Russia in the Black Sea Peninsula: Intervention, Annexation, and the Role of International Law
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abstract
International law failed to prevent Russian intervention in Ukraine: this is clear. Yet international legal considerations, far from being irrelevant, profoundly shaped the nature of Russian violation. This paper considers the crisis against the backdrop of two international legal principles: the principle of non-intervention and the principle of self-determination, in order to determine whether international law shaped Russian behavior. It concludes that while instrumental calculation might explain Russia’s violation of the law, the way in which the violation was carried out reflects the influence of legal considerations and ‘acculturation’. From this perspective, Russian behavior also suggests that international law is the dominant discourse in international relations, and that states seeking to challenge the international legal order must do so from within the confines of that order.

abstract
Le droit international n’a pas réussi à prévenir l’intervention russe en Ukraine, ceci est évident. Pourtant, les considérations juridiques internationales, loin d’être sans importance, ont profondément façonné la nature de la violation russe. Cet article examine la crise dans le contexte de deux principes juridiques internationaux : le principe du non-intervention et le principe de l’autodétermination, afin de déterminer si le droit international affecte le comportement politique de la Russie. Cette dissertation conclut que même si le calcul instrumental pourrait bien expliquer la décision par la Russie de désobéir le droit international, la façon dont la violation a été réalisée reflète l’influence des considérations juridiques et de « l’acculturation ». Vue par cette perspective, le comportement russe suggère également que le droit international est le discours dominant dans les relations internationales, et que les états cherchant à contester l’ordre juridique international doit le faire à l’intérieur des limites de cet ordre.
Keywords: Putin Crimea international law state behaviour acculturation strategic violation

“Russia will always defend her interests using political, diplomatic and legal means.”
-Vladimir Putin (2014)

Russian intervention in Ukraine, the subsequent Crimean declaration of independence, and the annexation of the Crimean Peninsula to Russia present something of a hard case for students of international law. Yet to place emphasis exclusively on the fact that Russia did not comply with international law is to neglect the importance of the law in shaping its behaviour.

Upon consideration, it becomes apparent that while instrumentalist theories of compliance best explain the simple fact of Russian non-compliance, Russian behaviour and legal argumentation reveal a profound acculturation to the principles of non-intervention and self-determination. When viewed through this lens, Russian behaviour also provides insight about the nature of international law – specifically, it provides support for the argument that international law is the dominant discourse in international relations, and that even states seeking to challenge the international legal order do so within the confines of legal discourse.

In short, the way in which Russia went about ignoring international law reveals, paradoxically, that it still finds it necessary to play by the rules of the international legal game; and that, far from treating the rules as irrelevant, it is instead trying to shape them in its own favour.

A Ukrainian Spring?

Protests erupted in Kiev’s Maidan Square in February of 2014, following the decision of Ukrainian President Victor Yanukovich to renege on a longstanding decision to sign a trade agreement with the European Union, opting instead to negotiate a new agreement with Russia. As protesters dug in at Maidan, the initially disorganized protests evolved into Euromaidan, a large-scale mobilization of Ukrainian citizens in support of closer ties with the European Union. In the face of government inaction and increasingly violent police crackdowns, a contingent of protesters swapped banners for Molotov cocktails (BBC 2014).

President Yanukovich, fearing for his life, slipped away to safety in the semi-autonomous Crimean republic, before finding a more permanent haven in Russia, where he was welcomed some days later. Declaring that he had left his position derelict, the Ukrainian Rada (parliament) invoked constitutional procedures, impeached Yanukovich, and established an interim government—although the constitutionality of the procedures remains subject to debate (BBC 2014).

Meanwhile, in early March of 2014, Russian military personnel in unmarked green uniforms began to infiltrate the largely ethnic Russian Crimean Peninsula. The contingent began occupying key military installations and government buildings, including the Crimean parliament and the airport at Simferopol. The mysterious occupation went off without a hitch – not a single shot was fired (BBC 2014). It was in this context that an occupied Crimean parliament then announced that it would hold a referendum on independence, citing fears of repression by the new Ukrainian government and a deep concern over the looming draft bill regarding restrictions on the teaching of the Russian language (BBC 2014). The referendum was, according to the official account, immensely successful, and Crimea was annexed to the Russian Federation some days later.

In order properly to assess the influence of international law on Russian behaviour, one must first survey the approaches taken in studying the relationship between state behaviour and international law.

