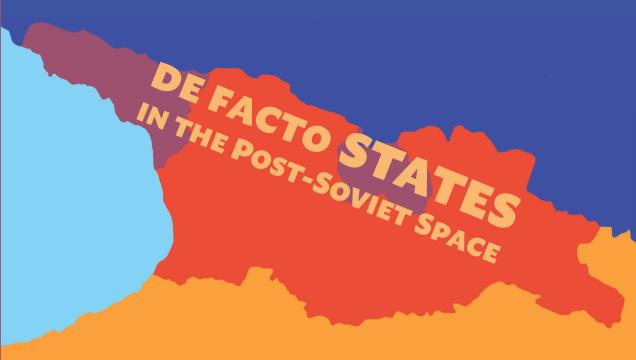
## **Piotr Sieniawski**



# The Cases of Abkhazia and South Ossetia



# DE FACTO STATES IN THE POST-SOVIET SPACE

## **Piotr Sieniawski**



# The Cases of Abkhazia and South Ossetia

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### **Table of Contents**

List of abbreviations	7
Introduction	9
1Theoretical aspects of statehood	27
1.1 The notion of state	27
1.2 Criteria of statehood	34
1.3 Modes of state creation	42
1.4 Functions of a state	48
1.5 The right to self-determination of peoples	52
2 Secession and <i>de facto</i> statehood	61
2.1 The notion of secession	61
2.2 Legality of secession	71
2.3 The notion of <i>de facto</i> state	79
2.4 Factors of secession	97
2.5 Recognition of states. The obligation not to recognize unlawful situations	109
3 Case study: Abkhazia	123
3.1 Historical development	123
3.2 Circumstances of secession	134
3.3 Attempts to resolve the conflict	154

6 Table of Contents

3.4 Assessment of <i>de facto</i> statehood	165
3.5 Legal status	206
4 Case study: South Ossetia	215
4.1 Historical development	215
4.2 Circumstances of secession	227
4.3 Attempts to resolve the conflict	237
4.4 Assessment of <i>de facto</i> statehood	243
4.5 Legal status	285
5 De facto statehood in the post-Soviet space	291
5.1 The post-Soviet space	291
5.2 Abkhazia and South Ossetia in the foreign and security policy of the Russian Federation	300
5.3 Elements of stability and sustainability of Abkhazia	
and South Ossetia	316
5.4 De facto statehood of Abkhazia and South Ossetia	333
Conclusion	341
References	351
List of tables	391
List of figures	393
List of illustrations	395
Streszczenie	397
Index of names	404
Index of geographic names	408

#### List of abbreviations

AO autonomous oblast

ASSR Autonomous Soviet Socialist Republic
CIS Commonwealth of Independent States

CONIFA Confederation of Independent Football Associations

EEAS European External Action Service

EU European Union

EUMM European Union Monitoring Mission

FRG Federal Republic of Germany GDR German Democratic Republic

ICAO International Civil Aviation Organization

ICG International Crisis Group
ICJ International Court of Justice
IDP internally displaced person

IIFFM Independent International Fact-Finding Mission

NATO North Atlantic Treaty Organization NGO non-governmental organization

OSCE Organization for Security and Co-operation in Europe

RA Republic of Abkhazia

RSFSR Russian Socialist Federative Soviet Republic SFRY Socialist Federal Republic of Yugoslavia

SSR Soviet Socialist Republic

8 List of abbreviations

UN GA	United Nations General Assembly
UNPO	Unrepresented Nations and Peoples Organization
USAID	United States Agency for International Development
USSR	Union of Soviet Socialist Republics

With the era of *perestroika* in the 1980s, ethnic tensions around the Soviet Union aggravated. The exercise of the right to self-determination by the constitutive states of the USSR led to separatist demands among ethnic groups within those constitutive units, which attempted to secede from their parent states. At the beginning of the 1990s, ethno-linguist tensions were often accompanied by armed conflicts between the separatists and the parent states. Some of them ended in success of the separatist groups. Geopolitical units such as Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh, which functioned independently from their parent states, were created this way. However, the parent states refused to grant recognition to these units and maintained their territorial integrity despite the fact that they no longer exercised effective control over part(s) of their territories.

The problem of recognition and non-recognition reappeared in an intense discussion after the declaration of independence by Kosovo on 17 February 2008. This caused markedly different reactions among the international community. For instance, within the UN Security Council, Russia and China were opposed to the declaration of independence, whilst the United States, Great Britain and France granted Kosovo recognition. In August 2008, an armed conflict occurred between Georgia and Russia, in which Georgia attempted to reclaim the territory of South Ossetia. Consequently, Russia recognized Abkhazia and South Ossetia as independent states.

