Aviation is a major globalizing force for the transfer of people, goods, and power, as well as a tool of positive statecraft. Through intergovernmental and transnational relationships, the United States and European Union have helped countries such as Ukraine and Azerbaijan build capacity – human, technical, and legal – and engage more fully in the global aviation system. These relationships provide Washington and Brussels with avenues of influence and enhance the potential for civil-military cooperation, without the overt provocation of Moscow. This article argues that this form of constructive engagement is not an exclusive strategy for diplomacy, but a long-term investment in the development of Russia’s near abroad.

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Following its annexation of Crimea on 21 March 2014, on March 28th, Russia issued a notice purporting to establish control over airspace that included sovereign Ukrainian airspace over the Crimean Peninsula and the associated Ukrainian territorial sea. Following its intervention in Ukraine, Russia also claimed control of international airspace managed by Ukraine over the Black Sea and the Sea of Azov, pursuant to a regional air navigation agreement with the International Civil Aviation Organization (ICAO). ICAO is a specialized agency of the United Nations created by the 1944 Convention on International Civil Aviation (Chicago Convention).1

Ukraine rejected Russian claims and continued to provide air traffic control services in both Ukrainian territorial airspace and international airspace assigned to Ukraine. Within the disputed airspace, Ukraine and Russia exchanged competing restrictions on flight operations and closed various air traffic services’ route segments. As a result, ICAO issued a recommendation that states implement measures to avoid the airspace and to circumnavigate the Simferopol (UKFV) Flight Information Region with alternative routings. Citing the risk of interception and military engagement, on 3 April 2014 the US created a “no fly zone” in the contested airspace applicable to US civil operations.

On 17 July 2014, Malaysia Airlines Flight 17 (MH17), a scheduled international passenger flight traveling within Ukrainian airspace near Donetsk was shot down, killing all 298 passengers and crew on board. Western intelligence suggested the involvement of Russian-armed rebels. The United Nations Security Council condemned the attack. Subsequently the US extended its no fly zone in the region to include the airspace near Donetsk, the Dnepropetrovsk (UKDV) Flight Information Region.

In response to Russia’s intervention in Ukraine, the US and the EU initiated sanctions targeting the Russian economy. On 12 September 2014, Washington and Brussels jointly escalated the sanctions directed at Russian energy, finance, and defense sectors, including aviation interests, and blocking access to Western capital markets. In return, Russia threatened to close its airspace to Western air carriers, a move that would disrupt international flight operations, particularly for European airlines.

The crisis in Ukraine and the ensuing challenges discussed above have urgently revived the question of how the US, the EU, and its partners, including Turkey, should engage Russia’s so-called “near abroad” and account for its proclaimed interest in

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the region. Tragedies such as MH17, economic sanctions, and threats from Moscow to close Russian airspace also highlight the critical importance of aviation to international relations.

Through institutional and intergovernmental relationships in aviation, and similar technical and economic fields, the West can build-upon its constructive engagement in states along Russia’s periphery. This approach represents a long-term investment in the region that respects Moscow’s vital interests and serves the West’s foreign policy objectives. In turn, this type of positive statecraft through aviation can serve as a roadmap for rebuilding the West’s relationship with Russia.

The following analysis will examine positive statecraft through aviation in two states, Ukraine and Azerbaijan; and evaluate the benefits and limitations of this strategy to engaging Russia’s near abroad from above.

**Ukraine**

Ukraine has one of the richest traditions of aviation in the world, particularly with respect to aircraft design and manufacturing. The country served as a key industrial center for Soviet aviation, a legacy that continues to this day. Soviet engineer Oleg Antonov designed numerous fighters and transport aircraft, and headed the famed Antonov Research and Design Bureau. His feats of engineering are still so well-renowned that you will find oil prints of Antonov aircraft in flight in the open-air market on St. Andrew’s descent in Kiev. ICAO collaborates with Ukraine’s National Aviation University to provide training and research opportunities for aviation specialists across the globe. In addition, Ukraine has a sizeable and complex aviation environment as a result of its multiple airports and air carriers, expansive territory, and role as a major Eurasian transit way.