Theories of International Law Compliance

Theories of international law and state behaviour generally focus on the question of compliance – why and how states comply with international law. While this paper proposes to examine both compliance and effectiveness – the more general effect of law on behaviour –compliance theories offer much insight into the latter relationship. Compliance theories may be classed into three categories: instrumentalist, normative, and organizational. Each of these categories can be treated as a framework, providing a set of assumptions about the nature of international law and the international system. Within each of these categories there exist a number of more nuanced approaches, predicated on the central assumptions of the framework but approaching them from different perspectives.

Instrumentalist Theories

The fundamental assumptions of the instrumentalist framework are that states – which are generally taken to be the central actors in the international system – are self-interested and that they exist in an anarchic system. The central argument of instrumentalist theories follows from these premises: states comply with international law because they perceive it to be in their interests to do so, not because it is the law. Generally, states are considered rational actors, meaning that they act in accordance with their preferences by calculating the net benefits of any particular course of action before proceeding. Because preferences are taken to be exogenous and fixed, each potential move generates a set of expected payoffs, of which the best option is chosen.

Enforcement theory combines a rational-choice approach with a
strong emphasis on the state as an autonomous actor with “material power capabilities that [...] shape the structure and substance of international law” (Steinberg 2013, 149). Law is understood to be an epiphenomenon of state power – the product of a strategic dynamic, and states comply only because they fear retaliation or the loss of joint gains from coordination or cooperation (Goldsmith and Posner 2005, 26-35; 100).

Reputational theory shares many of the assumptions of enforcement theory, by applying a similar rational-choice framework. In this analysis, states pledge their reputation as a form of bond, which provides a signal in strategic games, by indicating the rate at which a prospective partner discounts future gains. Reputation thus acts like an interest rate, rising and falling to signal changing risk. States comply at least in part because of reputational considerations – in other words, to keep their ‘interest rates’ low (Guzman 2008, 40).

Less prominent theories in the instrumental framework include Managerial and Liberal-Domestic theories. Managerial theory is characterized by the assumption that states have a general propensity to comply with international law because compliance is efficient; treaties are consent-based and therefore serve the interests of participating states, and there exists a general norm of compliance. (Chayes and Chayes 1993, 178-187; Guzman 2002, 1823-87).

Finally, the Liberal-Domestic theory of compliance is characterized by its emphasis on domestic interest groups as the key explanatory variable in describing compliance decisions.

Such decisions are treated as the product of a two-level game, in which state preferences are an aggregation of domestic preferences and strategic considerations (Putnam 1998). Preferences are also conditioned by the regime’s desire to remain in power (Dai 2005, 369).

Normative Theories

Normative theories accept that behaviour can be governed, at least in part, by a logic of appropriateness rather than exclusively by a logic of consequence. As such, actors may make decisions on the basis of normative judgments about the inherent goodness of a particular rule, not only on the basis of a rational cost-benefit analysis. Moreover, goal-driven behaviour can be conditioned by social context (Hurd 2007, 76). Normative theories are undertold by a more optimistic view about the possibility of mitigating anarchy. They are also broadly constructivist in inspiration, tending to emphasize human cognition and social-psychological processes.

The first theory in the normative framework is legitimacy theory. Legitimacy may be defined in abstract terms as a right to govern (Bodansky 2013, 324). Thomas Franck (1988, 712) concerns himself with the characteristics of rules that lead them to exert a normative ‘compliance pull’ on actors, arguing that rules are legitimate when there is “a perception on the part of those to whom it is addressed that it has come into being with the right process.”

To Ian Hurd (2007, 36), on the other hand, legitimacy is a more subjective matter and is contingent upon the judgment of a given actor. Belief in the legitimacy of a rule changes interests and structures decision situations by changing “an actor’s perception of both its interests and the payoffs of the available options (Hurd 2007, 45). When widespread, this process creates a "valid," or legitimate system which exhibits "a structure of constraints and incentives that [appear] to all actors in the system as an objective reality" (Hurd 2007, 46).

Socialization theories, on the other hand, deal with the internalization or acceptance of norms. Harold Koh (1998, 626) conceives of internalization as the process by which international legal rules become incorporated into domestic systems, prompted by a transnational process that unites norm entrepreneurs in a transnational epis-temic community whose members then “bring international law home.” Risse and Sikkink (1999, 17), on the other hand, adopt a more strictly social approach and define internalization as the process by which norms come to be “taken for granted.”

