

# History Did Not End: Russian Doctrine of International Law and the Kremlin's Future Warfare Plans

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## Abstract

This paper will first offer an objective overview of the main components of the official contemporary Russian interpretation of international law. As a result, it will draw conclusions about Russian future warfare behavior starting from the premises of its international legal doctrine. In order to catch a glimpse of the challenges that the international community will have to face when confronted with the Russian government's actions, this paper will: 1) provide a brief overview of Russian attitude towards some fundamental principles of international law and counterterrorism; 2) assess Russia's contemporary development of warfare and its links with the Russian approach to international law; 3) envisage future warfare challenges arising out of this doctrine, with specific reference to the use of drones and targeted killings.

## Introduction

It was hope that originated from Professor Fukuyama's article: hope that the world order was finally coming to a point of convergence, that conflicts would have been reduced, that a period of hegemony would have finally brought peace.<sup>1</sup> However, the world today is only a faded copy of the peaceful one that humanity awaited at the end of history. The threats to stability are multifaceted and the winds of turmoil are blowing throughout the planet.<sup>2</sup> The dangers coming from the freezing steppes of Russia are often underestimated, because there was a belief that after the end of the Cold War Russia "would have had no other choice than to make Western liberal and capitalist values its own, as the new extended West would have been almost universal."<sup>3</sup> Conversely, a safer international order could not be achieved, as Russia started emerging from the ashes of the Soviet Union.<sup>4</sup>

The Russian approach to international law is worth examining, as it constitutes a well-crafted alternative to the Western perspective.<sup>5</sup> The Russian government is not denying the importance of international law; on the contrary it is committed to the development of its own interpretation and application of fundamental principles, by covering Russian actions with the mantle of international law.<sup>6</sup> This is of utmost importance inside the field of international law, as Russia's "legal arguments can be considered as probative in the formation of customary international law," especially considering the persistent objector rule.<sup>7</sup> This paper will not aim at criticizing Russian interpretation of international law. It will offer an objective overview of its main components, to draw conclusions about Russian future warfare behavior.

To catch a glimpse of the challenges that the international community will have to face, confronted with the Russian government's actions, this paper will: 1) provide a brief overview of Russian attitude towards some fundamental principles of international law and counterterrorism; 2) assess Russia's contemporary development of warfare and its links with the Russian approach to international law; 3) envisage future warfare challenges arising out of this doctrine, with specific reference to the use of drones and targeted killings.

## Russian Approach to International Law

An analysis of Russian legal rhetoric can shed light on Russian policy (and vice versa).<sup>8</sup> The lenses of post-imperial resentment and Russia's semi-peripheral position on the world's chessboard are the most appropriate through which to read the Russian

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<sup>1</sup> Fukuyama, *The End of History and the Last Man*, 1.

<sup>2</sup> Krauthammer, "Unipolar Moment Revisited," 5; Holbrooke, "America, a European Power," 38.

<sup>3</sup> Baaz, "International Law is Different," 264.

<sup>4</sup> Kasparov, *Winter is Coming*, 98.

<sup>5</sup> Lukin, "25 Years Later, Another Wall," 44; Scoville, "Finding Customary International Law," 1896.

<sup>6</sup> Burke-White, "Crimea and International Legal Order," 67.

<sup>7</sup> Dunoff, Ratner, and Wippman, *International Law: Norms, Actors, Process*, 28.

<sup>8</sup> Allison, "Russian 'deniable' intervention in Ukraine," 1259.

contemporary approach to international law. It is evident that Moscow aims to achieve “great power status” on the international stage but it “still perceives global norms and institutions as an external imposition from the hegemonic West.”<sup>9</sup> This form of subaltern imperialism, and the bipolar worldview that follows, leaves Russia with the impossibility to feel as part of the West and the countervailing need to antagonize it by flexing muscles.<sup>10</sup> Russian Federation President Vladimir V. Putin constantly reiterates the concept of “Eurasianism,” according to which the Third Rome constitutes a “civilization distinct from the decadent and corrupted West.”<sup>11</sup> A Waltzian second-image analysis explains that Russian domestic concerns developing an external dimension are the drivers of its foreign policy.<sup>12</sup> This is demonstrated upon closer examination of the Russian stance on several principles of international law.

