examples of how the functionality of these organizations is reflected in Russia's consolidation attempt to promote a specific Russian-Eurasian view of international law in post-Soviet Eurasia.

6.2 Russian-Eurasian international law: emerging practices, norms, and principles

In this section, based on articles 2, 3, and 4, I demonstrate that Russia's efforts to consolidate post-Soviet Eurasian space are manifested in a number of ways. This part, therefore, addresses postulate 3 of this dissertation on emerging normative practices of Russia's consolidation efforts. First, in post-Soviet space, Russia geopoliticizes the discourse of conventional understanding of norms and principles of international law, which is reflected in its hypocritical application of these legal norms and principles in different conflicts.[197] In several cases, I argue that, in this form of consolidation, Russia does not aim to create or develop a regional norm; it only purports to (geo)politicize the discourse of a legal norm to be in line with its foreign policy goal to construct a *Russkiy Mir* or a Eurasian world – a geopolitical space of its legal and political activity.[198] In that deliberation, the attention is shifted to understanding how ideological markings affect Russia's consolidation practices. Such geopoliticization is the first characteristic of Russian-Eurasian international law.[199] This geopoliticization aspect is more thoroughly discussed in article 2, and therefore, in this compendium, it is represented solely as part of Russia's consolidation tactics without further description.

Secondly, I demonstrate that within different institutional and non-institutional settings, Russia aims to construct emerging regional practices or new norms – still not achieving customary rule status but remaining embryonic in form – that go against several principles and norms of international law. Such are: a) the institutionalization of the EAEU through the concept of supranationalism and weak judicialization, as is demonstrated in article 3, b) and the usage of

196 ibid 312–317.

197 On hypocritical application of international law in post-Soviet Eurasian context when self-determination principle is concerned see also Socher (n 105).

198 Simonyan, 'Regional International Law Revisited' (n 16) 312 et seq.

199 ibid.

historic(al) rights as the legal norms of the spatial organization of the post-Soviet Eurasian space as analyzed in article 4.

I conclude that both practices lack international or regional acquiescence and do not have a clear legal standing; they remain only quasi(legal) and embryonic formulations. They, however, reinforce the emergence of an embryonic form of a legal system where Russia aims to consolidate its vision of international law that, over time, can turn into functioning regional international law based on Russian ideological markings and geopolitical vision.

6.2.1 Institutionalization of regional integration law in post-Soviet Eurasian authoritarian and civilizational setting

Description of the problem: Jan Klabbers claims that in organizations where there is explicit domination of a single state, the separate personality of that organization then becomes the alter ego of the dominating state.[200] Subsequently, he supports his argumentation, referring to the example of the USSR's place within the Comecon and the Warsaw Pact.[201] In fact, the standing of these Soviet regional integration projects has always been highlighted with different characteristics under international law.[202] When Soviet jurists viewed them as champions of socialist principles of international law – notably distinguishing the principle of mutual assistance[203] – the Western lawyers considered them political arrangements of '*ex post facto* justification for [USSR's] unilateral decisions and an alliance which [USSR] could easily discard.'[204]

Is there a continuity between the Soviet legacy and the contemporary Russian vision of international law, especially in the context of regional integration law? [205] Lauri Mälksoo's vision of Eurasian integration projects speaks in favor of such continuity where Russia continues watching the EAEU, CSTO, and CIS as part of its post-imperial, post-hegemonic regional international law where basic norms and principles of international law can be reconfigured in Russia's vision,[206] and where *ex post facto* justification of Russia's actions are possible.

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[200] Jan Klabbers, *An Introduction to International Institutional Law* (4th. print, Cambridge Univ Press 2002) 317.

[201] ibid 317–318.

[202] See e.g., Thomas W Hoya, 'The Comecon General Conditions – A Socialist Unification of International Trade Law' (1970) 70 Columbia Law Review 253; Robin Remington, 'The Warsaw Pact: Institutional Dynamics Within the Socialist Commonwealth' (1973) 67 The American Journal of International Law 61; Laurien Crump and Simon Godard, 'Reassessing Communist International Organisations: A Comparative Analysis of COMECON and the Warsaw Pact in Relation to Their Cold War Competitors' (2018) 27 Contemporary European History 85.

[203] G Tunkin, *Theory of International Law* (Harvard University Press 1974) 427–449.

[204] See e.g., Remington (n 202) 64.

[205] On continuity issue see also Mälksoo, *Russian Approaches to International Law* (n 17) 3–12.

[206] Mälksoo, 'Post-Soviet Eurasia, Uti Possidetis and the Clash Between Universal and Russian-Led Regional Understandings of International' (n 16) 796.

If that assertion is correct, these organizations and their legal and institutional structures should formally and informally highlight that superiority component. Structurally, however, it is difficult to trace because, as Tom Ginsburg claimed, authoritarian regimes mimic and reproduce norms, practices, and principles from liberal-democratic societies when it comes to authoritarian regional integration law.[207]

This dissertation, however, proceeds with different methods by trying to understand where the differences between authoritarian and liberal regional integration laws lie. Even if it is empirically valid that from an institutional perspective, there is not much difference – especially when quantitative analysis is concerned[208] – between how liberal-democratic and authoritarian polities proclaim norms in founding charters of regional organizations, the civilizational, post-imperial syndrome may be traced a) at least in public and academic deliberations (that is in speeches and discourse of politicians and scholars) and b) within some institutional – at least informal, but also formal – frameworks of regional organizations that may reflect that top-down modality. In this subsection, based on article 3, I concentrate on one single case of the Eurasian integration project – the EAEU – to trace the functionality of the post-imperial regional integration law promoted by Russia. By observing how the concept of supranationalism has been framed within the scholarship of different epistemic communities in Russia/ Eurasia and in actual institutional practices of the EAEU, I offer conclusions on how this peculiarity becomes part of Russia's consolidation efforts.

Statement set forth to defend: Regional organizations play a very functional role in Russia's attempt to consolidate post-Soviet Eurasian states around one single narrative of international law. In scholarly visions of several Russian epistemic communities, these organizations are not more than an affirmation of Russia's *primus inter pares* status.[209] That status affirmation then showcases how legal norms, principles, and discourses may alter their traditional meaning according to the post-imperial visions of Russia and applied through mechanisms disposed of, patronaged, and financed by Russia. I claim that this superiority complex is not only reflected in scholarly writings of different epistemic communities but, in different ways, has become part of the institutional practices of regional organizations – particularly that of the EAEU – both in formal and informal ways.

Reasoning: In article 2, I argue that Russia's vision of regional integration law of post-Soviet space has a particular geopolitical resonance where integration

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[207] Tom Ginsburg, *Democracies and International Law* (1st edn, Cambridge University Press 2021) 193.

[208] See some of Ginsburg's works on differentiating authoritarian and democratic (liberal) states in Ginsburg, *Democracies and International Law* (n 209); Ginsburg, 'Authoritarian International Law?' (n 12); Tom Ginsburg, 'Article 2(4) and Authoritarian International Law' (2022) 116 AJIL Unbound 130.

[209] On Russian specific vision of sovereignty vis-à-vis post-Soviet Eurasian states see also Mälksoo, *Russian Approaches to International Law* (n 17) 100–109.

may align with the globalized economy but be reluctant to adhere to political proclamations of the unipolar momentum.[210] Ginsburg, on this particularities, contends that 'Russia's main international constructs, the Eurasian Economic Union, and the CSTO, have a territorial logic rather than a regime-type logic.'[211] Therefore, I claim that 'for promoters of political multipolarity, including Russia, regional integration law becomes a method to secure and concretize a specific region as a space for their geopolitical activity.'[212] This specific geopolitical logic subsequently alters the institutional law of these organisations, marking it with more civilizational and imperialist markings.[213] As a result of that imperialist logic, the attempts of successful integration either remain dim[214] or institutional constraints emerge that hinder the construction of *l'ordre juridique Eurasienne*, as I claimed elsewhere.[215]

The idea of Russian civilisational distinctiveness, as an epicentre of Eurasian order is enshrined also in Russia's foreign policy concept since 2008.[216] The 2023 foreign policy concept already proclaimed that:

> '…more than a thousand years of independent statehood, the cultural heritage of the preceding era, deep historical ties with the traditional European culture and other Eurasian cultures, and the ability to ensure harmonious coexistence of different peoples, ethnic, religious and linguistic groups on one common territory, which has been developed over many centuries, determine Russia's special position as a unique country-civilization and a vast Eurasian and Euro-Pacific power that brings together the Russian people and other peoples belonging to the cultural and civilizational community of the Russian world.'[217]

The purely 'non-European origin' of Russian civilisation is not a novelty.[218] As I demonstrate in article 3, in the 1920s, a new group of intellectual protagonists of Russia's non-European origin was mobilized in Russian emigree communities of Europe, who claimed the unique Eurasian civilizational

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[210] Simonyan, 'Regional International Law Revisited' (n 16) 321.

[211] Ginsburg, 'Article 2(4) and Authoritarian International Law' (n 208) 116.

[212] Simonyan, 'Regional International Law Revisited' (n 16) 317.

[213] See also Mälksoo, 'Post-Soviet Eurasia, Uti Possidetis and the Clash Between Universal and Russian-Led Regional Understandings of International' (n 16) 797.

[214] On recent rise and fall of regional integration law in post-Soveit Eurasia see Lauri Mälksoo, 'Rise and Fall of Regional International Law in Post-Soviet Eurasia' (2023) 66 Japanese Yearbook of International Law 318, 336.

[215] Simonyan, 'Institutional Balance as a Driver of the Development of the EAEU Law' (n 112) 289.

[216] 'Kontseptsiya vneshney politiki Rossiyskoy Federatsii [The Concept of Foreign Policy of the Russian Federation]' [2008] (n 191).

[217] 'The Concept of the Foreign Policy of the Russian Federation' [2023](n 192).

[218] For instance, for very long time Russian difference vis-à-vis Western civilization was part of discussions to introduce Russia as a unique Slavic civilisation that lies between the West and East. See generally N ÏA Danilevskiĭ, *Russia and Europe: The Slavic World's Political and Cultural Relations with the Germanic-Roman West* (Slavica 2013).

identity of the Russian state.[219] Based on the teachings of these intellectuals, I observe that their proclamations were not only ethnocultural claims but also an institutional proposal to look at state and law from different Eurasian angles in the Russian civilisation context. I evidence that assertation through writings of Eurasianist jurist Nikolay Alekseev (1879–1964), who, for instance, wrote that 'Russian culture is not international but supranational (*sverkhnatsional'noy*) and 'comprehensive'. It is astonishing as it could cultivate the 'comprehensive' principle. It could understand the big ideas of the East and connect with perceptions of Western ideals.'[220] Then, I compare the Eurasianists' claims with claims that resonate well in contemporary Russia's legal scholarship. Particularly, I demonstrate that in a contemporary context, Eurasianism acted as philosophical and sometimes even legal justification for pseudo-scientific claims regarding the post-Soviet Eurasian order. As such, some scholars have started to speak about the existence of a unique Eurasian legal family alongside continental and common law systems. [221]

By acknowledging the possible caveat that the direct link between the Eurasianist vision of Russian foreign policy and proclamations of Eurasianist scholars are shallow, I still claim that these scholarly deliberations may have a secondary influence over Russia's foreign policy choices that are deemed to be regarded as corrections of Soviet law and a return to pre-Soviet spatial order.[222] Ironically, however, the same 2023 foreign policy concept also notes the historical role of the Soviet Union in rethinking the contemporary global (legal) order.[223] In that regard, I claim that contemporary Russia's attempt to consolidate a certain vision of international law in post-Soviet Eurasia is nourished to some degree by civilizational (Eurasian) ideology and the Soviet role in determining the institutional setup of contemporary global legal order.

The analysing patterns demonstrate that such civilizational argumentation, both at scholarly and institutional levels, marked the internal dimension of restructuring the regional integration projects in post-Soviet Eurasia, sometimes formally yet sometimes in a hidden manner. For that reason, I have particularly focused on how Eurasianist and Soviet legal scholars viewed the

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[219] Simonyan, 'Eurasian Supranationalism' (n 60) 51.

[220] N Alekseyev, 'Sovetsky Federalizm [Soviet Federalism]' (1925) Kn. 5 Evrazisky Vremennik 121.

[221] N Shulepov, 'Kontseptsiya "Evrazeystkogo" Prava v Sovremennoy Komparativsitike [The Conception of Eurasian Law in Comparative Law]' (2017) Vestnik MGLU 220; Yuri Obortov, 'Obshepravovoe Razvitiya i Evrazeyskaya Pravovaya Sem'ya (General Law development and Eurasian legal family)' (2001) Philosophia Prava.

[222] On imperial discourse in the Russian concept of international law see e.g., Lauri Mälksoo, 'The Russian Concept of International Law as Imperial Legacy' in Peter Hilpold (ed), *European International Law Traditions* (Springer International Publishing 2021).