Jeffrey Checkel (2001, 553) examines the “role of argumentative persuasion and social learning” in relation to compliance, employing a largely social-psychological approach that nevertheless takes account of the influence of historical and institutional context. Finally, Goodman and Jinks propose as a mechanism of internalization called acculturation, “the general process of adopting the beliefs and behavioural patterns of the surrounding culture,” driven by cognitive and social pressures rather than by an acceptance of a rule’s legitimacy (Goodman and Jinks 2004, 638-642; 642-643).

Legal Issues and Compliance with Rules of International Law

Two central legal issues are implicated by the events in Crimea: the Principle of Non-Intervention – which includes Prohibition of the Use of Force (Encyclopedia of Public International Law (“EPIL”):Principle of Non-Intervention) – and the Right of Self-Determination.

The Principle of Non-Interven-tion is a foundational principle of contemporary international law. It receives explicit mention in article 2.7 of the Charter of the United Nations (UN), and is generally held to be implicit in Article 2(1), which bases membership in the organization on “the sovereign equality of members” (UN 1945). Essentially, it holds that states should not intervene in the external or internal affairs of another state without consent from that state. The principle is also implied by the prohibition of the Use of Force in Article 2(4) of the Charter of the United Nations (UN 1945), which makes it incumbent upon all members to “refrain in their international rela-tions from the threat or use of force
against the territorial integrity or political independence of any state.” It is significant to note that the protection of nationals abroad is tentatively connected to self-defense arguments, and is of ambiguous legal legitimacy (EPIL: Humanitarian Intervention).

Naturally, the most significant issues for arrival at a dispositive legal judgment are what constitutes, in practice, intervention in the affairs of another state. The answer to this question is often the subject of much debate. Traditionally, only two exceptions to the prohibition of the use of force have been acknowledged: authorization by the UN Security Council and self-defense in the event of imminent or actual armed attack (UN 1945: Article 51). An emergent third exception is the Responsibility to Protect, which allows intervention by a third party in the event of atrocities, genocide, or other similarly grievous crimes. Though it still requires Security Council authorization, it is remarkable because it is predicated on the notion that “sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility that holds States accountable for the welfare of their people” (UN Office of the Special Advisor on Genocide 2015). Acceptance of this broader principle has given rise to another, less widely accepted principle: humanitarian intervention – “the threat or use of armed force against another State that is motivated by humanitarian considerations” (EPIL: Humanitarian Intervention).

A final potential justification for the use of force is “intervention by invitation,” which involves a formal request for intervention from the government of one sovereign state to another (EPIL: Intervention by Invitation). As a general rule, this form of intervention is permissible, although it requires “demonstrable consent by the highest available government authority in order to identify attempts of abuse”. The principle has been applied, with tenuous justification, by the United States in Grenada and Panama (EPIL: Intervention by Invitation).

The right to self-determination is also relevant to the discussion here, because it shaped the events of March 2014. The principle is also contained in the Charter, this time in Article 1(2) (UN 1945), which establishes as one of the purposes of the United Nations the preservation of “...friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.” In this case, however, its provisions are rather vague and it is debatable whether it creates a set of binding rights and obligations. The International Court of Justice in its Advisory Opinion, On the accordance with international law of the Unilateral Declaration in Respect of Kosovo (ICJ 2010: paragraph 79), found no general prohibition on declarations of independence in customary law. Yet in order to be applicable, the right of self-determination requires that we establish whether the group in question constitutes a people, and how that people’s right is to be exercised (EPIL: Self-Determination). It is also important to note that a grievous violation of the right to self-determination can in theory justify humanitarian intervention, or at least trigger the responsibility to protect (UN Office 2015).

To what extent, then, did Russia comply with international law? The answer in the case of non-intervention and the threat or use of force is quite clearly “almost certainly not at all.” Russian troops were present in Crimea, despite Putin’s dissimulations, as early as February of 2014 in clear violation of Ukrainian sovereignty (BBC 2014). And even if by some miracle of legal argumentation their actions do not count as a use of force in the narrowest sense – a doubtful proposition to begin with – amassing troops on the Ukrainian border, occupying key installations in an entire sub-region of Ukraine, and threatening full-scale intervention in the case of a Ukrainian response must certainly count as a threat of force. Russian actions were also certainly in violation of a 1997 Status of Forces agreement signed between Russia and Ukraine, which pledged to keep Russian forces in the port of Sevastopol (O’Connell 2014).