In 2014, Crimea declared independence from Ukraine and was later annexed by the Russian Federation. In the same year, an armed conflict broke out in the east of Ukraine, where two self-proclaimed republics, the Donetsk People's Republic and the Lugansk People's Republic, emerged. At the time when I started my doctoral studies, these entities had only existed for two years, which seemed relatively short in order to conduct research on their *de facto* statehood. Moreover, as the armed conflict was still ongoing and it was not clear whether the parent state would re-establish effective control, I chose not to include these entities into my research. In the meantime, the two self-proclaimed entities remain out of control of the parent state. In the scholarship on *de facto* states, the notion "second generation of frozen conflicts" emerged and started to be applied with reference to unrecognized entities¹ that appeared later in the 2000s.

The problem of unrecognized or partially recognized entities constitutes a topical issue in political science as well as in international legal science. The specificity of the issue of de facto states rests upon the fact that they claim to be independent states and have unilaterally declared independence from their parent states, although the latter insist on their territorial integrity and claim that such declarations are null and void. Little clarity did the decision of the International Court of Justice bring to this issue with regard to the unilateral declaration of independence by Kosovo, merely stating that a unilateral declaration of independence does not violate the principle of territorial integrity unless it is a result of breach of peremptory norms. The issue of de facto states is closely related to other partial problems, which are addressed by international relations science, such as creation and extinction of states, recognition of states, state-building processes, state weakness and state failure, ethnic separatism, international and non-international armed conflicts, reconciliation and peaceful resolution of disputes, international protection of human rights, etc.

De facto states are not some kind of "black holes"; on the contrary, there are people facing their everyday problems, such as passports recognized only by few states, obstacles in travelling abroad, difficulties with the international

<sup>&</sup>lt;sup>1</sup> Kazantsev, A. 2020. Russia's policy in the "frozen conflicts" of the post-Soviet space: from ethno-politics to geopolitics. In *Caucasus Survey*. Vol. 8, no. 2. ISSN 2376-1199. Pp. 142–162.

postal service, international trade, educational issues, medical treatment, etc. When I travelled to Abkhazia, what stroke me the most, perhaps apart from abandoned and dilapidated buildings, was the lack of international brands (brand fashion stores, chain restaurants, etc.), which are so common in Europe that we almost take them for granted. Foreign visitors who come from Georgia proper may not continue their journey to Sochi or Adler (Russia), because this would be in violation with the Law of Georgia on Occupied Territories. When I was walking the streets of Sukhum(i) or Gagra, the locals probably considered me an ordinary Russian tourist due to the fact that the vast majority of foreign visitors are Russian citizens and Russian language appears to be the *lingua franca*.

The object of research are the *de facto* states in the post-Soviet space, specifically the mechanisms of their creation, their internal and external stability and sustainability as well as the role of a patron state in the process of *de facto* state creation and the significance of *de facto* states in the patron's foreign policy.

I have chosen Abkhazia and South Ossetia as case studies because these entities constitute the most similar cases for a qualitative in-depth analysis. "The chosen pair of cases is similar in all respects except the variable(s) of interest". The similarities between the two cases stem from internal and external aspects of *de facto* statehood (mechanisms of secession, support of the third state, or some elements of stability and sustainability in the internal and external spheres). However, they differ in the level of their dependency on the third state as well as in their struggle to become internationally recognized entities.

Moreover, the entities chosen for case studies share the following characteristics:

- Geographical location (both seceded from the same parent state);
- Geopolitical context (both belong to the first generation of *de facto* states in the post-Soviet space);

<sup>&</sup>lt;sup>2</sup> Gerring, J. 2008. Case Selection for Case-Study Analysis: Qualitative and Quantitative Techniques. In *The Oxford Handbook of Political Methodology*. New York: Oxford University Press. ISBN 978-0-19-928654-6. P. 668.

• Extent of international recognition (recognized by the Russian Federation and a few other UN member states with rather close ties to Russia). In contrast, no other *de facto* state in the post-Soviet space has been recognized by any UN member state;

• Mutual cooperation (Abkhazia and South Ossetia officially recognize each other and used to cooperate within the Community for Democracy and Rights of Nations<sup>3</sup>).

The case studies have been conducted separately, but with same parameters applied to each of them. Abkhazia and South Ossetia represent cases that "differ on the outcome of theoretical interest but are similar on various factors that might have contributed to that outcome". Thanks to the application of same parameters to both cases, the result is a set of two matched cases comparable according to those parameters.

Although recently there has been a growing interest in the topic of *de facto* states both in political science and in public international legal scholarship, it is still considered a relatively young field of research. The general public interest in *de facto* states has intensified after the outbreak of armed conflicts in the east of Ukraine in 2014 and the Armenian-Azerbaijani conflict over Nagorno-Karabakh in 2020. This proves that the problem of *de facto* states, their functioning and the security challenges relating to them is a topical issue in international relations.

The aim of this work is to provide answers to the following research questions:

- 1. What is a de facto state and what are the key elements of its definition?
- 2. How can secession be defined and how does it translate into the process of *de facto* state creation?
- 3. How have Abkhazia and South Ossetia been able to sustain themselves over several decades? What are the elements of their stability and sustainability?