[223] 'The Concept of the Foreign Policy of the Russian Federation' [2023] (n 192). In this regard it is also nothworthy to understand that Soviet Union can also be understood as a specific form of empire. On Soviet Union as empire see Gurian W, *Soviet Imperialism: Its Origins and Tactics,* (University of Notre Dame Press, 1953)

concept of supranationalism to understand its functional specificities with the EAEU. In that article, the examination of the concept of supranationalism is selected for instrumental purposes. First, in contemporary international law, it is a single concept that alters the Hegelian logic of sovereignty. Second, through that concept, as employed within regional integration projects in post-Soviet Eurasian space, Russia can impose a specific vision of 'non-equal or graded sovereignty' (especially if such supranationalism is not based on the logic of pooling sovereignty) all in line with Jan Klabber's claim about most powerful states and their role in constructing alter egos of regional organizations.[224]

As article 3 demonstrated, while the Eurasianist lawyers and thinkers generally viewed the concept of supranationalism alongside cultural dimensions,[225] Soviet jurists, assessing it within the European integration context, viewed it as an attack on the state's sovereignty.[226] The findings, however, come to the conclusion that one common point that connects Soviet and Eurasianist scholars is their specific appreciation of the concept of supranationalism in the Russian/Eurasian space based on specific typology of states. When Eurasianists distinguished four types of states: parish, land, kingdom, and State-world, clearly positioning Russia as a State-world,[227] the Soviet authors, in reality, captured the real existence of such a typology within the Soviet's sphere of influence[228] where the principles of socialist international law become applicable.[229]

After the dissolution of the USSR, the experience of so-called Soviet 'supranationalism' was a key concern of post-Soviet Eurasian states based on their experience of Soviet type of supranationalism where *primus inter pares* status of Russian Soviet Federative Socialist Republic (RSFSR) was confirmed. Accordingly, Article 1 of the CIS Charter proclaimed that '[t]he Commonwealth shall not be a state and shall not be supranational.'[230] Until 2015, attempts to develop a supranational integration project were unsuccessful and rejected by post-Soviet Eurasian states.[231] A lot has changed since 2015 with the establishment of the EAEU, where the post-Soviet Eurasian state deliberately agreed to proceed with an integration project with a supranational

[224] Klabbers (n 200) 317.

[225] See e.g., Alekseyev (n 220); P Savitsky, *V bor'be za evrazeystvo [In the struggle for Eurasianism]* (Imp de Navarre 1931).

[226] Simonyan, 'Eurasian Supranationalism' (n 60) 53–54.

[227] RB Romanovskaya and AV Krimov, *Evrazeyskaya Doktrina Gosudarstva I Prava [Eurasian Doctrine of Law and State]* (Iz Nizhninobgorodskaya gosuniversiteta 2010) 32–33.

[228] VV Aspaturian, *The Union Republics in Soviet Diplomacy: A Study of Soviet Federalism in the Service of Soviet Foreign Policy* (Greenwood Press 1984) 29.

[229] Tunkin (n 203) 417 et seq.

[230] 'Charter of the Commonwealth of Independent States (with Declaration and Decisions)' [1991] CIS art 1.

[231] For trajectory of Eurasian integration see Karliuk (n 50) 51–74.

dimension.[232] This specific political and legal development is analysed in article 3.

I demonstrate how the EAEU law legalized the functionality of supranationalism in line with the political specificities of the post-Soviet Eurasian space. I particularly demonstrate that '[i]n practice, the Treaty does not provide a comprehensive legal basis to determine policy coordination based on competencies criteria.'[233] I observe that although the EAEU Court clarified that common policies form part of the supranational activity of the Union's bodies,[234] 'the Eurasian way of supranationalism is limited in policy spheres, supranational jurisdiction being balanced between the Member States as sovereign actors and supranational bodies.'[235]

I further claim that the same discrepancy exists also in the field of institutional design of the EAEU. The Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, the Eurasian Economic Commission (EEC), and the Court of the Eurasian Economic Union are the primary bodies of the EAEU.[236] Among these institutions, the supranational character is usually given to the EEC, which was represented as a quasi-supranational body.[237] The EAEU Commission, which is the permanent governing body of the Union, is a two-tier institution composed of a Council and a Collegium.[238] On the supranational character of this body, I claim that even if the EAEU Commission has several competences to regulate common policies as part of its supranational activity and its decision-making, which sometimes reflects supranational quality (especially when some qualified majority voting is concerned), several institutional obstacles are also in effect in the EAEU law to restrict the supranational activity of its bodies.[239] First, almost all decisions of supranational character can be altered by intergovernmental bodies of the

[232] 'Deklaratsia O Evrazeyskoy Ekonomicheskoy Integratsii [Declaration on Eurasian Economic Untegration]' [2011].

[233] Simonyan, 'Eurasian Supranationalism' (n 60) 59.

[234] See e.g., *Konsul'tativnoe zakluchenie po zayavleniyu Respubliki Belarus [Advisory Opinion on the request of the Republic of Belarus]* [2018] EAEU Court P– 1/18; *Konsul'tativnoe zakluchenie po zayavleniyu Natsional'noy palatii predprinimateley Respubliki Kazakhstan 'Atamken' [Advisory Opinion on the request of the National Commerce Chamber of Kazakhstan 'Atamken']* [2019] EAEU Court P– 1/19.

[235] Simonyan, 'Eurasian Supranationalism' (n 60) 60.

[236] 'Treaty on Eurasian Economic Union' art 8 [signed in 2014, entered into force 2015].

[237] See e.g., A Khurmatullina and A Malyi, 'The Supranationality Problem in the Formation of Interstate Associations' (2016) 17 Journal of Economics and Economic Education Research 304; O Pimenova, 'Pravovaya Integratsiiya v Eevropeeyskom Soyuze i Evrazeyskom Ekanomicheskom Soyuze: Sravnitelniy Analiz [Legal Integration in the European Union and the Eurasian Economic Union: Comparative Analysis]' (2019) 14 Vestnik Mezhdunardnoy Organizatsiey 76.

[238] 'Treaty on Eurasian Economic Union' (n 236) art 10.

[239] Simonyan, 'Eurasian Supranationalism' (n 60) 61–63.

EAEU.[240] Second, the Court is unwilling to favour the supranational activity of the Union as, in its decisions, the Court aligns with intergovernmental bodies, marking attacks against supranationalism as qualities to preserve the sovereign equality of Member States.[241] Finally, I claim that in the Eurasian understanding of supranationalism, the *po-ponyatyam* (informality) way of dealings outweighs formal procedures, and, through that *modus operendi*, the Russian superiority complexes are internalized.[242] Judge Neshatyeva from the EAEU Court also affirms that view by claiming that sovereign equality in Eurasian economic unions ought to be observed not in legal terms but from an actual strength standpoint.[243]

Another aspect that I focus on regarding the institutional specificity of the EAUE is the EAEU Court, which initially marked certain optimism that after the failure of the CIS Economic Court, a path to form a *union de droit* could be achievable within post-Soviet Eurasian legal landscape.[244] I, however, claim that similar to other institutions of the EAEU, the Court also remained a quasi-functioning body, especially when it comes to its judicial activism and involvement in the progressive development of the EAEU law.[245] Particularly, I demonstrate that unlike the Court of Justice of the European Union (CJEU), the EAEU Court has no preliminary ruling mechanism, is alienated from the domestic jurisdictions, and subsequently faces difficulties bringing closer domestic and supranational orders through harmonizing the law.[246] Further I show that unlike its predecessor, the EurAzEs Court, which developed certain level of judicial activism, notably in *Iushnii Kusbass* case,[247] the EAEU Court is restricted to 'alter, override Union law or the Member States' domestic legislation or create new legal rules.'[248] Its interpretative competencies are

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[240] 'Treaty on Eurasian Economic Union' (n 236) art 12(8), 12(9),16(7); 'Regulation of Eurasian Economic Commission' [2015] pt 30.

[241] *Konsul'tativnoe zakluchenie Bolshoy kolegii suda, [Advisory opinion of the Grand Collegium of the Court of the Eurasian Economic Union]* (EAEU Court) 3.

[242] See also Mälksoo, 'Post-Soviet Eurasia, Uti Possidetis and the Clash Between Universal and Russian-Led Regional Understandings of International' (n 16) 797; Simonyan, 'Eurasian Supranationalism' (n 60) 58.

[243] T Neshatayeva, 'Evrraziskaya Integratsiya: Obshie Tsennosti i Pravoviie Instituti [Eurasian Integration: Common Values and Legal Institutions]' 1 Zhurnal Zarubezhnogo Zakanadatel'stva I Sravnitel'nogo Pravovideniya 20, 22.

[244] On Failures of CIS Court and initial optimism regarding the EAEU Court see Kembayev (n 45) 63–68; Rilka Dragneva, 'The Case of the Economic Court of the CIS' in Robert Howse and others (eds), *The Legitimacy of International Trade Courts and Tribunals* (1st edn, Cambridge University Press 2018); AA Federtsov, 'Mezhdunarodnoe Pravosudie Yvlyaetsya Neot'emlemim Instiutom Evrazeyskoy Integratsii [International Judiciary Considered Integral Institution of Eurasian Integration]' (2015)EAEU Court Publication.

[245] Simonyan, 'Eurasian Supranationalism' (n 60) 63–65.

[246] ibid 64.

[247] *O raz"yasnenii i ispolnenii resheniya Kollegii Suda Yevraziyskogo ekonomicheskogo soobshchestva ot 5 sentyabrya 2012 goda* [2013] YevrAzEs Court YevrAzES – 1– 7/1– 2013.

[248] 'Statute of the Court of Eurasian Economic Union' [2015] pt 102.

restricted, while its decisions are generally non-enforced and lack direct effect over individuals living within the EAEU's jurisdiction.[249] Speaking on these restrictions, Judge Neshatayeva comments that 'not an order, but persuasion becomes an effective way of communicating between courts, including national ones. Perhaps, for this reason, the acts of the Court [EAEU] are executed voluntarily, and the question of enforceability has not yet arisen.'[250]

On this institutional specificity of the EAEU, I conclude that '[s]overeignty-based Eurasian integration, with its Russo-centric and hierarchical typology of States, has been the core for almost all academic communities in Eurasian space, with all these peculiarities being reflected in the institutional law of the Eurasian Economic Union.'[251]

6.2.2 Historic(al) Rights in post-Soviet Eurasia: The Russian perspective

Description of the problem: When great powers aim to restructure the international legal order, they bring novel argumentative patterns that not only semantically change the conventional language of international law but mark the emergence of embryonic legal systems where new principles, doctrines, and norms of international law are (attempted to be) validated.[252] Usually, as international adjudicative bodies are reluctant to approve such revisionist doctrines of international law as pushed forward by the New Great Powers, these actors find the regional forums – regional organizations and their political bodies – as more cost-effective validating channels for their (revisionist) argumentation.[253] This is especially relevant for the wider Eurasian geopolitical space, where judicial bodies within regional organizations remain impoverished.[254]

Statement set forth to defend: One such practice that can be traced in Russia's consolidation attempt is the revocation of historic(al) rights justification to validate its territorial expansions, especially recently in Ukraine, but also in other parts of post-Soviet space. In its struggle for recognition of its unprecedented and non-legally justified historic(al) rights argumentation, Russia a) acts together with other non-western powers – namely China – in an attempt to restructure international law, and b) uses the regional organizations in post-Soviet Eurasian space to justify – at least regionally – its claims, albeit not achieving to establish a

[249] Simonyan, 'Eurasian Supranationalism' (n 60) 65.

[250] Neshatayeva (n 243) 22.

[251] Simonyan, 'Eurasian Supranationalism' (n 60) 66.

[252] Jorgensen (n 41); Orford, 'Regional Orders, Geopolitics, and the Future of International Law' (n 41); Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[253] On non-Western vision of regionalism see Marcin Kaczmarski, 'Non-Western Visions of Regionalism: China's New Silk Road and Russia's Eurasian Economic Union' (2017) 93 International Affairs 1357.

[254] Among all regional organisations in Eurasia, only the EAEU has a standing Court.

regional (special) customary international norm, at least in this stage. Notably, Russia pushes forward specific legal discourse of historic(al) rights, aiming to challenge the post-1991 spatial guarantee of *uti possidetis juris* in post-Soviet Eurasian space. In this vision, historical justification of the right to (re)conquest of new territories becomes central to Russia's new *grossraum* ordering. More concretely, Russia sees Chinese legal discourse on the South China Sea as a legal precedent to push similar legal justification when it comes to its war in Ukraine. Russia then aims to validate its revisionist claims through regional channels, particularly the CIS and CSTO, by also claiming that post-Soviet Eurasia as a region forms a specific historical totality that has a single destiny.

Reasoning: Alongside the crisis of liberal international order,[255] new great powers strategically started to use international law to move forward with their unprecedented claims.[256] As Ian Hurds observes, on this development, international law is not an institutional constraint for powers but a language through which they legitimize their foreign policy choices.[257] One such prominent case is the Chinese assertion over territorial rights in the South China Sea.[258] Another case is Russia's historic(al) justification of territorial expansion in Ukraine.[259] Based on that, I claim in article 4 that what unites both great powers is their affinity with historical argumentation in framing legal claims.[260]

I begin the examination of article 4 by demonstrating that in a broader Eurasian context, the political organization of territories to which international law cannot be indifferent has always been related to a deep-rooted appreciation of history.[261] Notably, the ICJ, thereby, in the *Western Sahara* case, maintained that '[n]o rule of international law, in the view of the Court, requires the structure of a State to follow any particular pattern.'[262] Therefore, regional specificities of

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[255] Orford, *International Law and the Politics of History* (n 172) 44.

[256] Cai (n 139); Jorgensen (n 41); Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[257] Ian Hurd, *How to Do Things with International Law* (Princeton University Press 2017) 1, 11.

[258] For Chinese argumentations of territorial rights in South China Sea, see e.g., Florian Dupuy and Pierre – Marie Dupuy, 'A Legal Analysis of China's Historic Rights Claim in the South China Sea' (2013) 107 American Journal of International Law 124; James D Fry and Melissa H Loja, 'The Roots of Historic Title: Non– Western Pre– Colonial Normative Systems and Legal Resolution of Territorial Disputes' (2014) 27 Leiden Journal of International Law 727; Bill Hayton, 'The Modern Creation of China's "Historic Rights" Claim in the South China Sea' (2018) 49 Asian Affairs 370; Shi Cun Wu, Mark John Valencia and Nong Hong, *UN Convention on the Law of the Sea and the South China Sea* (Routledge 2020).

[259] On this issue see also P Hilpold, 'Ukraine, Crimea and New International Law: Balancing International Law with Arguments Drawn from History' (2015) 14 Chinese Journal of International Law 237; Christopher Borgen, 'Law, Rhetoric, Strategy: Russia and Self-Determination Before and After Crimea' (2015) 91 International Law Studies 216; Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[260] Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[261] ibid.