## Sovereignty and Territorial Integrity

Russian contemporary international legal perspective considers the principle of state sovereignty enucleated in Article 2(4) of the United Nations (UN) charter as of paramount importance.<sup>13</sup> The dominating Russian doctrine adopts a statist view in this regard; it considers the state as the bearer of the sovereignty and not the Russian people as subjects of individual rights, therefore rejecting the Western idea of popular sovereignty.<sup>14</sup> Russian scholars contribute to this statist rhetoric, which limits the subjects of international law to traditional actors and keeps international law distant from domestic law. This statist view has two corollaries: “anti-human rightism” and “anti-interventionism,” which contribute to the uniqueness of Russian theory of international law.<sup>15</sup>

Russian voting behavior in the UN Security Council best exemplifies its legal position on non-intervention, which took a conservative-nationalist turn in recent years.<sup>16</sup> For what concerns the Libyan situation, after voting in favor of Resolution 1970 Russia abstained from voting on Resolution 1973.<sup>17</sup> The fear that Resolution 1973 could have opened the door to large-scale military intervention dictated abstention.<sup>18</sup> The aftermath of the North Atlantic Treaty Organization’s (NATO) intervention in Libya further strengthened the Russian standpoint against interventionism, as it increased concerns about military operations aimed at internal interferences disguised as humanitarian

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<sup>9</sup> Morozov, “Aimed for the Better,” 28.

<sup>10</sup> Kaylan, “Kremlin Values,” 14.

<sup>11</sup> Crowley et al., “This is War,” 33.

<sup>12</sup> Waltz, *Man, the State, and War*, 9.

<sup>13</sup> Article 2(4) UN Charter: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

<sup>14</sup> Baaz, “International Law is Different,” 270.

<sup>15</sup> Malksoo, *Russian Approaches to International Law*, 140.

<sup>16</sup> Reykers and Smeets, “Losing Control: A Principal-agent Analysis,” 369; Mund, “In Defense of Sovereignty,” 1-164.

<sup>17</sup> S.C. Res. 1973, preamble, U.N. Doc. S/RES/1973, 17 March 2011; S.C. Res. 1970, preamble, U.N. Doc. S/RES/1970, 26 February 2011.

<sup>18</sup> U.N. SCOR, 66th Sess., 6498th mtg. at 8, U.N. Doc. S/PV.6498, 17 March 2011.

interventions.<sup>19</sup> In fact, after the *Isayeva v. Russia* judgment of the European Court of Human Rights condemned Russian actions against civilians in Chechnya, the Russian government has been wary of foreign humanitarian intervention in support of separatist movements.<sup>20</sup> This is not to say that Moscow is against the principle of responsibility to protect. However, it interprets this as the need for the international community to assist (from the outside) those states that require help in maintaining their duty to protect civilians, not to directly intervene inside the country.<sup>21</sup> Russian involvement in the Syrian conflict on Assad's side is a crystalline exemplification of this approach.<sup>22</sup> Russia vetoed five Security Council resolutions, concerned with Syria's territorial integrity and the principle of non-intervention.<sup>23</sup> Moreover, Russia affirmed that it would not allow other member states to use Security Council authorization to effect regime changes.