The purpose of the first research question is to analyze the existing definitions of *de facto* states and similar terms, such as *de facto* regime,

<sup>&</sup>lt;sup>3</sup> The organization, founded in 2006, which united *de facto* states in the post-Soviet space: Abkhazia, Nagorno Karabakh (Artsakh), South Ossetia and Transnistria.

<sup>&</sup>lt;sup>4</sup> Gerring, J. 2008. Case Selection..., p. 668.

states-within-states, quasi-states, contested states and *sui generis* entities. Based on an analysis of the above terms, I attempted to draw the key elements of the *de facto* state definition.

The second research question focuses on the process of secession of a part of territory and its population from an independent state with the purpose of creating a new state. In this context, particular attention is paid to factors and circumstances of secession, i.e. why in some cases secession occurs early whilst in other cases separatist entities prefer to remain part of the "parent state". Moreover, it is necessary to analyze the role of actors who participate in the process of secession. In international law, there is an ongoing discourse whether secession is legal or illegal, and in international relations science, secession is often discussed in the light of recognition granted by other members of the international community. However, recognition is nowadays no longer perceived as a discretionary act, but rather as an act which bears legal consequences and which in certain cases might even be in breach of international law. Once a separatist entity has successfully withdrawn from the parent state, it needs to create internal institutions, which will perform at least basic state functions. Therefore, it is necessary to examine the relationship between secession and de facto state creation.

The third research question aims at analyzing the sustainability of Abkhazia and South Ossetia, which were chosen as case studies representing the first generation of *de facto* states in the post-Soviet area. The sustainability of these two entities is explored in the context of their relations with the parent state and their secessionist struggle, policies of the parent state as well as the policies of the "patron state".

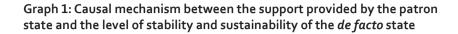
The following hypothesis will be examined: "In the process of creation and functioning of the *de facto* states in the post-Soviet space, the external factor in the form of a third state plays a decisive role since this 'patron state' guarantees stability and sustainability of the *de facto* states. The more support the 'patron state' provides, the higher the level of stability and sustainability of the *de facto* states is. As long as those entities are able to perform basic state functions, they should be regarded as states in political science despite the lack of their recognition or their dependency on the third state".

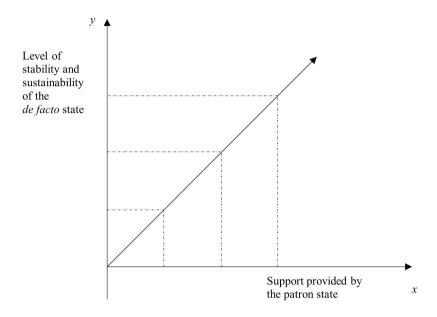
In order to prove the hypothesis, the role of the "patron state" will be analyzed, in particular with regard to two processes: (1) creation of *de facto* states, and (2) functioning of *de facto* states. It is assumed that the "patron state" supports secession of a separatist entity. In case that the secession is successful, it provides for stability and sustainability of the *de facto* state. The term "stability" is understood as "a situation in which a system can continue in a regular way without unexpected changes"<sup>5</sup>. In this context, an "unexpected change" would mean a scenario in which the *de facto* states would be regained by their "parent state" (i.e. Georgia). The notion "sustainability" is understood as "the quality of being able to continue over a period of time"<sup>6</sup>.

The second part of the hypothesis refers to a causal mechanism between the amount of support provided by the patron state to the *de facto* states, and the level of stability and sustainability of those entities. Should the level of support by the patron state rise, the level of stability and sustainability of the *de facto* state will rise accordingly. In the hypothesis, I expect a linear relationship between the two variables. The "support" provided by the patron state is understood in the broad sense of the notion, including political, socio-economic, diplomatic, military support, etc. It was expected that the more support the patron state (the Russian Federation) provided, the higher the level of stability and sustainability of the respective *de facto* states would be. For this purpose, a causal mechanism was expected to exist between the support provided by the patron state to a *de facto* state (marked on axis *X*) and the level of stability and sustainability of the *de facto* state (marked on axis *Y*).

<sup>&</sup>lt;sup>5</sup> *Cambridge Learner's Dictionary.* 2004. Cambridge: Cambridge University Press. ISBN 0-521-54380-0. P. 630.

<sup>&</sup>lt;sup>6</sup> Ibidem, p. 654.





The third part of the hypothesis refers to the *quasi*-statehood of those entities. Whilst there is reluctance in international law to refer to said entities as states, I assume that it would be acceptable to consider them as states in political science as long as they meet the basic criteria of statehood, especially in terms of functionality of such entities. Similarly, the dependency on a third state should not be regarded as an obstacle for considering them as states as long as they are able to perform basic state functions.

The problem of *de facto* states was approached from the point of view of international relations, which constitute a broad discipline with different intermingling branches. These branches include history, economy, demography, social psychology, legal science, political science, etc.<sup>7</sup> Therefore, several methods were applied in order to examine the problem of *de facto* states.