[262] *Western Sahara* (Merits) [1974] ICJ para. 94.

different systems of territorial organization (tributary, sultanate, or Islam-centric) have been recognized by the Court as being legitimate.[263] However, in practice, I also demonstrate how the Court almost always contended that 'claims about historic title over territory should be backed by the capability of enjoying territorial sovereignty over the disputed area,' thus, marking that territorial sovereignty is the only valid form and ought to be manifested on the level of exercising state competencies over specific territory.[264] From that perspective, territorial sovereignty, as I claim, has been universalized with the help of international adjudicative bodies, which almost always equalized the manifestation of sovereign rights with that of territorial jurisdiction.[265] The historical justification of belongingness of this or that territory to this or that state,[266] therefore, has been generally valued as non-juridical argumentation.[267]

Further, in article 4, I argue that Russia and China are paradigmatic in this struggle to normativize historical justification as a legitimate claim over territorial entitlements.[268] While for China, the memory of the tributary system – where China acted as sole sovereign as the centre of the earth – is determinative, for Russia, its historical connectedness to Byzantium-centred regional order (where supreme empire acted as a universal power within its dominion) has become fundamental to shape its current foreign policy.[269] In this latter aspect, I particularly demonstrate how the historical justification of Russia relates to the concept of vertical-apologetic regional international law. Based on that historical narrative, I contend that:

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[263] See e.g., *Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* (Merits) [2008] ICJ Rep. 12 p. 31; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening)* (Merits) [1998] ICJ; *Eritrea/Yemen – Sovereignty and Maritime Delimitation in the Red Sea* (Merits) [1996] PCA.

[264] Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[265] See e.g., *Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* (n 263) p. 31.

[266] More correct to claim 'entity' rather than 'state.'

[267] There is a difference between claims of historic rights on sea and land. Yehuda Blum is one of few scholars who attempted to represent legitimate pattern on historic titles on land. However, international lawyers and international community at large is reluctant to affirm those claims. On differences between historic rights on land and see see Yehuda Z Blum, *Historic Titles in International Law* (Springer Netherlands 1965); Clive Ralph Symmons, *Historic Waters and Historic Rights in the Law of the Sea: A Modern Reappraisal* (2nd edition, Nijhoff 2019).

[268] Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[269] Mälksoo, *Russian Approaches to International Law* (n 17) 185–192; Benjamin Reilly, 'Southeast Asia: In the Shadow of China' (2013) 24 Journal of Democracy 156; Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

> '[i]n determining the possibility of acquiring sovereignty over a territory, China and Russia have invoked historic titles as valid justifications that international law or at least their own regional approaches to it should take into consideration. Chinese and Russian claims have expanded beyond what international law can accommodate. As a result, the stance of both states over the South China Sea and Eastern Ukraine and Crimea have not been recognised by the wider international community and do not form a specific customary norm.'[270]

Nevertheless, even if their claims do not amount to the emergence of a regional customary norm in the wider Eurasian region, the claims are paradigmatic for the embryonic multipolar legal order that these powers view as an alternative to an international rules-based order in a fragmented world.[271] The legitimation of their claims, as my analysing patterns demonstrate in this regard, takes place in specific regional arrangements where, through economic, political, military, and cultural influences (or even coercion), such submissions become relatively burden-free to validate.[272] In the Chinese case – which is not a central aspect of this dissertation – I examined how China used the SCO to legitimize the (geo)politicization discourse of historical rights in the South China Sea by getting support for its anti-judicialization stance from Central Asian Republics.[273]

For Russia, I go into a more in-depth examination of the matter. Notably, I demonstrate that Russia's actions in Crimea and, recently, in Eastern Ukraine showcase similarities with the Chinese stance.[274] Like China, Russia makes unprecedented claims based on unilateral – and sometimes faux– interpretations of historical realities. In this vision, according to the Russian narrative, Crimea and Eastern Ukraine belong to Russia, and that is how historic(al) rights ought to be interpreted. From purely legal point of view, Russia's claims are baseless and contradictory to basic principles of the UN Charter and customary international norms, as the article further examines. This illegal interpretation, however, does not restrict Russia from trying to get support from post-Soviet Eurasian states for its historic(al) rights claims within regional organizations – notably CIS, CSTO, and EAEU – even if, until now, these attempts have not been successful: the majority of post-Soviet Eurasian states have not recognized Russia's annexations.

Additionally, as argued in the article, Russia goes further with its historizing discourse. In the post-Soviet Eurasian region, it aims to promote a historicized discourse of regional integration based on the common historical past of overcoming Nazism. That vision then Russia politically and legally incorporated within different declarations and resolutions adopted both at international and

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[270] Simonyan, 'Historic(al) Rights in Eurasia' (n 59).

[271] On differences between international rules-based order and international law see John Dugard, 'The Choice Before Us: International Law or a "Rules-Based International Order"?' (2023) 36(2) Leiden Journal of International Law 1.

[272] Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[273] ibid.

[274] ibid.

regional levels, where, in most cases, the post-Soviet Eurasian states came with affirmative stances.[275] Therefore, using the political bodies of the CIS, CSTO, and EAEU, Russia has aimed to consolidate specific political ideas based on historical unity that recognizes Russia's spatial supremacy and the reality that norms of the UN Charter, *uti possidetis juris*, inviolability of borders can be challenged if post-Soviet Eurasian states negate such reality.[276]

I conclude that even if Russia's historic(al) rights justification in conquering Ukrainian territory never amounted to the development of post-Soviet Eurasian customary rule of historic(al) rights, it contributed to Russia's consolidation attempt in the form of '[l]egitimis[ing] its spatial supremacy in return for guaranteeing (or at least trying to) the territorial integrity of post-Soviet Eurasian states. In that process, Russia has proven itself willing to challenge any doctrine that aims to preserve stability in the post-Soviet Eurasian region – the *uti possidetis juris* principle, in particular.'[277]

6.2.3 Geopoliticizing international law in post-Soviet space: Hypocrisy or a consistent trend?

Description of the problem: Russia, in constructing its legal relationship with other post-Soviet states, plays the role of a mediator in conflicts, occasionally offering resources to address internal disturbances, and as such (attempts to) acts as a guarantor of the national security of post-Soviet Eurasian states.[278] In all these encounters, Russia often applies international law hypocritically.[279] Particularly, as far as in Russian geopolitical discourse, post-Soviet Eurasia is considered its own sphere of influence;[280] it is the geopolitical logic and motivations, rather than

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[275] See e.g., 'Sovmestnoye Zayavleniye Gosudarstv – Chlenov Odkb Pri Prinyatii Proyekta Rezolyutsii Tret'yego Komiteta 77 – Y Sessii General'noy Assamblei Oon "Bor'ba S Geroizatsiyey Natsizma I Neonatsizma" [Joint Statement of the Csto Member States During the Adoption of the Draft Resolution of the Third Committee of the 77th Session of the Un General Assembly "Combating the Glorification of Nazism and Neo– Nazism"]' <https://odkb-csto.org/documents/statements/sovmestnoe-zayavlenie-gosudarstv-chlenov-odkb-pri-prinyatii-proekta-rezolyutsii-tretego-komiteta-77-/#loaded> accessed 11 April 2023; 'A/C.3/77/L.5 on Combating Glorification of Nazism, Neo– Nazism,and Other Practices That Contribute to Fuelling Contemporary Forms Ofracism, Racial Discrimination, Xenophobia and Related Intolerance'.

[276] Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 59).

[277] ibid.

[278] See e.g., Andrey Kortunov, 'Moscow's Painful Adjustment to the Post-Soviet space' (2022) Internationale Politik Quarterly'.

[279] *See* on this approach in Russia's vision of self-determination in Socher (n 105).

[280] On Russian post-Soviet sphere of influence policy see e.g.., Mikhail Suslov, '"Russian World" Concept: Post-Soviet Geopolitical Ideology and the Logic of "Spheres of Influence"' (2018) 23 Geopolitics 330; Elizabeth Cullen Dunn and Michael S Bobick, 'The Empire Strikes Back: War without War and Occupation without Occupation in the Russian Sphere of Influence' (2014) 41 American Ethnologist 405.

pacta sunt servanda, that determine the applicability of norms by Russia.[281] The impact of this specific policy for normative purposes can be framed as the geo-politicization of international law. In attempting to observe that empirically, the recent 2020 Armenia-Azerbaijani conflict and 2022 intervention in Kazakhstan are scrutinized in this subsection.

Statement set forth to defend: Russia, in post-Soviet space, geopolitically interprets norms of international law. Notably, it intervenes when conflicts may endanger its political idea of countering color revolutions and anti-Westernism (the case of Kazakhstan). Meanwhile, it may remain reluctant to do so if the conflict does not conflict with its foreign policy aims (case of the Armenia-Azerbaijani border delimitation and demarcation conflict). From that perspective, Russia not only can undermine norms of international law – Article 2(1) of the UN Charter, for instance – but also disregard customary international law such as the principle of *pacta sunt servanda*.[282]

Reasoning: Russia's interpretation and application of international legal norms have consistently been the subject of allegations of being hypocritical or based on double standards when it comes to post-Soviet Eurasian conflicts, namely Crimea Abkhazia, South Ossetia, and Nagorno Karabakh.[283] Meanwhile, Russia itself accuses the West of having double standards and almost always supports its unprecedent interpretation of international law through whataboutist tactics.[284] On this dilemma of why Russia acts differently in post-Soviet space, legal and political scientists contend that such a hypocritical behavior is conditioned upon the fact that Russia's foreign policy in post-Soviet Eurasian space is about countering Western-supported color revolutions and, subsequently, contributing to autocratic rule promotion.[285]

In article 2, I support this discussion on Russia's pick-and-choose hypocritical application of international law in post-Soviet Eurasia by focusing on how this behavior is founded on Russia's 'distancing from the West' ideology. More concretely, I observe how norms are interpreted within vertical-apologetic Russian-Eurasian international law that Russia has been trying to promote.[286] I particularly argue that when international legal norms do not clash with Russia's political

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[281] Simonyan, 'Regional International Law Revisited' (n 16) 322–327.

[282] This particularly refers to Russia's inactivity in involving at Armenia-Azerbaijani conflict with Azerbaijan although such obligation exists both at bilateral and multilateral levels for Russia. See 'Charter of the Collective Security Treaty Organization' [1992] art 4; 'Paymanagir Hayastani Hanrapetut'yan Yev Rrusastani Dashnut'yan Mijev Barekamut'yan, Hamagortsakts'ut'yan Yev P'vokhadardz Ognut'yan Masin [Treaty on Friendship, Cooperation and Return Assistance Between the Republic of Armenia and the Russian Federation]' [1997] arts 2–5.

[283] See generally Socher (n 105).

[284] See e.g., Lieblich (n 119).

[285] See e.g., Obdyenkova and Libman (n 178)

[286] See also Mälksoo, 'Post-Soviet Eurasia, Uti Possidetis and the Clash Between Universal and Russian-Led Regional Understandings of International' (n 16) 799; Obydenkova and Libman (n 178).

ideas encapsulated in the Russian-Eurasian international law framework, their applicability can be bolstered by Russia, whereas when norms of international law go against Russia's geopolitical aims, Russia could disregard and violate not only *pacta sunt servanda* but other foundational norms of the UN Charter.[287]

Empirically, in article 2, I demonstrate the validity of such a claim by focusing on Russia's legal stance towards conflicts that evolved in CSTO: Armenia-Azerbaijani border conflicts (not the Nagorno Karabakh war but the conflict between two states as regards delimitation and demarcation of their borders in post-2020 NK war period) and 2022 intervention in Kazakhstan. First, before observing these empirical cases, I demonstrate that in this regional organization, Russia's standing can be described as one by *primus inter pares* both politically, legally, and symbolically.[288] As such, when clashes between Armenia and Azerbaijan intensified in 2021, followed by the capture of sovereign territories of Armenia by Azerbaijan in the area of *Sev Lich* (Black Lake) and Syunik region,[289] Russia (but also other CSTO Member States) deliberately refused to activate Article 4 of CST to intervene that guarantees collective action in case a menace to the security of its member states (in this case Armenia) even if such legal requirement was at hand.[290] As a result, in February 2024, Armenia decided to freeze (politically and not legally, as CSTO does not provide such a mechanism) its membership in the CSTO.[291] Meanwhile, in 2022, when internal struggles in Kazakhstan intensified, followed by a popular uprising that could grow as another color revolution, Russia 'successfully intervened,' although the legal community considers such intervention as unlawful.[292] On this hypocritical approach I conclude that:

> '[i]n a *grossraum [*which Russia aims to construct in post-Soviet Eurasian space*]*, the absolute necessity is to ban the intervention of spatially alien powers, yet the *Reich* (legalized hegemony) preserves all types of freedom to determine cases where it is suitable to intervene in its own concrete regional order for maintaining the political idea. In this line of reasoning, in the case of Armenia and Azerbaijan, there was nothing that hindered Russia's political idea that it aims to disseminate in its post-Soviet Eurasian region. In contrast, in the case of Kazakhstan, where unrests could have critically challenged the anti-western political idea of Russia-Eurasia, Russia has had more reasons to intervene to ban spatially alien powers-liberal West, particularly to disseminate counter-political ideas.'[293]

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[287] On this aspect see also Mälksoo, 'Aggression and the "Civilizational Turn" in Russian Politics of International Law' (n 181).

[288] See also Simonyan, 'Symposium on Classism and the International Legal Profession' (n 124).

[289] This is not part of Nagorno Karabakh territory but Armenian sovereign territories per se.

[290] Collective Security Treaty [1992] Art. 4.

[291] 'Armenia Freezes Participation in Russia-Led Security Bloc – Prime Minister' *Reuters* (23 February 2024) <https://www.reuters.com/world/asia-pacific/armenia-freezes-participation-russia-led-security-bloc-prime-minister-2024-02-23/> accessed 6 March 2024.