## Use of Force

The general principles of the sovereign equality of states, non-intervention and non-interference in other states' domestic affairs, and the general prohibition of the use of force as outlined in Article 2(4) of the UN Charter constitute constraints to military intervention. Unless authorized by the Security Council under Article 42 of the UN Charter or in self-defense under Article 51, military intervention is considered unlawful.<sup>24</sup> With regards to the latter, an intervention for humanitarian purposes not authorized by the Security Council is justifiable under the logic of the UN Charter only as an act of self-defense of the state.<sup>25</sup> The main justification to the Russian intervention in Georgia and Ukraine rests upon a peculiar interpretation of Article 51.<sup>26</sup>

In light of the Waltzian inward-looking perspective, Russian territorial expansion is not a goal in itself. It is aimed at the preservation of sovereign autonomy threatened by Western expansionism, as best shown by the narrative surrounding the Ukrainian and Georgian conflicts. The perceived threat of NATO expansion in the area and Western interference with internal affairs in both countries are at the root of both interventions.<sup>27</sup> According to the Russian government, the *casus belli* of the Ukrainian crisis is the

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<sup>19</sup> U.N. SCOR, 68th Sess., 6903rd mtg. at 17, U.N. Doc. S/PV.6903, 21 January 2013.

<sup>20</sup> European Court of Human Rights, *Isayeva v. Russia*, 2005.

<sup>21</sup> Mastroianni, "Russia Running Rogue?," 621.

<sup>22</sup> Charap, "Russia, Syria and Intervention," 35.

<sup>23</sup> S/2016/846; S/2014/348; S/2012/538; S/2012/77; S/2011/612.

<sup>24</sup> Article 42 UN charter: "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations;" article 51 UN charter: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

<sup>25</sup> Engle, "A New Cold War? Cold Peace," 165.

<sup>26</sup> Lee, "The Law of War," 251.

<sup>27</sup> Fursov, "Thirty Days That Changed the World," 58.

overthrow of President Yanukovich by a putsch backed by Western powers (dating back to the Orange Revolution).<sup>28</sup> Along the same lines, Saakashvili's anti-Russian Rose movement triggered the Georgian crisis. Russia used these starting points to justify its interpretation of the right of self-defense as including the protection of its nationals abroad. The Kremlin has formulated a "privileged interest doctrine," akin to the Soviet vision of spheres of influence. It characterized the end of the Soviet Union as one of the greatest catastrophes of the twentieth century. One of the reasons for this is that it left millions of "co-citizens" outside of Russian territory.<sup>29</sup> The Russian government considers attacks against Russian minorities anywhere in the world directed against the Russian homeland itself, deeming them as a lawful basis for the use of force.<sup>30</sup> Moscow also believes that it may legally intervene on behalf of ethnic Russians in danger abroad under the auspices of humanitarian rescue.<sup>31</sup> Technically, this approach complies with several values enshrined in various articles of the UN Charter, such as the principle of self-defense (Article 51), the duty to promote the protection of human rights (Article 1.3), and the obligation to further the purposes of UN article 56.<sup>32</sup>

In Crimea, Russia "exploited the tension between the principle that prohibits the acquisition of territory through the use of force and an equally fundamental right of self-determination."<sup>33</sup> Article 1(2) of the UN charter embodies the right of self-determination and its interpretation has evolved from including independence declared by post-colonial states to the one avowed by an oppressed population, mostly as a victim of crimes against humanity.<sup>34</sup> Within the context of the Crimean crisis, President Putin affirmed that those seeking self-determination are a "distinct people, subject to systematic oppression and who have chosen their status through a democratic process,"<sup>35</sup> satisfying all the conditions listed by the Supreme Court of Canada in the milestone case regarding Quebec. Moreover, by affirming that declarations of independence often violate domestic legislation without breaching international law, President Putin referred to the *Kosovo Advisory Opinion* when commenting on the Crimean referendum.<sup>36</sup> At the time of the *Kosovo Advisory Opinion*, Moscow opposed recognition of the independence of Kosovo. In Medvedev's words: "Western countries rushed to recognize Kosovo's independence. We argued that it would be impossible, after that, to tell the Abkhazians and Ossetians (and others) that what was

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<sup>28</sup> Rywkin, "Russia: An Adventure to Restore the Empire," 97.