<sup>&</sup>lt;sup>7</sup> Cf. Ehrlich, L. 2018. Wstęp do nauki o stosunkach międzynarodowych. Reprint pierwszego wydania z 1947 r. Warszawa: Wydawnictwo Naukowe Scholar. ISBN 978-83-7383-993-9.
Pp. 45–69.

Firstly, an in-depth analysis method was applied in order to analyze the notion of state and elements of definition of a state based on the definition provided by G. Jellinek and on the requirements set by the 1933 Montevideo Convention on the Rights and Duties of States. It was also necessary to analyze the scholarship on secession and *de facto* statehood to identify basic elements of definition of these terms.

Secondly, the method of process tracing was applied in order to test the hypothesis and "to investigate whether the hypothesized causal mechanism was present in the case". From the historical perspective, factors that led to the secession of Abkhazia and South Ossetia from Georgia were identified and analyzed with regard to three actors: (1) the seceding entity (Abkhazia/South Ossetia), (2) the parent state (Georgia), and (3) the patron state (the Russian Federation). The most significant milestones leading to the secession of Abkhazia and South Ossetia were identified using the method of process tracing. Correspondingly, the most significant peace initiatives were analyzed from the historical perspective.

The method of in-depth analysis was applied in Chapter 3 and Chapter 4, which are case studies dedicated to Abkhazia and South Ossetia. In order to prove the causal mechanism between the support provided by the patron state to a *de facto* state and the level of sustainability of the *de facto* state, elements of sovereignty were assessed (see Table 1).

Thirdly, the comparative method was applied in order to contrast the indicators of stability and sustainability of Abkhazia and South Ossetia. The comparison was based on indicators that were the same for both entities. In this way, similar and different aspects of their *de facto* statehood were identified.

The use of the aforementioned methods enabled me to draw conclusions regarding the *de facto* statehood of Abkhazia and South Ossetia as well as the possible development of relations with the parent state (Georgia) and the patron state (the Russian Federation) at the end of the monograph.

The core of the research was the assessment of stability and sustainability of the *de facto* states Abkhazia and South Ossetia. Firstly, sovereignty of the

Beach, D. and Pedersen, R. B. 2013. *Process-Tracing Methods. Foundations and Guidelines*. [s.l.]: University of Michigan. ISBN 978-0-0472-07189-0. P. 147.

*de facto* states was assessed based on the criteria applied by E. Berg and E. Kuusk (2010)<sup>9</sup>. The aforementioned researchers listed ten attributes of sovereignty, divided into internal and external sovereignty. This tool was applied to determine objective criteria of sovereignty and stability of the *de facto* states.

Table 1: Elements of sovereignty and their assessment according to E. Berg and E. Kuusk

Internal sovereignty	External sovereignty
1. Symbolic attributes: flag, national holiday, capital city (estimating every single feature at 0.7 points and a half feature with 0.3 points)	1. Actorness: 0 political entity is not an independent actor and has no intention of becoming one; 0.5 political entity is not recognized as an independent actor, does not have any foreign policy activities but is willing to develop one; 1.0 political entity has been granted some foreign policy functions, it is active but not internationally recognized; 1.5 political entity is partly or fully recognized as an independent actor but has no major influence in foreign affairs; 2.0 political entity is recognized as an independent actor and major player in foreign affairs
2. Governance: head of state, autonomous government, constitution (estimating every single feature at 0.7 points and a half feature with 0.3 points)	2. Security structures: 0 political entity has no defense structures; 0.5 political entity has developed its own (illegal) security structures and/or relies on external military assistance; 1.0 political entity has its independent (legal) security structures and relies on external military assistance; 1.5 political entity is able to provide its security without external assistance but alternative security structures contest its authority; 2.0 political entity is fully operational in providing its security
3. Monetary system: 0 full dependence on an integrated monetary system; 0.5 "sub-national" currency in use at par with the national currency/more than one currency in use at the same time; 1.0 deliberate integration into the regional monetary system; 1.5 independent monetary system with some regional opt-outs; 2.0 independent central bank and monetary system without any contestations	3. Diplomatic relations: 0 no diplomatic relations/ recognition by an external patron only; 0.5 diplomatic relations with 2–50 countries; 1.0 diplomatic relations with 51–100 countries; 1.5 diplomatic relations with 101–150 countries; 2.0 diplomatic relations with more than 150 countries

<sup>&</sup>lt;sup>9</sup> Berg, E. and Kuusk, E. 2010. What makes sovereignty a relative concept? Empirical approaches to international society. In *Political Geography*. Vol. 29. ISSN 0962-6298. Pp. 40–49.