While it is generally agreed that Russia did not comply with the principle of non-intervention, it is instructive to consider what shape non-compliance took, because it reflects an acknowledgment of the principles of non-intervention and self-determination. For one, the pains taken to keep the military operation from being attributed to Russia – at least at the outset – reflect an appreciation of the fact that, as Nico Krisch has put it, “Russia does care about its international audience (at least a bit), and knowing that international law matters for that audience it has chosen a less open form of invasion (Krisch 2014)”.

Moreover, Russia has since 2008, and perhaps earlier, undertaken to distribute passports to members of ethnic Russian minorities abroad (Green 2014). Notably, the process was accelerated after the deposition of Yanukovich; in the last two weeks of February, Russia issued approximately 143,000 passports to Russian-speaking Ukrainians on the peninsula (Green 2014, 8). The goal appears to have been to set the justificatory groundwork for later claims that intervention was in protection of Russian citizens abroad; in particular, to provide a counterargument that force was used as a form of self-defense – as a protection of Russian nationals in the near abroad.

Finally, Russia’s role in creating the conditions for an imminent Crimean referendum reflects an appreciation of the legal principle of self-determination. While details are sketchy, the occupation of the Crimean parliament, and the fact that a referendum was held a mere two weeks after Russian occupation began (BBC 2014), suggests little time for public deliberation. Because of the heavy military presence, it is also possible that many voters who would otherwise have voted “no” might have elected instead to remain silent. Still, the very fact that
a referendum was held reflects an attempt to frame the events in terms of a legal act of self-determination.

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The Russian legal argument, articulated in rough form in Putin’s Kremlin Address of March 18th, helps to place Russian actions in context (2014). In addition to emphasizing the perceived (and to some extent genuine) historical affinity between Crimea and Russia, Putin stressed that the Crimean referendum was an act of self-determination, “in full compliance with democratic procedures and international norms (Putin 2014). Russia had merely helped to “create the conditions so that the residents of Crimea for the first time in history were able to peacefully express their free will regarding their own future” (Putin 2014). At the same time, however, Putin vigorously denied that Russian forces ever entered Crimea (Putin 2014).

The secretive nature of the intervention thus allowed Putin to claim that Russian actions did not constitute aggression. How, after all, could there occur “an intervention without a single shot being fired and with no human casualties?” (Putin 2014). Later, when it was admitted that Russian troops had in fact been involved in the Crimean occupation, it was argued that they were there by formal invitation – first from the Crimean government, and then from Victor Yanukovich himself (Jorritsma 2014). Specifically, Russia held that because procedures for establishing an interim government after his escape did not satisfy the provisions of the Ukrainian constitution, Yanukovich was still technically the Ukrainian head of state, and the Ukrainian government had been dissolved by “revolution” (Jorritsma 2014). The absurdity of the latter claim notwithstanding, even if Yanukovich had remained head of state, it is generally agreed that request for intervention must come from the highest levels of government, not from a head of state alone (EPIL: Intervention by Invitation). Finally, Putin made extensive use of the Kosovo example, throwing back in the face of the Western audience a ‘precedent’ that they ostensibly “created with their own hands in a very similar situation” (Putin 2014).

None of this is to say that the Russian legal argument holds water, or that the case of Kosovo and Crimea are even remotely comparable. It is merely to point out that the Russian legal argument has sought to exploit areas of uncertainty or flux in international law by altering state practice. Specifically, it has sought to highlight the tension between the principles of non-intervention and self-determination (Borgen 2014; Krisch 2014).

Explaining Russian Behaviour

International law failed to prevent Russian intervention in Ukraine; this is clear. Yet international legal considerations, far from being irrelevant, profoundly shaped the nature of Russian violation. It is clear, however, that beyond the perspective of a legal-rhetorical justification, Russian state behavior was shaped by international law—albeit, indirectly. The significance of the law is thus demonstrated by the fact that Russia sought to portray itself as if it were adhering to international law through its actions. In a cynical way, it might even have aimed to obey what it understood to be letter of the law, if not the spirit.