<sup>29</sup> Rieker and Gjerde, "The EU, Russia and the Potential for Dialogue," 308.

<sup>30</sup> Article 61 of the Russian Constitution provides the domestic legal basis for this approach: "the Russian Federation shall guarantee to its citizens protection and patronage abroad."

<sup>31</sup> Toomey, "The August 2008 Battle of South Ossetia," 473.

<sup>32</sup> Article 1(3) UN Charter: "The purposes of the UN are [...] to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;" article 56 UN Charter: "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

<sup>33</sup> G.A. Res. 2625 (XXV), U.N. Doc. A/RES/2625 (XXV), 24 October 1970; Burke-White, "Crimea and the International Legal Order," 65.

<sup>34</sup> Article 1.2 UN Charter: "the purposes of the UN are [...] To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;" See Quane, "The United Nations and Self-Determination," 537.

<sup>35</sup> Kremlin, "Address by President of the Russian Federation," 18 March 2014; Supreme Court of Canada, Reference re Secession of Quebec, 2 S.C.R. 217, August 20, 1998.

<sup>36</sup> International Court of Justice, *Advisory Opinion on Kosovo*, 2010.

good for the Kosovo Albanians was not good for them.”<sup>37</sup> However, in the following years the Russian government accepted the *Kosovo Advisory Opinion* as a precedent and adopted it as the legal basis to specifically back its actions in Ukraine.<sup>38</sup> By supporting the internal dimension of self-determination within the boundaries of a sovereign state, the Kremlin justified the annexation of Crimea. As a result, self-determination is not considered an exceptional remedy anymore but becomes a more ordinary occurrence (relevant for various minorities throughout the world) and another destabilizing factor on the international scene.<sup>39</sup>

Counter-terrorism became a primary concern on the world agenda after the beginning of the “war on terror;” however, the practice of targeted killing has a longer history. Targeted killings are “the premeditated killing of a specific target suspected of terrorism, with governmental approval.”<sup>40</sup> This practice is justifiable under international humanitarian law, which only applies when “there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups, or between such groups within one State.”<sup>41</sup> According to the principle of distinction, the killing of combatants in this context is lawful.<sup>42</sup> The Kremlin’s approach to this practice fits within the picture of Russian compliance with international law. Russia has targeted and killed individuals suspected of terrorist attacks on its territory, mostly Chechens. By affirming that the situation in Chechnya constitutes an active armed conflict, Russia once again covered its actions under the mantle of international law;<sup>43</sup> by doing so, Moscow also avoided the applicability of the stricter requirements of international human rights law to the Chechen conflict.<sup>44</sup>

## Russian Warfare Today

With reference to the Ukrainian crisis in particular, the narrative surrounding Russian involvement in the conflict further highlights the Russian government’s need to prove its adherence to international law. President Putin denied that the acts of the unidentified forces in Crimea were attributable to Russia: he could do so because of the lax legal standard set forth by the Nicaragua case on the attribution of actions by non-state actors to a government that backs them.<sup>45</sup> The “little green men” that appeared in Crimea and the ones that are still fighting in Eastern Ukraine cannot be undeniably proven to be

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<sup>37</sup> Medvedev, “Why I Had to Recognize Georgia’s Breakaway Regions,” August 26, 2008.

<sup>38</sup> Mastroianni, “Russia Running Rogue?,” 628.

<sup>39</sup> Shany, “Does International Law Grant the People a Right to Secede?,” 241.

<sup>40</sup> Morehouse, “Russia’s Targeted Killing Program,” 272.

<sup>41</sup> International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Dusko Tadić (a/k/a Dule)*, 1995.

<sup>42</sup> Saura, “On the Implications of the use of Drones,” 143.

<sup>43</sup> Žilinskas and Declerck, “Targeted Killing Under International Humanitarian Law,” 9.

<sup>44</sup> Ruys, “License to Kill?,” 13-49.