[292] See e.g., Florian Kriener and Leonie Brassat, 'Quashing Protests Abroad: The CSTO's Intervention in Kazakhstan' (2023) 10 Journal on the Use of Force and International Law 271.

[293] Simonyan, 'Regional International Law Revisited' (n 16) 326–327.

6.3 Russia and international lawyers in Post-Soviet Eurasia: structures

In this section, based on the findings of article 5, I contend that the Soviet legacy and post-Soviet Russia's consolidation efforts considerably impacted how international lawyers in post-Soviet space approach, analyze, and interpret international law in the post-1990 period.[294] Notably, the common historical past, a specific type of legal analysis, and the existence of joint social arrangements (legal education, common publication, and practicing places) patronaged by Russia formed a sort of 'geoeducational' space where post-Soviet Eurasian lawyers could overcome their marginalized standing in the competitive, west-centric invisible college of international lawyers as defined by Oscar Schacter.[295] Considering that specificity, this section demonstrates how a) Russia used these social arrangements to form a divisible college of international lawyers as part of its consolidation efforts to promote a Russia-centered vertical-apologetic international law, and 2) to what extent these scholars are inclined to these efforts and showcase a Russia-apologetics behavior.

6.3.1 Russia-centered social arrangements and post-Soviet Eurasian international lawyers

Description of the problem: In the post-Soviet period, connectivity between lawyers across post-Soviet Eurasian states was maintained thanks to shared history, knowledge of the Russian language, similarities of education, cultural connectivity, educational exchange, similar law school structures, and syllabuses (especially when teaching international law is concerned).[296] These social validation channels were almost always dominated by Russia, which promoted the inclusion of post-Soviet Eurasian lawyers in these social arrangements, where they could develop their own agency and interact with each other at a regional scale.[297] In that sense, the instrumental usage of these social arrangements could likely bolster a more consolidated regional approach to international law, as Russia envisioned in its domination tactics.

Statement set forth to defend: In post-Soviet Eurasia, Russia has developed, financed, and patronaged joint social arrangements where interaction between post-Soviet lawyers occurs. With these structures, Russia aims to further consolidate the regional approach to international law by using the agency of a divisible college

[294] Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (n 61).
[295] See also Artur Simonyan, 'Symposium on Classism and the International Legal Profession' (124)
[296] Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (n 61).
[297] ibid.

of international lawyers to make them protagonists of Russia's 'Eurasianist' standing.

Reasoning: In 1977, Oscar Schacter depicted the existence of an invisible college of international lawyers where lawyers from different jurisdictions engage in discourse setting and idea exchanging regarding international law within distinct social arrangements, having the same intellectual vocation to contribute to the progressive development of this joint intellectual field.[298] Although this group has never achieved a universal composition during the Cold War and its membership has always been West-centered, contemporary scholars believed that in the post-1991 period, the invisible college would finally debracket itself to include lawyers from the third world.[299]

Anthea Robert's 2018 book 'Is International Law International?,' in this respect, has become a watershed to discredit this naïve belief of the liberal narrative of universality and, conversely, through the realistic pursuit of it, has demonstrated that the international (more accurately to say transnational) legal community is divided, especially when it comes to how different national and regional actors apprehend and interpret international law in different jurisdictions.[300] Robert's book was well-received by international lawyers, but its subsequent examinations have never included the sub-regional divisions.[301] Similarly, much of the content of critical approaches to international law has evolved around demonstrating how different people view international law in different places instead of viewing it within the geopolitical aim of regional consolidation.[302]

In article 5, I claim that in a very empirical sense, these developments mean that if Russia has its own illiberal approach to international law,[303] which it aims to promote within post-Soviet Eurasian space, then one possible social validation channel where this promotion is possible is these shared arrangements where interaction between international lawyers from the region occur. Based on these interactions, these shared arrangements would likely reflect the specificities of that regional international law promotion.

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[298] Oscar Schachter, 'Invisible College of International Lawyers' (1977) 72 Northwestern University Law Review 217.

[299] On contemporary vision of invisible college see symposium organized at Opinio Juris. Chris Carpenter and Dimitrios Kourtis, 'The Visible C of the Invisible College: Classism and the International Legal Profession – Symposium Introduction' (*Opinio Juris*, 19 December 2022) <https://opiniojuris.org/2022/12/19/the-visible-c-of-the-invisible-college-classism-and-the-international-legal-profession-symposium-introduction/> accessed 22 April 2023.

[300] See generally Roberts (n 11).

[301] Certain exceptions exist. See e.g., Gleider Hernández, 'E Pluribus Unum? A Divisible College?: Reflections on the International Legal Profession' (2018) 29 European Journal of International Law 1003; Jason Beckett, 'The Divisible College: A Day in the Lives of Public International Law' (2022) 23 German Law Journal 1159.

[302] Even Kennedy's first contribution on critical legal studies included highlight of differences between how law is perceived differently in US and non-US (particularly in that case Uruguayan) space. See David Kennedy, 'Spring Break' (1984) 63 Texas Law Review 1377.

[303] Mälksoo, *Russian Approaches to International Law* (n 17).

Several empirical foundations lend credence to the legitimacy of such a claim. Russia, at different levels, constructed social arrangements to bring lawyers from the region closer, as article 5 in different sections demonstrated. First, the article demonstrates Russia's leading standing in the educational flows of students from the post-Soviet Eurasian region, also when it comes to the study of international law.[304] Further, the article elucidates how Russia fosters the establishment of higher educational institutions in post-Soviet Eurasian states, where education – also in law – is not only conducted in Russian and with the extensive usage of Russian language literature but also critical figures of international law in these institutions remain Tunkin, Kozhevnikov, Chernichenko, Lidia Modzhorian – a guard of Soviet international legal scholars who hardly were part of invisible college as imagined by Oscar Schacter.[305] Next, the article examines the publication patterns of post-Soviet Eurasian international lawyers in Russian law journals and compares that publication frequency and activity to their marginal participation in Western elite publication houses; post-Soviet Eurasian international lawyers mainly publish in Russia and in Russian and not in English and Western publication houses.[306] Finally, the article demonstrates that places to practice international law remain Russia-centered – namely, the secretariats and institutions of the EAEU, CSTO, CIS, and SCO.[307]

Observing these specific social arrangements, I conclude that Russia's attempt to develop social arrangements where post-Soviet Eurasian international lawyers can interact has been successful.[308] That success then is analyzed in the background of Russia's attempt to consolidate a *grossraum* order in post-Soviet Eurasia and the region's lawyers' role therein.

6.3.2 Post-Soviet Eurasian international lawyers and promotion of Russian-Eurasian international law

Description of the problem: Russia's attempt to develop joint social arrangements where post-Soviet Eurasian scholars could develop a shared understanding of international law can be regarded successful as some scholars, for self-esteem reasons or reasons of the bourgeois-capitalist structure of the invisible college of international law, joined the divisible college where Russia's standing is exclusive.[309] However, the central question in this respect remains to understand how these lawyers' behavior can be characterized in line with Russia's consolidation tactics.

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[304] See the patterns of educational flows in the region in 'Global Flow of Tertiary-Level Students' <https://uis.unesco.org/en/uis-student-flow> accessed 18 April 2023.

[305] Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (n 61).

[306] ibid.

[307] ibid.

[308] ibid.

[309] ibid.

Statement set forth to defend: Even if post-Soviet international lawyers joined the Russia-centered divisible college of international lawyers, they, in most cases, did not act as Russian apologetics in their deliberations on international law. Although some shared commonalities unite these scholars, they mostly remain *porte paroles* of their nation states within these social arrangements.

Reasoning: It may seem that existing institutional arrangements would lead to promoting a specific shared approach to international law among members of such a divisible college.[310] However, the examination patterns of article 5 have demonstrated that causation between membership in divisible college and Russia-apologetic behavioral patterns is not correlated, especially when it comes to their formal activities (research, education, practice).

First, I argue that when international lawyers from post-Soviet Eurasian states appear in these shared socialization arrangements, they come with a specific political purpose to present nationally concerned topics.[311] Second, I conclude that even if for some self-esteem and other reasons, in post-Soviet Eurasia, being international lawyer sometimes is affirmed through participation in Russia-centered divisible college (as other transnational settings, such as Western academia, remain close), 'the post-Soviet Eurasian scholar's positionality in this divisible college can be described as representing national foreign policy choices in a milieu where they are comparatively more visible, are published more easily and participate in conferences and other events burden-free.'[312]

Therefore, even if Russia has established joined social arrangements where post-Soviet Eurasian lawyers formed a divisible college, this epistemic community is formally not in charge of consolidating Russia's vertical-apologetic Eurasian international law in their scholarly and practical activity. Some psychological and informal support is not excluded, but that aspect has not been examined in article 5.

6.4 Benefiting from regional international law: *de lege ferenda* proposition

Description of the problem: As I claim in article 1, regional international law as a framework, alongside being a challenge to the unity and universality of international law, presents prospects to handle regional affairs more concretely and addresses the *sui generis* challenges of regional level more effectively.[313] Several

[310] Jean d'Aspremont and others (eds), *International Law as a Profession* (Cambridge University Press 2017) 2.

[311] Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' (n 61).

[312] ibid.

[313] Simonyan, 'Science of International Law and Regional Orders' (n 39); Koagne Zouapet (n 39); Alvarez, *Le Droit International Américain: Son Fondement, Sa Nature D'après L'histoire Des États Du Nouveau Monde Et Leur Vie Politique Et Économique* (n 18); Elias (n 24).

scholars have also expressed such opinions while observing the application of international law in a number of regions, including Africa and Latin America.[314] In post-Soviet Eurasia, this aspect is specifically essential when the desovietization of international law is concerned – a distinct 'post-colonial momentum'[315] that ensued following the USSR's dissolution.[316] One distinctive mark is that the desovietization of international law in the post-Soviet Eurasian region has been occurring under the post-hegemonic behavior of Russia (as represented in articles 2,3,4 and 5), which is marked by destabilizing activities by the former empire (Soviet Union is also understood as an imperial entity from such viewpoint), especially by way of challenging the spatial guarantee – *uti possidetis juris* – in the post-Soviet Eurasian region.[317] Taking those aspects into consideration, in this process, not only it is vital to consider patterns of understanding and describing the desovietization of international law in post-Soviet Eurasian space but also, based on that deliberations, propose *de lege ferenda* conclusions that can be applied to effectively find solutions for disputes in the post-Soviet Eurasian region – namely the territorial conflicts. Article 6, therefore, includes observations of that specificity, albeit at an embryonic, introductory level.

Statement set forth to defend: In post-Soviet Eurasian space, contrary to the Russian vision of *grossraum* order, the normative usage of regional international law framework for prescriptive purposes may be justified to provide *de lege ferenda* interpretations that consider historical, cultural, and political particularism that form the specificities of this region. In that regard, while Russia's vision of *grossraum* (a vertical-apologetic type of regional order) may challenge spatial stability – the *uti possidetis* norm, particularly – the reassessment of a benign form of regional international law would provide a structural milieu to develop legal imaginative tactics where regional interpretation of norms cannot be perceived as a challenge to the unity and universality of international law but measures to raise its effectiveness. In post-Soviet Eurasia, this regional particularity is based on the fact that desovietization differs from decolonization in a number of structural ways. Based on these peculiarities, the article proposes *uti possidetis à la Eurasienne* principle as a future law (*de lege ferenda*) conclusion.

Reasoning: In the post-1991 period, the most fundamental principle that provided a spatial guarantee to post-Communist (not only post-Soviet Eurasia but

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[314] Alvarez, *Le Droit International Américain: Son Fondement, Sa Nature D'après L'histoire Des États Du Nouveau Monde Et Leur Vie Politique Et Économique* (n 18); Bipoun-Woum (n 24); Koagne Zouapet (n 39).

[315] Although the distinction between decolonisation and desovetiziation is represented in this part, the term post-colonial also can be capturing for post-1991 events that happened in post-Soviet Eurasia.

[316] On decolonisation of international law see Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press 2011); Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

[317] Simonyan, 'Regional International Law Revisited' (n 16) 312 et seq; Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

also post-Communist Yugoslavia) space was *uti possidetis juris* (when the administrative border of the former state became the basis of new states)[318] that the ICJ recognized as a general principle.[319] Throughout the 1990s, Russia, both at bilateral and multilateral levels, concluded several treaties with post-Soviet states that recognized spatial guarantee, particularly the inviolability of borders, as decided in 1991 based on this principle.[320] Since then, major legal and geo-political conflicts in post-Soviet space have been linked to violating norms of territorial integrity and *uti possidetis* or revisionist interpretations of secessionism by Russia and other powers.[321] Additionally, the very idea of maintaining these administrative borders as the basis of new interstate borders even shaped regional integration in post-Soviet Central Asia as the central political aim of SCO was very much the delimitation and demarcation of borders between Central Asian Republics, China, and Russia.[322] From this perspective, direct challenges to this principle of spatial guarantee intensified in the post-2008 period, followed by the Russian-Georgian August war, where the territorial status quo of post-Soviet space was challenged seriously for the first time. Then, the annexation of Crimea in 2014, the 2020–2023 Armenia-Azerbaijani conflict over Nagorno Karabakh (that led to an exodus of 120000 Armenians living there and the Nagorno Karabakh ceased to exist as of January 1, 2024), and the 2022 Russian invasion of

[318] Alain Pellet, 'The Opinions of the Badinter Arbitration Committee A Second Breath for the Self– Determination of Peoples' (1992) 3 European Journal of International Law 178.

[319] *Affaire Du Différend Frontalier (Burkina Faso v. République Du Mali)* (n 147) para 20–21.