In 2005, however, the US determined that Ukraine no longer met the minimum requirements for aviation oversight under the Chicago Convention. More specifically, the US lowered the rating of Ukraine from “Category 1” to “Category 2” under the US Federal Aviation Administration (FAA) International Aviation Safety
Assessment (IASA) program.² Air carriers from Category 2-rated countries are not permitted to initiate commercial service to the US or engage in code-sharing relationships with US airlines. For states with air carriers currently operating flights to the US, the FAA will not permit expansion or changes in services to the US while in Category 2. Given that the US represents one of the largest aviation markets in the world, and that such a downgrade would bring additional scrutiny from the EU, Ukraine had incentives to take action.³

Subsequently, Ukraine, led by the State Aviation Administration of Ukraine (SAAU), part of the Ministry of Transport and Communications, engaged in a number of reforms to improve aviation oversight. Ukraine launched an effort to harmonize its regulatory system with that of the EU. In 2009, Ukraine entered into a bilateral arrangement with the EU’s European Aviation Safety Agency (EASA) to assist in the regulatory reform process.⁴ Through this initiative, the EU provided technical assistance and developed implementation procedures through “standardization visits” by teams of EASA experts. This intergovernmental relationship also facilitated the mutual recognition of technical approvals and exchange of traffic rights, all of which provide the basis for international trade in the aviation sector. As a result, Ukraine moved into closer alignment with the EU’s “Common Aviation Area” – a liberalized pan-European aviation market.

The US has also provided assistance to Ukraine to develop the country’s aviation system. In 2012, at the request of Ukraine, the FAA conducted a technical review of the SAAU to assess Ukraine’s compliance with ICAO standards under the Chicago Convention. This type of assistance occurs through a bilateral agreement with the US.⁵ During the technical review, a team of FAA experts conducted an in-depth audit of Ukraine’s civil aviation system. Upon completion, the FAA issued a report with specific recommendations to improve government oversight.

In response, the SAAU developed and began implementing an action plan. Among the important initiatives taken, Ukraine authorized a substantial increase in SAAU inspector staffing levels and passed legislation to ensure that remuneration for inspectors was compatible with private industry salaries. The lack of political will to

⁵ “Provision of Technical Assistance to Civil Aviation Authorities, Advisory Circular No. 129-5,” U.S. Federal Aviation Administration, 16 August 2013.
devote human and budgetary resources toward civil aviation oversight is often a key hurdle to achieving compliance with ICAO standards.

In 2013, the FAA conducted another review of the SAAU and determined that Ukraine complied with ICAO standards. At the time, Ukraine no longer had any carriers operating to the US. During the downgrade to Category 2 status, Ukraine’s largest airline went into bankruptcy and ceased operations. However, with the FAA’s upgrading of Ukraine to the Category 1 rating, a new entrant air carrier, Ukraine International Airways, launched non-stop service from Kiev to New York.

Following the downing of MH17 in July 2014, the United Nations Security Council called for an independent international investigation and affirmed the role of ICAO and other participating states under international law. The Chicago Convention provides specific rules and procedures on accident investigations, including the rights and obligations of states with interests in the accident. This group included Ukraine (the state of occurrence), Malaysia (the state of the air carrier’s registry and its operator), the US (the state of design and manufacture) and European Union members (states that suffered fatalities). The institutional relationships previously established with Ukraine provided ICAO, the US, and the EU with existing channels to assist Ukraine with the investigation.

Azerbaijan

In 2013, Azerbaijan celebrated 75 years of civil aviation. Members of the Azerbaijani aviation community and guests such as the president of the European Civil Aviation Conference met in Baku on 31 May 2013 to observe the occasion. There was much progress to commemorate.

In 2006, the Baku-Tbilisi-Ceyhan (BTC) oil pipeline, running 1770 kilometers from Baku to the Turkish port of Ceyhan – beyond Russian territory – began operations.

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7 See: Chicago Convention, art. 26; see also: Aircraft Accident and Investigation, Annex 13 to the Convention on International Civil Aviation, 10th Ed. (July 2010).
A gas pipeline project, the Baku-Tbilisi-Erzurum (BTE), was also completed. This new capacity in the hydrocarbon industry led to new energy exports and incredible economic growth. Concurrent with this economic expansion, Azerbaijan began the restructuring of its civil aviation system.

Following adoption of new primary aviation legislation, Azerbaijan established the State Civil Aviation Administration (SCAA) in 2006 as a civil aviation authority. One legacy from the Soviet era was that the entire civil aviation system, from overseer to operator, existed within a single organization, the “State Concern of Civil Aviation” (Azerbaijan Hava Yolları). The establishment of the SCAA as an independent regulatory authority was an important step for avoiding conflicts of interests and achieving compliance with ICAO standards.

To further implement its new legal structure, Azerbaijan, like Ukraine, adopted aviation regulations that track the EU model. In support of these efforts, Azerbaijan entered into a bilateral arrangement with EASA. This working arrangement helped facilitate the exchange of expertise, training programs, and inspection procedures between the EU and Azerbaijan.