<sup>45</sup> Moiseev, “Concerning Certain Positions on the Ukrainian Issue,” 56; “For a conduct to give rise to the legal responsibility of the United States, it would in principle have to be proved that that State had effective control of the military or paramilitary operations [...] the United States’ participation, even if preponderant or decisive [...] was insufficient to attribute the acts to the US.” International Court of Justice, *Nicaragua v. United States of America*, 1986.

under Russia. Therefore, they fail the Nicaragua test in this regard.<sup>46</sup> The Russian military tactic of hybrid warfare is consolidating. The “diverse and dynamic combination of regular forces, irregular forces and/or criminal elements all unified to achieve mutually benefitting effects” accomplished this result.<sup>47</sup> Another feature of contemporary Russian warfare is the tactic aimed at avoiding direct conflict through non-contact clashes by protesters, rioters, mercenaries, and special forces that trigger the reaction of the host government. First, as the militias are composed of members of civil society without official military status, they have more deniability than regular Russian forces. Second, they provide the justification for the Kremlin’s involvement in those conflicts with conventional forces in a secondary moment.<sup>48</sup>

The proliferation of drone technology has evolved beyond the exclusive control of the United States and its allies and the spread of drones is transforming warfare on a global scale.<sup>49</sup> One of the most worrying aspects of the use of drones is “the powerful combination of efficiency and lethality spreading in an environment lacking internationally accepted guidelines on legitimate use.”<sup>50</sup> With regards to the future of Russian military strategy, President Putin announced several times the intention to develop a Russian drones program.<sup>51</sup> The development of an unmanned aircraft system in warfare fits within the framework of the strategic approach of “no-contact warfare,” according to which the Russian military can defeat a hostile state without the engagement of regular Russian forces.<sup>52</sup> As mentioned above, there is evidence that Russia used the practice of targeted killings within its own borders during the Chechen crisis; conversely, there is no clear evidence about targeted killings committed outside Russian borders or accomplished by Russian drones.<sup>53</sup> Given the rapid development of the Russian drone program and Russia’s increasing involvement in various conflict areas, it seems only a matter of time before the Kremlin develops its own drone doctrine and decides to use them for targeted killings on the territories of other states.

## The Future

In a future hypothetical scenario, Putin could follow the precedent established by the U.S. practice of targeted killings with drones. It is conceivable that Russia could exploit American doctrine on the drone strikes in the territories of other states, outside of areas of active hostilities. One can draw the following analogy: the U.S. targets terrorists in areas of non-active hostilities (for example, Yemen, Pakistan, or Somalia) based on the “legitimate claim of self-defense,” which translates into a perceived right to use lethal force against

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<sup>46</sup> Hilpold, “Ukraine, Crimea and New International Law,” 246.

<sup>47</sup> Kilinskas, “Hybrid Warfare,” 139; Training Circular 7-100, *Hybrid Threat*.

<sup>48</sup> Sinclair, “Old Generation Warfare,” 14.

<sup>49</sup> Freedman, “The Drone Revolution,” 158.

<sup>50</sup> Roberts, “When the Whole World Has Drones,” 2.

<sup>51</sup> Buckley, “Russia Looks to the Skies,” 55.

<sup>52</sup> Bugriy, “The Rise of Drones in Eurasia,” 7.

<sup>53</sup> Even though the use of drones outside Russian territory has been ascertained (mainly for surveillance purposes).

terrorist suspects.<sup>54</sup> This right of self-defense stretches beyond the requirements of Article 51 of the UN charter (in particular for what concerns the necessity and imminence components) and consequently transformed the entire world in the battlefield of the global war on terror.<sup>55</sup>