[320] The inviolability of borders and uti possidetis are not identical but interconnected. In this respect, the article does not concentrate on differentiating and situating both. Instead, it focuses on observation of *uti possidetis* principle from regional perspective. For treaties between Russia and other post-Soviet states see e.g., 'Charter of the Commonwealth of Independent States (with Declaration and Decisions)' (n 230); 'The Treaty of Friendship and Cooperation Between the Russian Federation and Turkmenistan'; 'The Treaty of Friendship, Cooperation and Mutual Aid Between the Republic Kyrgyzstan and the Russian Federation'; 'Treaty Between the Russian Federation and Republic of Belarus on Friendship, Neighborliness and Cooperation'; 'Treaty on Friendship, Good Neighbourliness and Cooperation Between Ukrainian Soviet Socialist Republic and Russian Soviet Federative Socialist Republic'; 'Paymanagir Hayastani Hanrapetut'yan Yev Rrusastani Dashnut'yan Mijev Barekamut'yan, Hamagortsakts'ut'yan Yev P'vokhadardz Ognut'yan Masin [Treaty on Friendship, Cooperation and Return Assistance Between the Republic of Armenia and the Russian Federation]' (n 282).

[321] On political and legal argumentation behind post-Soviet secessionism see e.g., Daria Isachenko, Mykhailo Minakov and Gwendolyn Sasse (eds), *Post-Soviet Secessionism: Nation-Building and State-Failure after Communism* (ibidem Press 2021); Gary Wilson, 'Secession and Intervention in the Former Soviet Space: The Crimean Incident and Russian Interference in Its "Near Abroad"' (2016) 37 Liverpool Law Review 153.

[322] Aris, *Eurasian Regionalism* (n 45) 28.

Ukraine followed.[323] In these cases, the central principle violated is *uti possidetis juris*.[324]

Interestingly, however, in each of these cases, most states showed discontent with what was set in the 1990s as the legal basis of a spatial guarantee of the region.[325] Russia maintained that some of its territories were solely gifted to Kazakhstan and Ukraine during Soviet times.[326] Armenia maintained that the rights of ethnic minorities and self-determination are in clash with *uti possidetis*.[327] Azerbaijan maintained that *uti possidetis* is relevant, but, in the post-2020 war period, is reluctant to recognize that principle anymore for political purposes and pushes forward historic(al) rights justification.[328] Ukraine fights for the preservation of the status quo established in 1991 but incidentally cast that fight as preserving the peace in Europe and not referring to the fight as preservation of the very much that spatial guarantee set in the 1990s.[329] Border clashes occur in Central Asia too, alongside concerns of Russia's imperial behavior.[330] Within this geopolitical context, legal scholars maintain that it is peculiar to return to 1990

[323] For chronological assessment in view of understanding the role of *uti possidetis* see e.g., Júlia Miklasová, 'Dissolution of the Soviet Union Thirty Years On: Re-Appraisal of the Relevance of the Principle of Uti Possidetis Iuris' in Jorge E Viñuales and others (eds), *The International Legal Order in the XXIst Century / L'ordre juridique international au XXIeme siècle / El órden jurídico internacional en el siglo XXI* (Brill | Nijhoff 2023).

[324] Mälksoo, 'Post-Soviet Eurasia, Uti Possidetis and the Clash Between Universal and Russian-Led Regional Understandings of International' (n 16).

[325] Especially Armenia, Georgia, and Azerbaijan proclaimed that they want to follow state continuity doctrine, yet their demands have never been recognized by international community. More on this aspect in Simonyan, 'International Lawyers in post-Soviet Eurasia' (n 61).

[326] See e.g., '«Bol'shoy Podarok». Vyskazyvaniya Rossiyskikh Deputatov O Territorii Kazakhstana Vyzvali Vozmushcheniye ["Big Gifts." Statements by Russian Deputies About the Territory of Kazakhstan Caused Indignation]' *Radio Azatti'k* (18:58:55Z) <https://rus.azattyq.org/a/kazakhstanis-reaction-to-the-statements-o-russian-deputies-about-the-kazakh-territory/31002411.html> accessed 16 January 2023.

[327] Arman Sarvarian, 'Uti Possidetis Iuris in the Twenty– First Century: Consensual or Customary?' (2015) 22 International Journal on Minority and Group Rights 511. This pattern, however, is shifting in recent years.

[328] For Instance, in his recent February 2024 interview, Azerbaijani president Ilham Alieyev maintained that delimitation of borders between Armenia and Azerbaijan ought to be conducted based on historical maps of First Republic of Armenia (1918– 1920) and First Republic of Azerbaijan (1918– 1920). See e.g., Tigran Grigoryan, 'Azerbaijan Seeks a "Victor's Peace" with Armenia' (*Civilnet*, 19 January 2024) <https://www.civilnet.am/en/news/762270/azerbaijan-seeks-a-victors-peace-with-armenia/> accessed 5 March 2024.

[329] On political assessment what this conflict means see 'Ukraine: Conflict at the Crossroads of Europe and Russia' (*Council on Foreign Relations*) <https://www.cfr.org/backgrounder/ukraine-conflict-crossroads-europe-and-russia> accessed 7 February 2024.

[330] Julia Emtseva, 'Small Conflicts with Big Impact: The Tajik– Kyrgyz War No One Talks About' (*EJIL: Talk!*, 11 October 2022) <https://www.ejiltalk.org/small-conflicts-with-big-impact-the-tajik-kyrgyz-war-no-one-talk- about/> accessed 7 February 2024.

moment of border localization based on *uti possidetis* principle,[331] which as a *lex lata* conclusion, has its own standing and merits. In article 6, however, I claim that such an automatic return is not feasible as it has very little probability of bringing stability and peace to the region, let alone harmonizing how principles of *uti possidetis* and self-determination ought to be applied simultaneously and harmoniously.[332]

In article 6, I revisit all these conundrums on regional peculiarities of post-Soviet Eurasian space from a more general, introductory perspective. First, I claim that 1990 and the events that followed the dissolution of the USSR ought to be explicitly understood within the lines of desovietization processes, which is ontologically different from decolonization. I concentrate on temporal, civilizational, and purely political questions while discussing the peculiarities of desovietization and its meaning for international law's applicability to post-Soviet space. Based on that differentiation, I further claim that specific regional interpretation of international legal norms may be more feasible as opposed to apolitical application of universal/general norms or principles of international law. Through that matrix, therefore, I support regional international law as a framework to raise the effective internalization of international legal norms and principles in particular spatial dimensions. I then draw conclusions that in providing a specific desovietized interpretation of norms, the agency of local elites – particularly that of lawyers – turns out to be crucial as their legal imagination includes an understanding of that very regional particularism to draw future law conclusions. Further continuing such future law conclusion, I empirically offer a specific post-Soviet Eurasian interpretation of the *uti possidetis* principle.

I begin the examination of *uti possidetis* by claiming that regional context where it applied before the dissolution of the USSR – 1810s Latin America and 1950–60 African decolonization – are historically and spatially concrete cases where regional particularism played a significant role.[333] Even if I acknowledge ICJ's stance against such particularism,[334] I offer an alternative viewing of it by toeing the legal discourse with the political processes (e.g., referencing *uti possidetis* in light of Monroe Doctrine). From that perspective, I conclude that *de lege ferenda* conclusion of *uti possidetis juris* principle from the post-Soviet Eurasian regional perspective is more feasible. I claim that by considering the contemporary development of *jus ad bellum* – notably war for recovery

[331] Anne Peters, 'The Principle of Uti Possidetis Juris: How Relevant Is It for Issues of Secession?' in Christian Walter, Antje von Ungern– Sternberg and Kavus Abushov (eds), *Self – Determination and Secession in International Law* (Oxford University Press 2014); Miklasová (n 323).

[332] Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

[333] On Different applications of *uti possidetis* see generally Suzanne Lalonde, *Determining Boundaries in a Conflicted World: The Role of Uti Possidetis* (McGill– Queen's Press – MQUP 2002).

[334] *Affaire Du Différend Frontalier (Burkina Faso v. République Du Mali)* (n 147) paras. 20–21.

doctrine[335] – and specificities of Soviet's constitutional law (as 'jus' in *uti possidetis* juris refers not to international law per se but former colonial constitutional law), this principle in post-Soviet Eurasian context can have alternate standing.[336] I particularly claim that by revisiting the Soviet constitutional law, the *uti possidetis* in its Eurasian interpretation can be applied to determining interstate borders and borders within a state.

By revisiting *uti possidetis* in a new desovietized context, therefore, a more in-context analysis of spatial guarantee is provided by article 6 that includes guarantees for territorial integrity and protection of minority rights when a spatial component of such rights is concerned.[337] With that reading, I offer an alternative viewing of 'regional international law' that facilitates the synchronization of diverse norms, principles, and legal discourses, thereby making the functionality of regional international law more sustainable.[338]

[335] For comprehensive study of war for recovery doctrine that has post-Soviet origin, namely as debates on this were intensified after 2020 Nagorno Karabakh second war – see Tom Ruys and Felipe Rodríguez Silvestre, 'Illegal: The Recourse to Force to Recover Occupied Territory and the Second Nagorno– Karabakh War' (2021) 32 European Journal of International Law 1287; Dapo Akande and Antonios Tzanakopoulos, 'Legal: Use of Force in Self– Defence to Recover Occupied Territory' (2021) 32 European Journal of International Law 1299; Eliav Lieblich, 'Wars of Recovery' (2023) 34 European Journal of International Law 349.

[336] On what *jus* means in *uti possidetis juris* see Lalonde (n 333) 55.

[337] Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (n 15).

[338] ibid.

7. CONCLUSION

In the post-1991 period, Russia's post-imperial behavior constantly intensified vis-à-vis the newly independent post-Soviet states to bring them back into Russia's sphere of influence. Russia's policy can be viewed differently from different perspectives. If, from a Western perspective, that imperialist and civilizational turn is an act of opposition to the liberal-democratic agenda supported by the West. For post-Soviet Eurasian states, Russia's assertive foreign policy yielded tangible outcomes, as it sought to unite these states around a single regional approach to international law, one that is distinct from the Western rules-based model and one that affirms Russia's *primus inter pares* status from a normative perspective. That promotion of regional international law based on Russia's post-imperial political project has been discussed, analyzed, and reflected in this dissertation.

7.1 Russia's vision of regional international law in Post-Soviet Eurasia: Content and tactics

As I have demonstrated, in the science of international law, regionalism has been interpreted in multiple ways, both from benign and malign perspectives based on political, geopolitical, cultural, and anthropological discourses. In contemporary times, its role is very much shaped by the fragmentation of international law, all along the lines of functional multiplication of different regime types in general international law. Russia's attempt to consolidate regional international law in the post-Soviet Eurasian region aligns with these theoretical observations, and three central conclusions in this respect are deductible.

First, in the post-1990 period, Russia, by misusing the possibilities provided by functional fragmentation of international law, constantly aimed to 'secure a region' under the pretext of either developing a common regional security arrangement (CSTO) under Chapter VII of the UN Charter or a regional trade bloc (EAEU) under the WTO. Yet, in this process, Russia understood regional orders not from a functional but spatial perspective. Therefore, over time, these projects turned into geopolitical spaces where Russia repurposed the applicability and interpretation of international law according to its own ideological markings. As such, regional integration law has become the first medium through which Russia attempted to promote and consolidate a common post-Soviet Eurasian approach to international law. That approach is based on Russia's illiberal stance and is one form of struggle against liberal democratic rule promotion in post-Soviet Eurasia.

Second, such regional international law goes in line with Schmittian *grossraum* theory, where Russia, as a self-proclaimed central power (*Reich*), wants to decide how norms of international law should be applied in this geographical space. Notably, through regional integration law and mediation efforts, Russia promoted a specific narrative of how norms of international law ought to be interpreted in the post-Soviet Eurasian region, which I conceptualized within the geo-

politicization of international law. Notably, by merging the specificities of the institutional and substantive law of post-Soviet Eurasian regional integration law and Russia's geopolitically motivated decision-making in post-Soviet Eurasian space, this dissertation exemplified how Russia endeavored (albeit unsuccessfully) to establish a Russian-Eurasian international law according to its geopolitical ambitions and ideological marking. Within that Russian-Eurasian international law, the dissertation demonstrated how the concept of supranationalism and historic(al) rights have become central to Russia's consolidation efforts, with their inherent capacity to structurally reflect Russia's spatial, formal, and informal supremacy in the region. Yet even if this consolidation effort may have been undermined following Russia's aggression against Ukraine,[339] it still resonates well with contemporary developments as neither CSTO nor EAEU has disintegrated in the post-2022 period, albeit some states that were part of this research project have distanced themselves from Russia.[340]

Third, there is a specific pattern of rise and fall of regional international law in the post-Soviet Eurasian region. Even if Russia has managed to consolidate its regional approach to international law in different ways – notably by influencing the institutional practices within regional integration law of post-Soviet Eurasian regional organizations and geopolitically intervening in different conflicts of the region, it still failed to establish specific Eurasian international norms that would get acquiescence by post-Soviet Eurasian states to form special customary international law or even as an alternative or complement to universal postulations of international law.

Considering these shortcomings, the overarching conclusion, in this respect, is that even if Russia failed to consolidate regional international law in post-Soviet Eurasia, it structurally altered the legal bases of regional integration law and substantive norms of international law by offering specific geopolitical interpretations. Still, in embryonic form, this form may eventually become a valid legal system where the challenge to the conventional understanding of international legal norms will be more profound.

[339] Mälksoo, 'Rise and Fall of Regional International Law in Post-Soviet Eurasia' (n 214).

[340] See, for instance, how Kazakhstan and Armenia has changed their foreign policy since the war in Ukraine. Marie Dumoulin, 'Steppe Change: How Russia's War on Ukraine Is Reshaping Kazakhstan' (*ECFR*, 13 April 2023) <https://ecfr.eu/publication/steppe-change-how-russias-war-on-ukraine-is-reshaping-kazakhstan/> accessed 1 March 2024; Staff, 'Armenia Formally Joins International Criminal Court in Snub to Russia' *The Guardian* (31 January 2024) <https://www.theguardian.com/world/2024/jan/31/armenia-formally-joins- international-criminal-court-in-snub-to-russia> accessed 1 March 2024.