It is instructive to consider, first of all, some simple counterfactual scenarios: absent the principle of non-intervention and the prohibition of the use of force, it is quite likely that Russian intervention would have been considerably more open – in the image of Hitler’s reoccupation of the Rhineland, perhaps. Absent the establishment of the principle of self-determination, moreover, it seems highly unlikely that those interested in accession to the Russian Federation would have gone to the trouble of holding a plebiscite. Rather, an outright annexation would most likely have occurred. It is therefore important to distinguish between a particular action, and the nature of that action. The distinction reveals that international legal considerations had some influence – but by what mechanism was the influence brought to bear?

The enforcement theory of international law compliance sheds the best light on what might be called the ‘simple fact’ of Russia’s non-compliance: The Ukrainian intervention, and Crimea’s subsequent annexation, when viewed as a single strategic move, reflect the machinations of realpolitik. Russia feared for the security of its warm-water port under Ukraine’s new pro-European and explicitly anti-Russian government, and had, in any case, been anxious about NATO’s expansion in the region (BBC 2014). By taking Crimea, it could at once assert itself as a great power through a strategic coup, and would win domestic prestige by bringing a region of significant historical and strategic value into the Russian fold. At the same time, according to this narrative, it could declare itself the protector of Russian minorities elsewhere in the region, and reap similar advantages in domestic prestige and international influence. Russia therefore calculated that the strategic and domestic political advantage to be gained by violating the prohibition on the use of force outweighed the disadvantage, in terms of sanctions or international opprobrium – perhaps acting even as a form of reputational sanction – which would follow violation.

These sorts of analytical predilections have led Julian Ku (2014), among others, to argue that “in academic terms, the failure of the Charter is evidence for both realists (who think international law never matters), but
also for rational choice theorists like Posner, as to how international law really works.” Ku and others certainly have a point when they argue that what matters, at the end of the day, is compliance with the central norm of non-intervention. But from an analytical perspective, his conclusions tell the right answer to the wrong question. Far more interesting – and perhaps more analytically useful – is to consider the more general causal relationship in this case between law and behaviour. And in respect of this relationship, it can be said with confidence that international law did shape the behaviour of the Russian Federation. This is evinced by Russia’s strenuous attempts to appear and act as if its behaviour was compliant, through its manipulation of the referendum and the adoption of a policy of passportisation.

If instrumentalist enforcement theory sheds the best light on the sources of Russian conduct, then normative theories are best suited to shed light on the nature of that conduct. In particular, the mechanism of acculturation proposed by Goodman and Jinks (2004) seems applicable. The reader will recall that acculturation is defined as “the general process of adopting the beliefs and behavioural patterns of the surrounding culture,” driven by cognitive and social pressures rather than by an acceptance of a rule’s legitimacy (Goodman and Jinks 2004, 638–643). Specifically, Russian behaviour suggests that Russia has been acculturated to participation in the international legal order, but that it has not actually internalized the legal principles of that order. In this sense, it is subject to external social pressures to comply with international law. Goodman and Jinks, in their discussion of one particular mechanism of acculturation, refer to “the imposition of social-psychological costs through shaming or shunning” as a consideration that prompts changed behaviour, and indeed the notion of international opprobrium falls comfortably into this category (Goodman and Jinks 2004, 641).

By the same token, because “actors are engaged in the generalized pursuit of social legitimacy” (Goodman and Jinks 2004, 645), presumably from the international community, they will alter their behaviour in order to argue plausibly that they complied with a norm, regardless of any belief in the content of the rule itself (Goodman and Jinks 2004, 643). This describes Russian behaviour almost exactly. Russia, in trying to articulate a legitimate claim to the annexation of Crimean territory, not only argued that its behaviour— and the behaviour of the Crimean parliament—was in full compliance with international law. It “went through the motions” as well.

Another indication that Russia has been acculturated to the international legal order—at least insofar as the principles of non-intervention and the right of self-determination are concerned—is that this is not the first time it has modified its actions in this way. It has employed similar strategies in South Ossetia, where it also distributed passports to ethnic Russians (Green 2014, 4), and sought to justify its intervention in terms of international law (Borgen 2009). Interestingly enough, the Crimean self-determination argument also represents quite the turnaround from Russia’s initially vigorous criticism of Kosovo’s declaration of independence. In 2008, Sergei Lavrov, the Russian Foreign Minister, stated that Kosovar secession would constitute a “subversion of all the foundations of international law” (Borgen 2009, 11). In both cases, this suggests that Russia acknowledges the importance of international law as an instrument of legitimacy, and has been acculturated to it.