Internal sovereignty	External sovereignty
4. Territorial integrity: 0.5 indefinite territory; 0.5 well-defined territory without <i>de facto</i> control over it; 1.0 fragmented territoriality with autonomist challenges/seceding regions without full independence/overseas dependencies contested by third countries; 1.5 political entities with disputed borders/overseas dependencies with shared territoriality; 2.0 territorial integrity in full	4. Membership in international organizations: 0 no membership; 0.5 membership in 1–10 organizations (UN excluded); 1.0 membership in 11–20 organizations (UN excluded); 1.5 membership in 21–30 organizations (UN excluded); 2.0 UN membership and/or membership in more than 31 organizations
5. Permanent population: 0 no permanent population; 0.5 permanent population is loosely connected to local authorities/ proclaimed state/metropolitan state, citizenship is operational from outside; 1.0 citizenship is not internationally recognized/exclusive right of abode/territories with ethnic segregation and racial discrimination; 1.5 a significant part of the population are non-citizens/problems with minority rights; 2.0 permanent population possesses fully recognized citizenship	

The practical part of the research, focused on subjective assessment of stability and sustainability of the *de facto* states, was based on two main methodological tools. Firstly, a survey was conducted with 25 experts from Georgia proper and the breakaway territories, Abkhazia and South Ossetia. The survey consisted of 20 indicators divided into three main groups: (1) regime–resident relationship, (2) internal sphere, and (3) external sphere. Each indicator was ranked by the experts on a scale from 0 to 10. The indicators were partially based on the research previously conducted by P. Kolstø and H. Blakkisrud (2008)<sup>10</sup> and later by R. Kermach (2016)<sup>11</sup>, who applied these criteria to Transnistria. Later studies have confirmed that the scholarship on *de facto* states usually focuses on three main factors of sustainability,

<sup>&</sup>lt;sup>10</sup> Kolstø, P. and Blakkisrud, H. 2008. Living with Non-Recognition: State and Nation-Building in South-Caucasian Quasi-States. In *Europe-Asia Studies*. Vol. 60, no. 3. ISSN 1465-3427. Pp. 483–509.

<sup>&</sup>lt;sup>11</sup> Kermach, R. 2016. *The Sources of Post-Soviet De Facto State's Sustainability: The Case of Transnistria*. [online] [Last retrieved 05.10.2017]. Available at: https://dif.org.ua/en/article/the-sources-of-the-post-soviet-de-facto-states-sustainability-the-case-of-transnistria. R. Kermach drafted ten parameters within two groups: state building and nation building.

i.e. security guarantees, economic support, and legitimacy-building through creation of democratic political institutions<sup>12</sup>.

Secondly, in-depth interviews were conducted, in which experts elaborated on their answers from the survey and were asked additional questions in order to clarify their views and statements. Each interview lasted from 40 to 90 minutes, was recorded and later transcribed. The experts who were willing to participate in the research were assured that the surveys were anonymous and that neither their names nor positions would be disclosed. For this reason, the survey sheets and respective interviews were marked with a number along with the information when and where the interview was conducted.

The experts who participated in the research belonged to one of the following three groups:

- (1) Members of the Georgian government/members of de facto governments;
- (2) Representatives of NGOs working in the field of conflict resolution or participating in the peace process;
- (3) Members of the academia.

The interviews were semi-structured and followed the survey questions. Additional questions were asked in order to clarify or elaborate on the information given. The interviews were conducted in person during my research stay in Tbilisi and Sukhum(i). In 2020, I was assigned a scholarship to conduct research in Vladikavkaz, Russia, where I intended to conduct interviews and field research on South Ossetia. Following the regulations of South Ossetian *de facto* authorities, entering South Ossetia is possible only through Nizhny Zaramag (from the Russian Federation), as the Georgian-South Ossetian administrative border line is closed for third country nationals. On the other hand, entering South Ossetia from the Russian Federation is prohibited by the Law on Occupied Territories and considered a criminal offence by Georgian authorities. Travelling to South Ossetia was, however, no longer possible due to the outbreak of the COVID-19 pandemics. Therefore, interviews with experts from South Ossetia were conducted through online calls.

Kopeček, V. 2020. Factors of de facto states' sustainability. In De facto States in Eurasia. Oxon: Routledge. ISBN 978-0-429-24404-9. Pp. 160–163.

The instructions to fill out the questionnaire were as follows:

Please rate the following aspects relating to Abkhazia and South Ossetia on a scale from 0 to 10, where 0 stands for the lowest standard and 10 stands for the highest standard.

Пожалуйста, оцените следующее аспекты, относящееся к Абхазии и Южной Осетии, по шкале 0/10, причем 0 обозначает самый низкий стандарт, а 10 обозначает самый высокий стандарт.