7.2 Post-Soviet Eurasian international lawyers and Russian consolidation effort

Further, it can be concluded that Russia also engaged at the individual level in its consolidation efforts. It tried to regroup and influence post-Soviet Eurasian international lawyers to make them sympathetic to Russia-cantered regional international law. Although, in this respect, it achieved a certain level of consolidation by including them within social arrangements patronaged by Russia, it failed to make them so-called Russia-apologetics in their activities, even if at a psychological or informal level, it may be the case.

7.3 Using regional international law as an effective and sustainable framework

Finally, the Russian consolidation attempt to set forth a regionally specific international law in post-Soviet Eurasia established a specific situation where regional international law as a framework becomes imperialistic and requires complete rejection, at least in a post-Soviet Eurasian regional context.[341] On this dilemma, we again return to A. Du Perron claims that such a way of drawing conclusions might cast international law as presumption science where brute generalization would determine the fate of this or that concept, theory, framework, or principle. With that in mind, this dissertation showcased how regional international law could be used instrumentally for benign purposes. Based on that narrative and by examining the shortcomings of spatial guarantee that have existed in post-Soviet Eurasian geojuridical space since 1991, this dissertation concluded that a more regionalized reading of the *uti possidetis* principle is necessary for post-Soviet Eurasian states based on the specificities of desovietization process.[342]

7.4 Call for further research

Alejandro Alvarez's renowned American international law publication was released in 1910. When one reads that book, several questions can be raised. Not only is it about how regionalism or universalism as principles relate to each other but also substantially whether Alvarez touched all questions of international law that make such a bald claim about the existence of American international law feasible. With that in mind, one ought to consider that when one refers to Alvarez's American international law, it is not the 1910 treatise but Alvarez's lifetime research in totality that provided a comprehensive outlook to such a celebrated

[341] On rejection of all forms of imperialism in international law see Kotova and Tzouvala (n 150).

[342] On usage of regional approaches for benign purposes see also Koagne Zouapet (n 39).

construct, with all those shortcomings. Nevertheless, his 1910 treatise merits being called 'American international law' as it opened new empirical and theoretical perspectives for others to focus on this region by understanding the regional specificity.

Much is the same when the title of this dissertation is concerned. This dissertation entitled 'Regional International Law in Eurasia' does not treat comprehensively all norms of international law from a post-Soviet Eurasian perspective. Nevertheless, through its own theoretical and empirical foundations, it opens the terrain for new research.

Further research, therefore, is required to complete the scholarly inquiries this dissertation sets forth. Notably, although the history of international law is marginally assessed in different articles of this dissertation, there is a specific need to touch on the development of the concept of regional international law in the Soviet Union. Further desovietization of international law as post-Soviet phenomenon requires extensive research. Finally, the region should be examined from more specialized viewpoints, such as international trade, economic, investment law, human rights law, and private international law. There is much to do with post-Soviet Eurasian approaches to international law, and this dissertation is a critical engagement that may stimulate further research.

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EESTIKEELNE KOKKUVÕTE

Regionaalne rahvusvaheline õigus Euraasias

Sissejuhatus, meetod ja ülesehitus

Pärast liberalismi algset võidukäiku 1991. aastale järgnenud perioodil on nn uued suurriigid (Hiina, Venemaa, BRIC-riigid) hakanud rahvusvahelist õigust killustama ja kahtluse alla seadma, püüdes selle norme, põhimõtteid ja aluseid oma ideoloogiale sobivalt ümber kujundada. Venemaa on nende püüdluste tüüpnäide. Ühest küljest on seal 1991. aastale järgnenud perioodil kujunenud selgelt läänevastane ja mitteliberaalne hoiak rahvusvahelisse õigusse, nagu Lauri Mälksoo on täheldanud.[343] Teisest, geopoliitilisemast küljest on Venemaa soovinud endale eristaatust nõukogudejärgses Euraasia ruumis, mida ta peab oma erihuvide piirkonnaks. Kui need kaks nähtust kokku panna, võib Venemaa poolset rahvusvahelise õiguse (geo)poliitika kasutamist nõukogudejärgses Euraasias kirjeldada kui püüdu konsolideerida piirkonnas teatud normatiivset raamistikku, milles Venemaa oleks püsivalt tunnustatud kui *primus inter pares*, ning kaitsta selle ruumi poliitilisi ja õiguslikke arenguid väliste jõudude, eeskätt lääneriikide sekkumise eest.

Käesolevas väitekirjas vaadeldakse seetõttu Venemaa katset koondada Euraasia endisi Nõukogude liiduvabariike oma regionaalse rahvusvahelise õiguse käsituse ümber, mis hõlmab nii läänevastasust kui ka liberalismi tõrjumist. Sellega seoses kasutatakse väitekirjas instrumentaalset nõukogudejärgse Euraasia määratlust, mis hõlmab Euraasia Majandusliidu (EML) ja Kollektiivse Julgeoleku Lepingu Organisatsiooni (KJLO) liikmesriike: Armeenia, Valgevene, Venemaa, Kasahstan, Kõrgõzstan ja Tadžikistan. Kuigi põhiosas vaadeldakse väitekirjas nimetatud riikidega seotud sündmusi, isikuid ja diskursusi, on vähesel määral käsitletud ka teisi endisi Nõukogude liiduvabariike (Aserbaidžaan, Ukraina, Gruusia, Türkmenistan ja Moldova) peale Balti riikide.

Väitekirja peamine uurimisprobleem on selgitada välja, millisel määral on Venemaal õnnestunud oma regionaalset rahvusvahelise õiguse eritõlgendust nõukogudejärgses Euraasias õiguslike vahenditega konsolideerida. Selleks vaadeldakse kõnealuse piirkonna integratsiooniõigust ning Venemaa õiguslikke reaktsioone pärast NSV Liidu lagunemist toimunud konfliktidele Kesk-Aasias, Lõuna-Kaukaasias ja Ida-Euroopas. Pärast regionaalse integratsiooniõiguse üldisemat vaatlust seoses EMLi, KJLO ja Sõltumatute Riikide Ühendusega (SRÜ) uuritakse väitekirjas empiiriliselt konkreetsemalt selliste konsolideerimispüüdluste mõju ning seda, kas kõnealuse praktika tagajärjel saab nõukogudejärgses Euraasias täheldada uusi norme, põhimõtteid või õiguslikke diskursusi. Täpsemalt keskendutakse institutsionaalsele praktikale (supranatsionaalsuse mõiste, EMLi kohtusüsteemi kujunemine (*judicialization*)), revisionistlikele (näiliselt) õiguslikele nõudmistele (Venemaa väidetavad ajaloolised õigused ja nende piirkondlikud

[343] Lauri Mälksoo, *Russian Approaches to International Law* (First Edition, Oxford University Press 2015).

tagajärjed) ning nõukogudejärgse Euraasia rahvusvahelise õiguse juristide rollile Venemaa konsolideerimisürituses. Lõpetuseks pakutakse väitekirjas nõukogudejärgse Euraasia riikidele mõned ideed, kuidas kasutada regionaalset rahvusvahelist õigust raamistikuna desovjetiseerimise paremaks reguleerimiseks, ning esitatakse mõned *de lege ferenda* järeldused põhimõtte *uti possidetis juris* kohta.

Väitekirja uurimisküsimuste põhjal kaitstakse, uuritakse ja analüüsitakse kuues artiklis ja käesolevas kokkuvõttes allpool esitatud teese. Peamised teesid on järgmised:

1. Rahvusvahelise õiguse teaduses puudub ühtne arusaam regionaalsest rahvusvahelisest õigusest. Selline õigus võib olla a) imperialistlikult vaenulik või b) piirkondlikke eripärasid arvestavalt heatahtlik. Kui regionaalse rahvusvahelise õiguse vaenulik vorm põhineb imperialistlikel praktikatel ning vajab kriitilist käsitlemist ja suuremat tõrjumist, siis regionaalse rahvusvahelise õiguse heatahtlik vorm võib rahvusvahelise õiguse süsteemi tõhusust hoopis suurendada ja ei pruugi selle ühtsust ohustada.
2. Venemaa propageerib Schmitti suurruumi (*Grossraum*) ideel põhinevat regionaalse rahvusvahelise õiguse vaenulikku vormi, mis seab kahtluse alla rahvusvahelise õiguse ühe keskse postulaadi – suveräänse võrdsuse, ning samal ajal kogub seal jõudu (post)imperialism, mis mõjutab otseselt rahvusvahelise õiguse mõistmist, kohaldamist ja tõlgendamist nõukogudejärgses Euraasias.
3. *Grossraumi* tüüpi korra eest võideldes on Venemaa nii normatiivselt kui ka semantiliselt muutnud mitmete rahvusvahelise õiguse kontseptsioonide tähendust; neist märkimisväärsemad on ajaloolised õigused, *uti possidetis juris* ja supranatsionaalsus.
4. Venemaa võib kasutada rahvusvahelise õiguse regionaalse käsituse konsolideerimiseks talle rahalise, poliitilise ja kultuurilise eestkoste tõttu kättesaadavaid ühiskondlikke struktuure (keel, venemeelsed kirjastused, haridusasutused, õiguse praktiseerimise kohad), et moodustada nõukogudejärgse Euraasia rahvusvahelise õiguse juristidest eraldatud kolleegium ning koondada sinna teadlasi, kes toetavad Venemaa püüdlusi regionaalse rahvusvahelise õiguse konsolideerimisel.
5. Kuigi Venemaal on õnnestunud moodustada nõukogudejärgse Euraasia rahvusvahelise õiguse teadlastest eraldatud rühm, ei tegele nad oma ametlikus rollis üldiselt Venemaa õigustamisega ning ei aita kaasa Venemaa-keskse rahvusvahelise õiguse propageerimisele või konsolideerimisele (kuigi seda ei saa alati välistada).
6. Venemaa vaenuliku regionaalse rahvusvahelise õiguse kõrval pakub rahvusvahelise õiguse teadus ka heatahtlikumat regionalismi vormi, mis põhineb solidaarsusel, ühisel ajalool ja piirkondlikul eripäral, mida nõukogudejärgsed Euraasia riigid saavad kasutada desovjetiseerimise lõpuleviimiseks ning mille põhimõte *uti possidetis juris à la eurasienne* võib anda neile kindlamaid ruumilisi garantiisid.

Metodoloogiliselt on tegemist võrdleva rahvusvahelise õiguse uurimusega, milles vaadeldakse, kuidas nõukogudejärgsed Euraasia riigid järgivad, mõistavad, tõlgendavad ja kohaldavad rahvusvahelist õigust olukorras, kus Venemaa püüab rahvusvahelist õigust regionaliseerida.[344] Seega ei ole väitekirja raskuspunkt otseselt Venemaal, vaid nõukogudejärgsete Euraasia riikide ja Venemaa mitmepoolsetel, regionaalsetel ja kahepoolsetel suhetel. Esmaseid ja teiseseid allikaid uurides on doktoritöös läbivalt kasutatud ajaloolisi meetodeid ja kriitiliselt analüüsitud õigusdoktriini.

Ülesehituselt põhineb väitekiri kuuel artiklil, mille on avaldanud *European Journal of International Law*, *Hague Yearbook of International Law*, *Baltic Yearbook of International Law* (kaks artiklit), *Michigan State International Law Review* ja *Revista Tribuna Internacional*.

Kaks regionaalse rahvusvahelise õiguse liiki ja Venemaa konsolideerimiskatse

Regionalismi seost rahvusvahelise õigusega on uuritud geopoliitiliste tegurite, ajaloosündmuste ja kultuurimõjude valguses ning dekoloniseerimise kontekstis on pööratud suuremat tähelepanu kolmanda maailma käsitustele (*Third World Approaches – TWAIL*) rahvusvahelisest õigusest. Kriitiline õigusteadus on aidanud paremini aru saada regionalismi rollist rahvusvahelises õiguses, paigutades selle rahvusvahelise õiguse killustumise poliitilisse konteksti.

Käesolevas väitekirjas vaadeldakse regionalismi ja selle seoseid rahvusvahelise õigusega mitmest aspektist. Kõigepealt on esimeses artiklis esitatud ajalooline ülevaade regionalismi kohast rahvusvahelise õiguse teaduses, täpsemalt Carl Schmitti ja Alejandro Alvarezi käsitlustes.[345] Neil kahel teadlasel on paradigmaatiline roll regionaalse rahvusvahelise õiguse teooria arendamisel, eriti seoses Monroe doktriiniga. Nimetatud õpetlased on kumbki omal moel järginud seda doktriini, mis võimaldas nõuda teatud piirkondadele rahvusvahelise õiguse ja poliitika süsteemis poliitilist (aga ka õiguslikku) eristaatust, nagu artiklis kirjeldatakse. Tšiili õigusteadlane Alejandro Alvarez märkis, et Monroe doktriin tähendas üleskutset kontinendi poliitilisele ja õiguslikule solidaarsusele, mis hoogustas Ameerika regioonile eripärase rahvusvahelise õiguse arengut. Seda tüüpi kontinentaalsel solidaarsusel ja ühtsusel põhinevat regionaalset rahvusvahelist õigust on väitekirjas nimetatud horisontaal-utopistlikuks.[346] Kolmanda Reichi esijurist Carl Schmitt kujundas Monroe doktriinist teistsuguse arusaama, mis põhines suurruumi (*Grossraum*) mõistel. Nagu väitekirja eri osadest nähtub, muutub suurruumidel põhinevas õiguskorras kontinentaalse solidaarsuse asemel

[344] Võrdleva rahvusvahelise õiguse kohta vt Anthea Roberts and others (eds), 'Conceptualizing Comparative International Law', *Comparative International Law* (Oxford University Press 2018).