With the establishment of the SCAA, Azerbaijan and EASA entered a new agreement in 2009 that further imbedded their cooperative relationship. EASA assisted the SCAA with incorporating the EU-based regulatory system into Azerbaijan’s domestic legal structures through in-country consultations. This partnership also allowed for the mutual recognition of certifications and approvals with regard to aircraft, related parts, and engineering organizations.

The US has also established and developed an aviation partnership with Azerbaijan. Shortly after taking office in 2009, President Obama authorized the substantial increase of US forces in Afghanistan as part of a new counterinsurgency (COIN)

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“The lack of political will to devote human and budgetary resources toward civil aviation oversight is often a key hurdle to achieving compliance with ICAO standards.”
strategy. With the Pakistani border proving problematic for security and political reasons, the US secured ground and air logistics corridors to Afghanistan through Azerbaijan, Uzbekistan, Kyrgyzstan, Turkmenistan, and even Russia. This “Northern Distribution Network” (NDN) provided an alternative means to support the troop surge. Following the Lisbon Summit in November 2010, NATO members adopted a timeframe for withdrawal from Afghanistan. When the drawdown in Afghanistan began, the US reversed the NDN routes, including through Azerbaijan, to allow for the movement of retrograde cargo.

Civil-military cooperation, particularly in aviation, proved critical to the success of the NDN. Commercial air carriers from Azerbaijan and elsewhere in the region provided unique air lift capabilities. Employing the massive Antonov-124 aircraft and the workhorse Ilyushin-76 aircraft, initially designed during the Soviet era, these airlines have the capacity, expertise, and local knowledge to execute inter-theater flights, as a supplement to the US military’s cargo fleet. Airports in Azerbaijan (Baku), Uzbekistan (Navoi), and Kyrgyzstan (Manas) were further developed and equipped with cargo-handling facilities able to process multi-modal shipments.

The US played an important role in ensuring that Azerbaijan’s civil aviation oversight institutions grew in tandem with this economic development. In 2009, the US Trade and Development Agency (USTDA) issued a grant to Azerbaijan to improve its aviation oversight system to meet an increased demand for aviation transportation services. Assisted by this USTDA funding, the SCAA worked to implement new regulations, train technical personnel, and establish standardized policies and procedures in congruence with ICAO standards.

In 2013, the SCAA engaged the FAA for a technical review of Azerbaijan’s civil aviation system. FAA experts traveled to Baku to perform the review and engage their SCAA counterparts. The SCAA then addressed areas of improvement identified during the FAA assessment. Following subsequent technical consultations and a

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10 To the extent that the US military relied on and sought to include regional air carriers in NDN airlifts, as part of its COIN strategy, Washington had incentives to develop civil aviation infrastructure in the region as US military procurement rules strongly favor, and some instances require, the use of foreign air carriers from Category 1-rated states, as opposed to Category 2-rated states.

11 The Wicks Group served as the contractor selected to carry out the USTDA-funded assistance.
confirmation trip to Azerbaijan, the FAA announced in March 2014 that Azerbaijan met ICAO standards and were issued a Category 1 rating.

Azerbaijan previously did not hold any IASA rating from the FAA. Unlike the case of Ukraine, there was no prior history of direct commercial air service between Azerbaijan and the US. US Ambassador Richard Morningstar cited the achievement as demonstrating the cooperation between the two countries and expressed hope for direct air flights to the US by the end of the year. On 24 September 2014, Azerbaijan Airlines completed the first non-stop commercial flight between Baku and New York. A new bridge between Azerbaijan and the US was complete.

**Positive Statecraft**

Aviation is a major globalizing force for the transfer of people, goods, and power. To paraphrase Carl von Clausewitz, aviation is a continuation of global politics by other means. Beyond its coercive application, aviation can serve as a tool of positive statecraft, particularly in states of the former Soviet Union, which have lacked sufficient capacity – human, technical, and legal – to fully engage in the global aviation system.

Treaty regimes and international institutions concerned with areas such as aviation provide utility-maximizing avenues for achieving preferences through the facilitation of agreements and policy coordination. As illustrated above, the US and the EU have promoted the harmonization of legislation and regulations, and the implementation of measures that comply with the Chicago Convention and ICAO standards. Western air carriers have large global networks, and US and European airplane manufacturers export more aircraft when foreign air carriers can expand their services. Therefore, the US and the EU have incentives to increase standardization of international aviation under the Chicago Convention. In turn, reputational benefits and market access serve as important incentives for foreign governments to achieve compliance with ICAO standards.