Table 2: Questionnaire form

I. REGIME-RESIDENT RELATIONSHIP			
	Abkhazia	South Ossetia	
Level of identification of the residents as citizens of the respective states Самоидентификация населения по отношению к гражданству	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10	
Participation of the population in national elections Участие населения в общенациональных выборах	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10	
Participation of the population in national referenda Участие населения в общенациональных референдумах	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10	
Participation of the population in local civic activities, community initiatives and communal elections Уровень гражданской активности населения, уровень участия в общественных инициативах и в выборах в органы местного самоуправления	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10	
Activity of civil society institutions (NGOs) in the territories of the respective states Деятельность институтов гражданского общества (НПО) на территории соответствующих государств	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10	
II. INTERNAL SPHERE			
	Abkhazia	South Ossetia	
Defense capability and border control (fighting of illegal trespassing and smuggling) Защита границ и пограничный контроль (борьба с незаконным проникновением и контрабандой)	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10	

Internal security (protection of people's rights and freedoms, possession, public order, fighting of organized crime, etc.) Внутренняя безопасность (защита прав и свобод личности, имущества, общественного порядка, борьба с организованной преступностью и т. д.)	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10
Effectiveness of the judicial system Эффективность судебной системы	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10
Governance (relation between the central and the local government; level of decentralization) Управление (связь между центральным и местным правительством, уровень децентрализации)	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10
Economic situation (GDP per capita; average income; employment rate; inflation rate) Экономическая ситуация (ВВП на душу населения, средний доход, уровень занятости, уровень инфляции)	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10
Level of development of the private economy sector (rate of economic activity) Уровень развития частного сектора экономики (уровень экономической активности)	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10
Social welfare system (unemployment; pensions; family policy; social programs) Система социального обеспечения (социальные программы – пособия по безработице, социальные и экономические программы по поддержке института семьи и др.)	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10
Healthcare system (accessibility; facilities; health insurance) Система здравоохранения (доступность, благоустроенность медицинских учреждений, медицинское страхование)	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10
Education system (structure; accessibility; educational programs) Система образования (структура, доступность, образовательные программы)	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10
Transport and infrastructure (roads, railway system, air transport, pipelines, hydroelectric system, etc.) Транспорт и инфраструктура (автомобильные дороги, железнодорожная сеть, воздушный и водный транспорт, трубопроводы, гидроэлектростанции и т. д.)	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10

III. EXTERNAL SPHERE			
Cooperation with international organizations and UN Member States Сотрудничество с международными организациями и государствами-членами ООН	0 1 2 3 4 5 6 7 8 9 10 0 1 2 3 4 5 6 7 8 9 10		
Abidance by international law standards for human rights Соблюдение международных стандартов в области прав человека	0 1 2 3 4 5 6 7 8 9 10 0 1 2 3 4 5 6 7 8 9 10		
Foreign trade and foreign investments Международные экономические и тор- говые связи и иностранные инвести- ции	0 1 2 3 4 5 6 7 8 9 10 0 1 2 3 4 5 6 7 8 9 10		
International civic, cultural, sports and educational cooperation Сотрудничество с неправительственными организациями (гражданское общество), а также в области спорта, культуры и образования	0 1 2 3 4 5 6 7 8 9 10 0 1 2 3 4 5 6 7 8 9 10		
Future aspirations to become a fully recognized state Нацеленность на признание международным сообществом статуса независимого государства	0 1 2 3 4 5 6 7 8 9 10 0 1 2 3 4 5 6 7 8 9 10		

The information provided by the interviewed experts was verified and confronted with a large number of sources relating to the indicators discussed in order to provide a sound analysis of the indicators of stability and sustainability of the *de facto* states.

The field research enabled me to understand the complexity of the problem and translate it into the monograph, especially when it comes to the conditions of daily life in the *de facto* states, sentiment and nostalgia about the Soviet times, hostility towards the other side as well as their own narratives about the conflict. Visiting half-abandoned sanatoriums and settlements for internally displaced persons in Georgia, where such persons were accommodated after the armed conflicts, helped me understand the human dimension of the problem. This would have never been possible if I had chosen to study the problem solely from books.

This monograph is logically divided into five chapters. Chapter 1, titled "Theoretical Aspects of Statehood", discusses the notion of state from the viewpoint of political science as well as international law. One of the most

popular definitions of state is based on the doctrine of three elements. This is closely related to the problem of state creation and the right to self-determination of peoples, which is often recalled by various separatist groups.

Chapter 2 discusses secession as a process of state creation based on definitions included in the legal doctrine, the decision of the Canadian Supreme Court in relation to Quebec as well as the 2010 decision of the International Court of Justice with regard to the unilateral declaration of independence by Kosovo. It examines the factors and circumstances that lead to secession based on theories of M. E. Brown, S. van Evera, D. Horowitz, D. Siroky and J. R. Wood. Subsequently, the chapter sheds light on the discourse on the legality of secession, especially on the relation between the right to self-determination of peoples, the right to secession, prohibition of the threat or use of force, and the principle of territorial integrity of states. It also includes an analysis of definitions of a *de facto* state and related terms, based on which it provides a new definition, highlighting the key elements of *de facto* states.