[345] Artur Simonyan, 'Science of International Law and Regional Orders: A Critical Appraisal of Alejandro Alvarez and Carl Schmitt' (2023) 12 Revista Tribuna Internacional 19.

[346] ibid 35.

määravaks jõupoliitika. Suurruumi ideest lähtuvas vertikaal-apologeetilises rahvusvahelises õiguses otsustab keskne riik (*Reich*), milliseid poliitilisi ideid ta soovib teatud regioonis levitada, ning üritab sellest tulenevalt välistada ruumiliselt kaugete võõrriikide sekkumist regiooni poliitikasse. Seda arvestades väidetakse artiklis, et sellist tüüpi regionaalne rahvusvaheline õigus on vertikaal-apologeetiline, kui kasutada Koskenniemi tüpoloogiat, mis eristab utopistlikku ja apologeetilist argumentatsiooni.[347]

Lisaks vertikaal-apologeetilise ja horisontaal-utopistliku regionaalse rahvusvahelise õiguse eristamisele vaadeldakse teises artiklis regionalismi seoses kaasaegse aruteluga rahvusvahelise õiguse killustumisest.[348] Artiklis ei keskenduta niivõrd funktsionaalsele killustumisele, mille puhul tuleks vaadelda erinormide (*lex speciali* ehk regionalism) ja üldnormide (*lex generali*) omavahelist seost, vaid uuritakse, kuidas uued suurvõimud (*New Great Powers*) on hakanud regionaalset korda käsitlevaid ÜRO põhikirja ning üldise tolli- ja kaubanduskokkuleppe (GATT) majanduse ja julgeoleku valdkonna sätteid spetsiifiliselt ja ruumist sõltuvalt tõlgendama. Ma näitan selle konkreetse argumentatsiooni põhjal, et suurriigid püüavad killustamise abil saada kontrolli teatud regioonide üle, mis seejärel muutuvad eraldi ruumiks, kus püütakse kohaldada vertikaal-apologeetilist regionaalset rahvusvahelist õigust.[349] Sellest lähtudes saab ÜRO põhikirja VII peatükki ja GATTi XXIV artiklit kasutada regionaalse õiguskorra loomise ja kindlustamise raamistikuna, mis võimaldab kesksel riigil rahvusvahelise õiguse norme tavapärasest erinevalt tõlgendada ja ühtlasi regiooni riike oma tõlgenduse ümber koondada. Kui riigid sellise regionaalse õiguskorra loovad, siis nad üldjuhul ei jää rahvusvahelise õiguse normide kohaldamisel apoliitiliseks. Selle asemel kasutavad nad geopolitiseerimise taktikat, mis on artiklis määratletud kui „rahvusvahelise õiguse doktriinide või rahvusvahelise õigusprotsessi kontseptsioonide väljatöötamine ja/või kasutamine suurriikide (aga mitte ainult) lühi-, kesk- ja pikaajaliste geopoliitiliste eesmärkide saavutamiseks".[350]

Need teooriad on Venemaa konsolideerimispüüdluste kirjeldamisel paradigmaatilised, nagu nähtub väitekirjas esitatud konkreetsematest näidetest. Esiteks järgib Venemaa konsolideerimispüüd üldiselt vertikaal-apologeetilist mustrit, milles muutub oluliseks Schmitti moodi suurruumi kindlustav kord. Teiseks püüab Venemaa rahvusvaheliste normide geopolitiseeritud kohaldamise abil takistada ruumiliselt kaugete riikide sekkumist ning kindlustada oma kontrolli nõukogudejärgse Euraasia üle ÜRO põhikirjal ja GATTil põhinevate regionaalsete majandus- ja julgeolekuliitude loomisega, nagu on kirjeldatud väljaannetes *Hague Yearbook*, *Michigan State International Law Review* ja *Baltic*

[347] Selle tüpoloogia kohta vt Martti Koskenniemi, *From Apology to Utopia the Structure of International Legal Argument* (Cambridge University Press 2006); on vertical-apologetic international law in Simonyan, 'Science of International Law and Regional Orders' (n 3) 35.

[348] Artur Simonyan, 'Regional International Law Revisited: A Eurasian International Law' (2023) 31 Michigan State International Law Review 283, 288–312.

[349] ibid 294, 331.

[350] ibid 331–332.

Yearbook ilmunud artiklites. Selle arengu analüüsimiseks on teises artiklis kasutatud Vene-Euraasia rahvusvahelise õiguse mõistet, mis on määratletud kui „nõukogudejärgse Euraasia *Grossraumi* õigus, milles saavad kokku nõukogudejärgse Euraasia postimperialistlik/hegemoonlik regionaalne rahvusvaheline õigus ning Venemaa geopoliitiliselt motiveeritud otsused selles ruumis kohaldatava rahvusvahelise õiguse kohta".[351]

Vene-Euraasia rahvusvahelise õiguse eripära: institutsioonid, normid ja diskursused

Käesoleva uurimuse põhitees ütleb, et Venemaa püüab kehtestada nõukogudejärgses Euraasia ruumis vertikaal-apologeetilist rahvusvahelist õigust. Korduvate mustrite vaatlusest ilmneb, et Venemaa kasutab põhiliselt kahte meetodit: postimperiaalset/hegemoonlikku rahvusvahelist õigust ja rahvusvahelise õiguse geopolitiseeritud kohaldamist.

Teises, kolmandas ja neljandas artiklis näidatakse, et Venemaa rahvusvahelise õiguse eripärase kasutuse eesmärk on saavutada taolist konsolideerimist.[352] Teises artiklis vaadeldakse regionaalse integratsiooniõiguse kasutust Venemaa poolt nõukogudejärgses Euraasias üldisemalt.[353] Selles kirjeldatakse, kuidas vastavad institutsioonid nõukogudejärgses Euraasias kujunesid paralleelselt Venemaa püüdlustega kindlustada regioonis erilist rahvusvahelist õigust. Täpsemalt näidatakse, et esimene seesugune katse oli SRÜ, mis loodi vahetult pärast NSV Liidu lagunemist. Aja jooksul on selle institutsioonid kaotanud funktsionaalsuse ning formaalsed õiguslikud protseduurid on asendunud mitteametlikega. Seetõttu on hakatud seda pidama pigem institutsionaalsesse raami paigutatud viisaka lahutuse kui eduka regionaalse lõimumise näiteks. Kuigi SRÜ-l oli oma majanduskohus ja on isegi ühine inimõiguslepe, millega on liitunud Venemaa, Valgevene ja Kasahstan, ei saa SRÜ-d kuidagi pidada regionaalse lõimumise edulooks. Nõukogudejärgse Euraasia regionaalsete organisatsioonide ajaloolist vaatlust jätkates analüüsitakse teises artiklis KJLO ja EMLi algset edu Venemaa-keskse regionaalse õiguskorra kujundamisel. Sellega seoses näidatakse artiklis, et neid organisatsioone ei tuleks vaadelda režiimilikust aspektist, vaid pigem nende territoriaalse ontoloogia põhjal kui ilminguid sellest, kuidas Venemaa püüab seda regiooni enda eestkoste alla põlistada.

Väitekirja kolmandat teesi on konkreetsemalt analüüsitud kolmandas ja neljandas artiklis, milles kirjeldatakse, kuidas Venemaa kasutab rahvusvahelist õigust institutsionaalselt ja sisuliselt regioonile eriomaste õiguslike kontsept-

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[351] ibid 331.

[352] Simonyan, 'Regional International Law Revisited' (n 6); Artur Simonyan, 'Eurasian Supranationalism: From Academic Discourse to the Eurasian Economic Union' (2022) 20 Baltic Yearbook of International Law Online 45; Artur Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' 36 Hague Yearbook of International Law (Brill).

[353] Simonyan, 'Regional International Law Revisited' (n 6).

sioonide loomiseks ning püüab laiendada nende kandepinda regionaalsetes organisatsioonides: KJLO, SRÜ, EML ja Shanghai Koostööorganisatsioon (SKO).

Kolmandas artiklis on eelkõige näidatud, et Venemaa on konstrueerinud EMLis erilist tüüpi institutsionaalse õiguse, mis mängib otsustavat rolli Venemaa püüdlustes koondada nõukogudejärgsed Euraasia riigid ühe regionaalse käsituse ümber.[354] Artiklis käsitletakse EMLi keerukat institutsionaalset korraldust, mis hõlmab EMLi kohtu näol ka toimivat kohtuvõimu, kui esimest katset saavutada regioonis riikideülese mõõtmega lõimumist. See on märk olulisest muutusest, sest SRÜ põhikirjas on sätestatud, et SRÜ ei ole riik ega riikideülene liit. Samas on artiklis selgitatud, et Venemaa mõistab supranatsionaalsust nii õpetuslikult kui ka praktikas tavapärasest erinevalt. Artikkel toob välja, kuidas Venemaa erinevad episteemilised kogukonnad (eurasianistid, nõukogudemeelsed ja nõukogudejärgsed ideoloogid) jõuavad Venemaa ja selle mõjupiirkonas asuvate riikide (*zone of influence*) suhteid käsitledes supranatsionaalsuse küsimuses üsna sarnaste seisukohtadeni. Nad usuvad valdavalt, et Euraasia/Nõukogude kontekstis toimib supranatsionaalsus piki kultuurilisi jõujooni nii, et suveräänse võrdsuse tähtsus kahaneb ja riike võib liigitada nende poliitilise, kultuurilise ja majandusliku olulisuse järgi. Nii tehakse artiklis tähelepanek, et mitmed Venemaa akadeemilised ringkonnad on omaks võtnud arusaama, mille kohaselt Venemaal on eriline poliitiline ja õiguslik voli tegutseda kui *primus inter pares*. Artiklis järeldatakse, et sellel Venemaa erinevate episteemiliste kogukondade õigusteadlaste ühisel arusaamal on normatiivne mõju EMLi kujunemisele. Selle kohta järeldatakse artiklis, et praktilisel tasandil toimib supranatsionaalsus EMLis teisiti, eriti kui võrrelda seda Euroopa Liidu õigusega. Vaatlusest ilmneb, et Euraasia Majanduskomisjonil – Euroopa Komisjoni analoog Euraasia Majandusliidus – puudub poliitika kujundamist võimaldav ainupädevusel põhinev sõltumatus ning lisaks ei ole selle otsused vahetult kohaldatavad ja valitsustevahelised organid (ülemnõukogud ja valitsustevahelised nõukogud) saavad neid tühistada. Sellist institutsionaalset struktuuri arvestades pole üllatav, et ka EMLi kohus ei tegutse Euroopa Liidu Kohtuga sarnasel moel. Euraasia Majandusliidu Kohtul on keelatud näidata üles kohtulikku aktivismi ning ta ei saa eelotsuste meetodit kasutades riiklike kohtutega otse teavet vahetada – Euroopa lõimumise kontekstis on eelotsusemenetlused tõhus vahend riikideüleste ja riiklike kohtuinstantside dialoogi pidamiseks. Lisaks ei ole EMLi kohtu otsused jõustatavad ja neil puudub otsene mõju EMLi territooriumi elanikele. Neid konkreetseid institutsionaalseid aspekte analüüsitakse seejärel läbi Venemaa konsolideerimispüüdluste prisma, keskendudes sellele, kuidas Venemaa postimperialistlikku/hegemoonset käitumist institutsionaliseeriva Euraasia supranatsionaalsuse juurde kuulub ka mitteametlik tegutsemisviis.

Venemaa konsolideerimispüüdluse eritunnuseks on samuti rahvusvahelise õiguse geopolitiseerimine, nagu on kirjeldatud teises artiklis.[355] Selles näidatakse, et Venemaa ei tõlgenda geopoliitiliselt mitte üksnes universaalseid norme, vaid

[354] Simonyan, 'Eurasian Supranationalism' (n 10).

[355] Simonyan, 'Regional International Law Revisited' (n 6) 312 et seq.

ka regionaalseid õiguslikke kohustusi. Näitena on kirjeldatud, kuidas Venemaa tõlgendab KJLO põhikirja 4. artiklit, millega liikmesriikidele tagatakse kallaletungi korral territoriaalne terviklikkus ja suveräänsus. Venemaa geopoliitiliselt motiveeritud rahvusvahelise õiguse normide tõlgendusest lähtudes näidatakse, miks ja kuidas Venemaa kohaldas neid norme silmakirjalikult kahel konkreetsel juhul: Armeenia ja Aserbaidžaani piirikonfliktides aastatel 2021–2022 ja Venemaa sekkumises Kasahstani sündmustesse 2022. aastal. Ma väidan sellega seoses, et Venemaa tõlgendab rahvusvahelise õiguse norme geopoliitiliselt siis, kui neid on vaja kohaldada nõukogudejärgses Euraasia ruumis. Artiklis järeldatakse, et Venemaa võib sekkuda juhul, kui ohtu satub tema poliitiline projekt nõukogudejärgset Euraasiat konsolideerida. Lisaks võib ta eirata mis tahes normi, eelkõige näiteks normi *pacta sunt servanda*, kui see mõjutab tema poliitilist ettekujutust enda kui postimperialistliku hegemooni rollist.