Instead of rejecting these principles, then, Russia is trying to use them to its advantage, and perhaps even to change them from within. As Roy Allison has put it, “Russian claims are enmeshed with the political and military aspects of Moscow’s strategy over Ukraine” (Allison 2014, 1259). But they are still legal claims. And, as we have seen, they shape behavior as well. William Burke-White (2014, 67) has observed that Russia is in fact trying to change the balance of interpretation that has been traditionally maintained between the principles of non-intervention and of self-determination in favour of an interpretation that would allow it to exercise greater influence in the region. Specifically, it advocates “a broad, rapid, and easy to trigger right of self-determination” (Burke-White 2014, 69). The exploitation of legal ambiguities has become possible, Burke-White argues, because of the decline of American hegemony and the concomitant rise of regional centers of power. As a result, certain states, like China in the South China Sea and Russia in the Caucasus and the near-abroad, attempt to control legal interpretation and to articulate regionally applicable, issue-specific legal norms; the tendency is therefore toward the creation of a polycentric legal order (Burke-White 2014, 66). This also explains Putin’s gratitude to other regional powers for their detachment:

We are grateful to all those who understood our actions in Crimea; we are grateful to the people of China, whose leaders have always considered the situation in Ukraine and Crimea taking into account the full historical and political context, and greatly appreciate India’s reserve and objectivity (Putin 2014).

If indeed Burke-White’s assessment is accurate, then it appears in the final analysis that Russia is enacting a kind of instrumentalist logic within the discourse of the international law to which it has been acculturated. In short, international law shapes Russian behaviour at the same time that Russia seeks, through its behaviour, to re-shape international law.

Conclusion: Rules, Behaviour, and the Nature of International Law
Russian behaviour is also interesting for what it tells us about the nature of international law in general. It suggests that critical legal theorists have a point when they suggest, as does Shirley Scott (1998, 37), that “the relationship between international law and foreign policy is more complex and nuanced than can be theorised in compliance terms alone.” Specifically, it suggests that the “rule-book image of international law,” which assumes the possibility of “a simple dichotomy of behaviour between legal and illegal, of rules pre-dating policy, of rules as shared by all parties involved in a dispute, and of the possibility of [their] objective application” needs to be modified (Scott 1998, 38). This is apparent when one considers that the fact of Russian non-compliance can be explained quite convincingly by enforcement theory, but that to do so is to neglect a whole host of law’s causal effects.

In order to fully comprehend the causal effect of international law, one must establish what precisely it is. Shirley Scott’s (1998, 44) solution – to theorise law as a form of ideology – is a useful first step. In this analysis, actors uphold the ideology of international law in their relations with each other, without necessarily subscribing to its precepts (Scott 1998, 44). But more is at stake here than ideological browbeating; the behaviour element supports the contention of other critical legal theorists, like Koskenniemi (2004), who assert that the legal idiom is a field of contestation, manipulable through both rhetoric and behaviour. Yet at the same time, by allowing political actors to frame their particularistic interests in universalistic terms, the legal idiom paradoxically creates and sustains the world as a legal community. It is therefore a source of legitimacy “simultaneously instrumental and resistant to the pursuit of power” (Krisch 2005, 369), a technique for the exercise of power that imposes behavioural constraints on the powerful as well as on the weak (Krisch 2005, 377). As a result, even challenges to the existing legal order are articulated and acted out from within the discursive structure of international law, not from without.

Contrary to the claims of neo-conservative pundits, then, the nature of Russian intervention in the Crimean Peninsula reflects the profound influence of the international legal principles of non-intervention and self-determination. While enforcement theory might explain, in general terms, the fact of Russian non-compliance, a normative theory of socialization – specifically, Goodman and Jink’s model of acculturation – best explains the nature of Russian behaviour as a whole. Beyond this, it signals to us the importance of international law as a discourse of power which can both shape and be shaped by state behaviour.
Endnotes

1 In the sense that compliance does not force a recalculation of the costs and benefits of a decision, thus “saving” transaction costs.

2 The concept of right process includes the criteria of determinacy, the clarity of a rule’s prescriptions and proscriptions; symbolic validation, authority bestowed through ritual or process; coherence, connection with some rational principle of broader application; and adherence to an accepted normative hierarchy (Franck 1988, 712).

Works cited