Chapter 3 offers a case study on Abkhazia. The chapter begins with an analysis of relations between the Abkhazians and the Georgians from a historical perspective. Then it provides an analysis of reasons and circumstances that led to the unilateral declaration of independence and secession of Abkhazia from Georgia. An analysis of the *de facto* statehood of Abkhazia based on the field research is included. Particular attention is paid to the post-conflict transformation and attempts to resolve the status of Abkhazia.

Correspondingly, Chapter 4 includes a case study on South Ossetia. The chapter is structured similarly to the previous one: an analysis of Ossetian–Georgian relations is followed by a thorough examination of reasons and circumstances that led to the secession of South Ossetia. The central part of the chapter is dedicated to the analysis of South Ossetia's *de facto* statehood. Finally, attempts to resolve the status of South Ossetia are analyzed.

Chapter 5 summarizes the research, providing an analysis of the post-Soviet space according to B. Buzan's theory, outlined in his book *Regions and Powers. The Structure of International Security.* The theory of secession and *de facto* statehood is applied to Abkhazia and South Ossetia, comparing their status, stability and sustainability. The comparison of the elements allows

to draw conclusions regarding *de facto* statehood and its future development. Finally, the policy of the "patron" state is examined and possible scenarios of future development are discussed.

L. Ehrlich noted that an analysis of various aspects of international relations may only lead to understanding of certain phenomena in international relations, but the sole understanding does not exhaust the purpose of research on international relations<sup>13</sup>. Therefore, this monograph does not only provide a complex analysis of the creation and functioning of the *de facto* states, but also offers recommendations on how to approach the *de facto* states and what steps should be taken in the future in order to reestablish dialogue and deescalate tensions in the South Caucasus region. The practical significance of the monograph stems from the fact that the field research has been conducted in places that are not easy to access. Moreover, experts with extensive expertise in the peace process participated in the interviews. The monograph may serve as a starting point for further research on this issue.

The monograph provides a complex analysis of the *de facto* statehood of Abkhazia and South Ossetia, including their stability and sustainability, along with an analysis of the process of their secession from Georgia, which undoubtedly constitutes a significant contribution to the scholarship on secession and *de facto* states.

It also includes a large number of materials, especially documents and interviews, which I translated into English myself from different languages that I worked with. The comparison of different points of view and positions, expressed in the interviews by experts representing different sides of the conflict, was particularly helpful in depicting the human dimension of the conflict and illustrating the complexity of the researched topic.

The territorial scope of the monograph is limited to Georgia and its separatist territories, Abkhazia and South Ossetia. However, the cases were analyzed in a broader geographical context, which includes the South Caucasus area and the post-Soviet space. In this book, geographical names are used in the language versions of both parties involved in the conflict, such as Sukhum(i), Gal(i), Tskhinval(i), etc., without any implication regarding their disputed political status.

<sup>&</sup>lt;sup>13</sup> Ehrlich, L. 2018. Wstęp do nauki..., p. 74.

The experts from Georgia proper, Abkhazia, and South Ossetia were chosen in order to represent different views on the issues discussed. The number of experts representing each group of views corresponds to the possibilities to conduct the research.

The monograph points out the most significant events that formed the development of the separatist movements in Abkhazia and South Ossetia as well as the events that had an impact on the formation of the *de facto* states. The monograph reflects the state of affairs as on 28 October 2021.

#### 1 Theoretical aspects of statehood

#### 1.1 The notion of state

The word "state" derives from the Latin word *status*, which means "condition, circumstances". In ancient Greece, a state was referred to as *polis*. Later, in ancient Rome, the terms *civitas* and *res publica* were used with regard to the state. In the Middle Ages, the term *terra* stressed the territorial nature of a state. Apparently, the term "state" comes from the word *stato*, which appeared in the 15<sup>th</sup> century in Italy<sup>14</sup>. In the 17<sup>th</sup> century, the British colonies in North America were occasionally called "states"<sup>15</sup>. The word is translated into German as *der Staat*, into French as *l'état*. In political science, the definitions of state are usually divided into five groups:

1. The doctrine of three elements. This definition was developed by Georg Jellinek in the 19<sup>th</sup> century and is based on three indispensable elements, namely: (1) territory, (2) population, and (3) supreme power. In Jellinek's words, the state is "the institution of a sedentary people, that is, a territorial

Sobczyński, M. 2006. Państwa i terytoria zależne. Ujęcie geograficzno-polityczne. Toruń: Wydawnictwo Adam Marszałek. ISBN 978-83-7441-530-9. P. 11.

State. In Online Etymology Dictionary. [online] [last retrieved 16-05-2019]. Available at: https://www.etymonline.com/word/state

institution endowed with an original supremacy power"<sup>16</sup>. Characteristic features of a state are sovereignty, the ability of self-organization and self-government, and the indivisibility of state sovereign power<sup>17</sup>.