Intergovernmental and transnational initiatives also provide states with levels of interaction and avenues for directing influence. In the aviation sector, the US and the EU have created and fostered relationships with the purpose of developing more effective regulatory oversight. These relationships can enable Western policymakers

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to mentor and influence their bureaucratic counterparts. In the event of a crisis, such as in the case of MH17, this interinstitutional dialogue can serve as an important conduit for information and assistance. Transnational civil aviation relationships also play an important role in global efforts to combat terrorism and address public health threats like the Ebola outbreak.

In addition, the methods, principles, and tools utilized by governments to achieve effective civil aviation oversight are applicable to other areas of governance. Through the initiatives described, the US and the EU seek to develop building blocks at the governmental level including: (1) establishing a sufficient and transparent legal framework – primary legislation, implementing regulations, internal policies, and procedures; (2) strengthening the independence and organizational capacity of the regulatory authority; (3) ensuring the recruitment and training of a skilled government workforce; (4) advancing and sufficiently documenting the oversight process; and (5) requiring enforcement and adjudication for violations. At its core, positive statecraft through aviation involves capacity-building to achieve good governance. Corruption at any stage creates a safety concern and security threat.

This form of constructive engagement is not meant as an exclusive strategy for diplomacy in the region. Technical and economic engagement does not immediately address other important policy objectives of the West, such as the promotion of human rights and growth of democracy. The adoption and effective implementation of ICAO standards is not going to instantly move a country’s rating on the Freedom House assessment of political rights and civil liberties.14

Instead, this approach represents a long-term investment and involves what Harold Koh, a human rights activist and former Legal Adviser at the US State Department, identified as a “transnational legal process.”15 Through an interactive process beginning at the international level, norms are identified, interpreted, and then internalized.

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within domestic structures and institutions. Even despite initial resistance to a norm, states eventually “learn” to comply because they develop an internal sense of fairness and legitimacy associated with the norm. Through this political, social, or economic entrenchment, states reconstitute their interests and practices in compliance with the norm. Once internalized, a norm such as good governance in aviation can transfer to another field.

“Given the dual-use nature of the aerospace sector, civil engagement can enhance the potential for military cooperation and the incorporation of advanced future technologies.”

There are other limits to this strategy for engagement. For example, soft power actions will not resolve the security dilemmas that confront states along the Russian periphery. Promoting good governance, economic integration, technical development, and related institutional cooperation will not unlock frozen conflicts or serve as an immediate deterrent for foreign interference. Such activities, however, also do not give rise to imminent security threats for neighboring states.

For example, hard power initiatives along Russia’s periphery can result in unintended consequences. With regard to Russia’s intervention in Ukraine, some observers claim that Moscow was provoked by NATO enlargement and Western support for the overthrow of former President Viktor Yanukovych. We do not have to fully accept this argument to acknowledge that Moscow has consistently claimed vital interests in states along Russia’s periphery and repeatedly demonstrated a willingness to defend them against perceived threats like NATO expansion.

Yet, there is hard power value in engaging countries through aviation diplomacy as well. Given the dual-use nature of the aerospace sector, civil engagement can enhance the potential for military cooperation and the incorporation of advanced future technologies. The development of the NDN, in which Russia was an active participant, is a useful example. The growth of the unmanned aerial systems (drones) and commercial space industries further highlight the possibilities. Moreover, supporting civil-military cooperation leads to increased safety, security, and efficiency


17 For example see: John J. Mearsheimer, “Why the Ukraine is the West’s Fault,” Foreign Affairs, Vol. 93 No. 5 (September/October 2014) (also extending this logic to explain Russia’s invasion of Georgia in 2008).
in the use of airspace – a benefit for international peace and security. In short, positive statecraft through aviation can be a force multiplier.

Constructive engagement through aviation provides a balanced approach that respects Russia’s core interests and serves Western foreign policy objectives. Developing human, technical, and legal capacity leads to strong states, but not necessarily Western strongholds in Russia’s near abroad. Creating interoperable regulatory and institutional platforms for economic integration and even strategic cooperation does not require EU or NATO membership. This approach does require a long-term investment in states of the former Soviet Union, which have struggled to fully participate in the global economy.

Russia faces many of the same institutional and economic challenges as its neighbors. Even as the West increasingly isolates the regime in Moscow as a result of the Ukrainian intervention, Russia is too important to international security to be ignored. In turn, access to Western markets and financial institutions is a critical component of world trade and a substantial incentive for cooperating with Washington and Brussels. If and when the period for détente arises, the tools and lessons of positive statecraft through aviation can serve as a roadmap for rebuilding the West’s relationship with Russia. Indeed, aviation has always provided a means for connecting disparate peoples, disseminating ideas, and deconstructing political boundaries.