Väitekirjas, täpsemalt neljandas artiklis käsitletakse eraldi ühte Venemaa geopoliitiliselt motiveeritud rahvusvahelise õiguse tõlgendust.[356] Artiklis analüüsitakse ja arvustatakse seda, kuidas Venemaa on tuginenud Ukraina ründamise õigustamiseks ajalooliste õiguste käsitusele. Artiklis selgitatakse, et lisaks muudele taktikatele Krimmi ja Ida-Ukraina pärast Ukrainaga alustatud konflikti õigustamiseks (enesemääramine, heastav lahkulöömine (remedial sucession), enesekaitse, humanitaarne interventsioon) poliitilisel ja õiguslikul tasandil (nt Venemaa konstitutsioonikohtu selgitustes Krimmi ja Ida-Ukraina referendumite kohta) põhjendab Venemaa oma tegevust ka niinimetatud ajalooliste õigustega. Ma väidan, et Venemaa praegused geopoliitilised huvid on vastuolus normi *uti possidetis* apoliitilise kohaldamisega endise Nõukogude Liidu aladel nii, nagu see 1991. aastal määratleti. Seetõttu üritab Venemaa pakkuda alternatiivset arusaama nõukogudejärgsetele Euraasia riikidele antud ruumiliste garantiide kohta, esitades mitmeid pretsedendituid normatiivseid ja mittenormatiivseid põhjendusi, millest kõige suurem kaal omistatakse ajaloolisele põhjendusele. Venemaa seisukoha järgi tuleb uue territoriaalse olukorra aluseks võtta ajalooline põhjendus, mitte normil *uti possidetis* põhinev piiride püsimine, mis peaks tagama riigi piiride puutumatuse, suveräänsuse ja territoriaalse terviklikkuse. Artiklis järeldatakse võrdlevalt, et Venemaa selline põhjendusviis sarnaneb Hiina ajaloolistel õigustel põhinevate pretensioonidega Lõuna-Hiina mere suhtes. Mõlemad riigid on asunud paradigmaatiliselt kahtluse alla seadma rahvusvahelise õiguse norme ja avanud Pandora laeka, segades ajaloolisi põhjendusi normatiivse tegelikkusega. Artiklis näidatakse, et selliseid pretsedendituid nõudmisi esitades rõhutavad mõlemad riigid oma ajaloolist erinevust lääneriikidest. Hiina jaoks seisneb see Hiina tribuudisüsteemi ajaloolises rollis ning Venemaa jaoks enda pidamises Bütsantsi traditsiooni ja pärandi jätkajaks. Artiklis selgitatakse, et lääneriikidele vastandumine võimaldab nii Hiinal kui ka Venemaal eirata rahvusvahelise õiguse põhilisi norme, eriti ÜRO põhikirjas sätestatud riikide suveräänset võrdsust. Selle võitluse järgmine element on regionaalsete struktuuride, eelkõige regionaalsete

[356] Simonyan, '(Forthcoming) Historic(al) Rights in Eurasia: A Regional International Law Perspective' (n 10).

organisatsioonide muutumine kohaks, kus neid pretsedendituid nõudmisi legaliseeritakse ja õigustatakse. Hiina jaoks on SKO regionaalne foorum, mille kaudu ta üritab saada tuge oma ambitsioonidele Lõuna-Hiina mere piirkonnas ning kus ta esindab seisukohta, et laiemas Euraasia regioonis tekkivad õigusvaidlused tuleks lahendada ilma kohtuid kaasamata, ning sellisel juhul annab kõneluse osapoolte ebavõrdsus eelise kõige tugevamale poolele. Nagu artiklis näidatud, on Venemaa sarnaselt Hiinaga välistanud võimaluse lahendada vaidlusi kohtutes, kuna neid peetakse lääne kontrolli all olevaks.

Samas läheb Venemaa ajaloolise põhjenduse kui normatiivse raamistiku kasutamisel Hiinast kaugemale, ja see kehtib eriti regionaalsetes organisatsioonides ettevõetavate initsiatsiivide puhul. Regionaalsetes organisatsioonides (peamiselt SRÜ, EML ja KJLO) rõhutab Venemaa enda ja oma nõukogudejärgse Euraasia naaberriikide ainulaadset ajaloolist lähedust ning soovib, et nad tegutseksid mitmepoolsetes süsteemides ühtse rühmana. Selles konsolideerimispüüdes annab Venemaa regionaalse lõimumise diskursusele ajaloolise tähenduse, väites, et lisaks nende riikide praeguste poliitiliste, kultuuriliste ja tsivilisatsiooniliste suhete mõjutamisele kujundab NSV Liidu pärand ka seda, kuidas tuleks rahvusvahelise õiguse norme nõukogudejärgses Euraasias mõista ja kohaldada. Artiklis järeldatakse, et kuigi vaatlus ei kinnita ajalooliste õiguste olemasolu regionaalses rahvusvahelises tavaõiguses, on Venemaa ometi loonud sellise õigussüsteemi alged, mis võivad nõrgestada rahvusvahelise õiguse konventsionaalseid ja tavapäraseid norme, vähemalt regionaalsel tasandil.

Rahvusvahelise õiguse juristide eraldatud kolleegium ja Venemaa konsolideerimispüüd

Oma püüdlustes konsolideerida nõukogudejärgses Euraasia ruumis regionaalset rahvusvahelist õigust kasutab Venemaa ka Euraasia rahvusvahelise õiguse spetsialistide episteemilist kogukonda, mille liikmed suhtlevad omavahel ning õpetavad, uurivad ja praktiseerivad rahvusvahelist õigust Venemaa eestkoste all spetsiifilistes ühiskondlikes struktuurides, nagu on kirjeldatud viiendas artiklis.[357] Seda rühma nimetatakse väitekirjas nõukogudejärgse Euraasia rahvusvahelise õiguse juristide eraldatud kolleegiumiks. Täpsemalt näidatakse artiklis, et 1991. aastale järgnenud perioodil on Venemaa oma kultuurilist ja keelelist ülemvõimu kasutades püüdnud moodustada erinevates ühiskondlikes struktuurides (haridusasutused, kirjastused, rahvusvahelise õiguse praktiseerimise kohad) tegutsevatest nõukogudejärgse Euraasia rahvusvahelise õiguse juristidest ühtset koolkonda. Võib näha, kuidas selle eesmärgi saavutamiseks on toimunud endistest liiduvabariikidest pärit üliõpilaste vool Venemaa ülikoolidesse ning nõukogudejärgsetes Euraasia riikides on Venemaa toel asutatud hulgaliselt haridusasutusi. Seejärel nenditakse artiklis, et rahvusvahelise õiguse õpetamine nendes asutustes põhineb jätkuvalt Venemaa/Nõukogude õigusteadlaste õpetustel. Väitekirja sellega seotud

[357] Artur Simonyan, '(Forthcoming) International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility' European Journal of International Law.

keskne postulaat ütleb, et nende keerukate ühenduskanalite kaudu on soodustatud nõukogudejärgse Euraasia rahvusvahelise õiguse juristide koondumist eraldi rühma, mis on võõrandunud rahvusvahelise õiguse juristide nn nähtamatust kolleegiumist, kui kasutada Oscar Schachteri väljendit.[358] Artiklist nähtub, et selle tagajärjel avaldavad need juristid oma kirjutisi rohkem Vene ajakirjades ja kirjastustes, osalevad rohkem Venemaal toimuvatel konverentsidel ja praktiseerivad rahvusvahelist õigust valdavalt Venemaa-kesksetes organites. Seejärel vaadeldakse neid analüüsi järeldusi Venemaa konsolideerimispüüdluste valguses. Selle kohta näitavad artiklis esitatud tähelepanekud, et nende teadlaste käitumises ei ilmne siiski Venemaad õigustavaid jooni, isegi kui nad psühholoogiliselt või mitteametlikult oleks valmis seda tegema. Selle asemel kasutavad nad neid vahepealseid sotsiaalseid struktuure oma riikide jaoks oluliste teemadega tegelemiseks. Taoline valik on äärmiselt oluline, sest selles Venemaa toel loodud eraldatud süsteemis, milles esineb selge klassistruktuur, on neil suhteliselt paremad ligipääsuvõimalused võrreldes nähtamatu kolleegiumiga.

Regionaalse rahvusvahelise õiguse kasutamine heatahtlikel eesmärkidel: konkreetne ruumiline garantii nõukogudejärgsele Euraasiale

Väitekirja lisaeesmärk oli täiendavalt uurida, kuidas nõukogudejärgsed Euraasia riigid saaksid regionaalset rahvusvahelist õigust mõjusamalt kasutada. Seda võimalust on vaadeldud kuuendas artiklis.[359] Rahvusvahelise õiguse sotsioloogilisest käsitlusest lähtudes esitatakse artiklis konkreetseid tõlgendusvõimalusi, millele tuginedes nõukogudejärgsed Euraasia riigid saaksid ühiselt Venemaa postimperialistlikule käitumisele vastu seista. Samuti pakutakse seal välja alternatiivseid ruumilisi garantiisid, mida Venemaa – ja mõned teised riigid – soovivad nõukogudejärgse Euraasia piirkonnas vaidlustada. Artiklis eristatakse dekoloniseerimist desovjetiseerimisest ning uuritakse kontekstist lähtuvalt, kuidas kohalike osapoolte agentsusele tuginedes oleks võimalik nõukogudejärgses Euraasias esitada *de lege ferenda* järeldusi. Lisaks näidatakse seal, kuidas desovjetiseerimise eriomaste tunnuste valguses saab tõlgendada põhimõtet *uti possidetis*. Vaadeldes viimaseid arenguid tagasivõtmissõja doktriini (*war of recovery doctrine*) üle peetud väitlustes ning konkretiseerides mitmeid *de facto* riikide (nt Abhaasia, Lõuna-Osseetia, Mägi-Karabahh) enesemääramisõigusega seotud küsimusi, väidetakse artiklis, et eritõlgendus *uti possidetis à la eurasienne* võiks võimaldada alternatiivset käsitust NSV Liidu lagunemise järel antud ruumilistest garantiidest ning pakkuda lisaks lahendusi rahvusvahelise õiguse erinevate normide ühtlustamiseks ja ühitamiseks viisil, mis aitab sõltumatute riikide piire tõhusamalt säilitada.

[358] Oscar Schachter, 'Invisible College of International Lawyers' (1977) 72 Northwestern University Law Review 217.

[359] Artur Simonyan, '(Forthcoming) Three Patterns of Desovietizing International Law' (2024) 22 Baltic Yearbook of International Law (Brill).

Kokkuvõte

Väitekirja kuues artiklis esitatud uurimuse tulemuste põhjal saab teha allpool esitatud järeldused.

a) Regionaalse rahvusvahelise õiguse kontseptsioon lähtub poliitilistest ajenditest ja kuigi instrumentaalselt võib selle abil väljendada kontinentaalset solidaarsust ning käsitleda regionaalseid *sui generis* õigusküsimusi, tavasid, kultuuri ja traditsioone, saab seda kasutada ka imperialistlikel eesmärkidel, et saavutada teatud regioonis ruumilist ülemvõimu ning selle kindlustamise käigus ühtlasi muuta seal kohaldatavate rahvusvahelise õiguse normide tähendust. Venemaa püüd rahvusvahelist õigust nõukogudejärgses Euraasias killustada lähtub eelkõige taolisest postimperialistlikust hoiakust, mis näeb Venemaad nõukogudejärgses Euraasia ruumis kui esimest võrdsete seas ja rakendab rahvusvahelise õiguse normid selle geopoliitilise eesmärgi teenistusse.

b) Regionaalse rahvusvahelise õiguse tõus ja langus nõukogudejärgses Euraasia ruumis järgib kindlat mustrit. Isegi kui Venemaal on õnnestunud oma regionaalset rahvusvahelise õiguse käsitust mitmel moel kindlustada – eelkõige mõjutades nõukogudejärgse Euraasia regionaalsetes lõimumisorganisatsioonides institutsionaalseid praktikaid (*insitutional practices*) ja sekkudes geopoliitiliselt regiooni erinevatesse konfliktidesse –, ei ole siiski suudetud kehtestada eriomaseid Euraasia rahvusvahelise õiguse norme, mis võimaldaksid nõukogudejärgsete Euraasia riikide nõusolekul tekitada erilise rahvusvahelise tavaõiguse või vähemalt täiendaksid rahvusvahelise õiguse universaalseid norme.

c) Venemaa on proovinud oma konsolideerimiseesmärke ellu viia ka üksikisikute tasandil. Ta on püüdnud moodustada nõukogudejärgse Euraasia rahvusvahelise õiguse juristidest eraldi rühma ning kasvatada neis toetust Venemaakesksele regionaalsele rahvusvahelisele õigusele. Sellega seoses on tal küll õnnestunud kujundada nõukogudejärgse Euraasia rahvusvahelise õiguse juristidest eraldatud kolleegium, kaasates neid Venemaa eestkoste all olevatesse ühiskondlikesse struktuuridesse, aga ta ei ole suutnud neid muuta praktikas Venemaa apologeetideks, isegi kui nad võivad seda olla psühholoogilisel või mitteametlikul tasandil.

d) Venemaa konsolideerimispüüdlustele, mis muudavad regionaalse rahvusvahelise õiguse imperialistlikuks projektiks, saab instrumentaalselt vastu seista, kui regionaalset rahvusvahelist õigust käsitatakse orgaaniliselt raamistikuna, milles universalismi ja regionalismi eristamine lähtub regionaalsetest eripäradest, mitte imperialistlikust sunnist. Kui nõukogudejärgse Euraasia riigid kasutavad regionaalset rahvusvahelist õigust strateegiliselt, võib see neil aidata desovjetiseerimise edukalt lõpule viia ning pakkuda lisaks alternatiivset ja tõhusamat rahvusvahelise õiguse normide tõlgendust, mis oleks paremini kooskõlas piirkondliku eripäraga, mille tõttu nõukogudejärgsel Euraasial on rahvusvahelise õiguse süsteemiga *sui generis* suhe.

PUBLICATIONS

CURRICULUM VITAE

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ELULOOKIRJELDUS

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01.09.2014–22.05.2018	Bakalaureus, Prantsuse ülikool Armeenias

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Publikatsioonid

2024

(Forthcoming) Artur Simonyan 'International Lawyers in post-Soviet Eurasia: Decoding Divisibility' (2024) European Journal of International Law.

(Forthcoming) Artur Simonyan 'Three Patterns of Desovietising International Law' (2024) 22 Baltic Yearbook of International law (Brill).

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