Similarly, a hypothetical scenario could be the Russian targeting of militants who are sabotaging Russian oil lines in some of its neighboring countries. For example, Crimea, Donbass, Abkhazia, South Ossetia, and Transnistria are all regions of frozen conflict, and therefore areas of non-active hostilities (for Eastern Ukraine this is only partially true).<sup>56</sup> By labeling those targets as terrorists, Russia could use the doctrine developed by the U.S. as a precedent. Moreover, the Russian government would probably add an additional layer of legal arguments to its actions, by referring to the Russian approach to general principles of international law examined above. A targeted killing of a terrorist in the territory of another country could be: a) in compliance with the principle of non-intervention, for example in Ukraine the Kremlin could base its actions on the request for help formulated by Yanukovich (or his designated successor), who the Russian government considers to be legitimate and forms the basis for the Russian involvement in the Ukrainian crisis; b) alternatively (or cumulatively) the “privileged interest” doctrine could be even more easily invoked, coupled with the broad interpretation of self-defense aimed at the responsibility to protect Russian nationals abroad (which could satisfy the “imminence” requirement of Article 51).<sup>57</sup>

## Conclusions

It is safe to infer that the “international law euphoria” that spread throughout the world in the aftermath of the Second World War has now lost momentum.<sup>58</sup> This short overview of the Russian government’s narrative of international law highlights the flaws of the fluidity of the international legal system; countries tend to interpret the law in the way that best serves their interests, taking advantage of the many loopholes existing in the fragile system of the law of nations. An analysis of the Russian attitude serves as a paradigm for the contemporary world, where realist views are becoming increasingly popular; as a result, international law is lying on a chair in the corner and can be used as a blanket when needed to cover—and legitimize—all sorts of actions.

Russia is evolving past international law. Quite to the contrary, learning to “read” Russian approach to international law is of paramount importance for the future, to reduce the surprise and disconcert arising out of Russian actions in foreign policy and build on

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<sup>54</sup> Presidential Policy Guidance: Procedures for approving direct action against terrorist targets located outside the United States and areas of active hostilities, 22 May 2013.

<sup>55</sup> Blum and Heymann, “Law and Policy of Targeted Killing,” 162.

<sup>56</sup> Arbatova, “Frozen Conflicts and European Security,” 51; Driscoll and Maliniak, “With Friends Like These,” 586; the ICC defined the situation in Ukraine as an international armed conflict; this triggered Russian withdrawal from the Rome Statute.

<sup>57</sup> Annual speech at the UN General Assembly: Foreign Minister Lavrov called on the GA to adopt a declaration on the “non-recognition of a coup as a method of the change of power” (address to 69th session of UN General Assembly, 27 September 2014); see also: Interview with Putin, March 4, 2014.

<sup>58</sup> Neff, “A Short History of International Law,” 24.

new foundations. A “long-term quarantine of Russia” cannot be the solution. In a moment of global uncertainty like the current one, the West has to abandon its purely confrontational nature with Russia; NATO expansion, sanctions, and perpetual condemnation of Russian unlawful actions are a counterproductive approach which makes the fire burn quicker under the ashes of the Wilsonian world order of the past decades. There is a need to understand the dangers coming from Moscow by reading through the lines of a well-elaborated legal and warfare doctrine and progressively develop confidence-building measures.<sup>59</sup>

In conclusion, if European intellectuals abandon their duty to lead, they will “invite domination by their more radical brother.”<sup>60</sup> “Kennanesque” policies of focusing on building the Western internal strengths, facing threats in an effective way, and illuminating the truth about President Putin’s rule is the best attitude to counter the new Russian avowals of power.<sup>61</sup> The effort to foresee where Russian trajectory will be in the near future is of paramount importance. The Kremlin is committed to regaining a central role on the international stage and it is not scared to flex its muscles. It is time to understand Russian behavior, through the lenses of the Russian approaches to international law and warfare, before the past we tried to forget comes alive again.

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<sup>59</sup> Rywkin, *Ibid.*; Mearsheimer, “Defining a New Security Architecture for Europe,” 31; Åtland, “North European Security after Ukraine,” 174.

<sup>60</sup> McCormick, “Carl Schmitt’s Europe,” 137.

<sup>61</sup> Baglione, “Don’t Feed the Bear,” 26.

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