2. Functional definitions. The definitions within this group focus on functions that states perform within a particular stage of social organization. In this context, a state is a form of social organization which has the supreme power over all persons living in a particular territory with the aim to maintain public order, distribute the "common good" and solve common problems. In the 17<sup>th</sup> century, Hugo Grotius defined state as a "complete Body of Free Persons, associated together to enjoy peaceably their Rights, and for their common Benefit" Thus, the basic function of a state is to secure conditions for peaceful existence in a community, and for this purpose political obedience is necessary.

According to J. R. Pennock and D. G. Smith, a state is "a political system comprising all the people in a defined territory and possessing an organization (government) with the power and authority to enforce its will upon its members, by resort, if necessary, to physical sanctions, and not subject in the like manner to the power and authority of another polity"<sup>19</sup>. A. Heywood defined state through its institutions, omitting the territorial criterion and claiming that the term state "stands for the apparatus of government in its broadest sense, for those institutions that are recognizably 'public' in that they are responsible for the collective organization of communal life and are funded at the public's expense"<sup>20</sup>.

3. Psychological definitions. These are represented by Leon Petrażycki, according to whom legal order is characterized by categories of mental experiences, whereas the state is an assemblage of assumptions regarding

<sup>&</sup>lt;sup>16</sup> Jellinek, G. 1929. *Allgemeine Staatslehre*. Berlin: Verlag von Julius Springer. P. 183.

<sup>&</sup>lt;sup>17</sup> Ibidem, pp. 394–434.

Barducci, M. 2017. Hugo Grotius and the Century of Revolution, 1613–1718: Transnational Reception in English Political Thought. Oxford: Oxford University Press. ISBN 978-0198754589. P. 29.

Pennock, J. R. and Smith, D. G. 1964. *Political Science. An Introduction*. New York: Macmillan Co. P. 126.

<sup>&</sup>lt;sup>20</sup> Heywood, A. 2004. *Political Theory. An Introduction*. 3<sup>rd</sup> ed. New York: Palgrave Macmillan. ISBN 0-333-96180-3. P. 75.

human relations, which include those between the rulers and the ruled<sup>21</sup>. The purpose of a state is to meet people's psychological needs, such as security, possession and domination<sup>22</sup>.

- 4. Sociological definitions. The foundations of sociological definitions of state are often attributed to Aristotle, who characterized city-state as a self-sufficient political community formed by its citizens<sup>23</sup>. According to Max Weber, a state is "the form of human community that (successfully) lays claim to the *monopoly of legitimate physical violence* within a particular territory—and this idea of 'territory' is an essential defining feature"<sup>24</sup>. The sociological definitions usually describe the notion of state through institutions or communities. Thanks to being members of such institutions or communities, people are given certain prerogatives. J. Turowski defined state as "a form of organization of society, which is differentiated in many ways and includes people living in a certain territory who are subject to sovereign government"<sup>25</sup>. It follows from this definition that the state as a specific form of organization of human society has been established at a certain level of development of society; in other words, it is the form of organization that makes it a state, provided it fulfills the requirements listed in the definition.
- 5. Marxist definitions. According to this group of definitions, a state represents a class institution, which appeared at a certain stage of development of society as an instrument of rule of the privileged minority of exploiters over the exploited. "The state is, therefore, by no means a power forced on society from without, just as little is it 'the reality of the ethical idea', 'the image and reality of reason', as Hegel maintains. Rather, it is a product of society at a certain stage of development; it is the admission that this society has

Petrażycki, L. 1959. *Teoria prawa i państwa w związku z teorią moralności*. Tom I. Warszawa: Państwowe Wydawnictwo Naukowe. P. 286. Tkacz, S. 2018. What is Offered to the Modern Science by Leon Petrażycki? (Following Three Descriptions of Legal Principles). In *Studia Humana*. Vol. 7, no. 3. ISSN 2299-0518. Pp. 5–10.

<sup>&</sup>lt;sup>22</sup> Cf. Cywiński, Z. 2018. Tradycja petrażycjańska w polskiej socjologii prawa albo o tym, co zyskaliśmy, nie odwołując się do Ehrlicha. In *Studia Iuridica. Tom 74. Leon Petrażycki i jego dzieło*. Warszawa: Wydawnictwo UW. ISBN 978-83-235-3444-0. Pp. 99-134.

<sup>&</sup>lt;sup>23</sup> Aristotle. 1998. *Politics*. Indianapolis: Hackett Publishing Co. ISBN 978-0-87220-388-4.

<sup>&</sup>lt;sup>24</sup> Weber, M. 2004. Politics as a Vocation. In *The Vocation Lectures*. Indianapolis: Hackett Publishing Company. ISBN 0-87220-665-3. P. 33.

<sup>&</sup>lt;sup>25</sup> Turowski, J. 1994. *Socjologia. Wielkie struktury społeczne*. Lublin: Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego. ISBN 978-83-730-6035-7. P. 111.

become entangled in an insoluble contradiction with itself, that it has split into irreconcilable antagonisms which it is powerless to dispel. But in order that these antagonisms, these classes with conflicting economic interests, might not consume themselves and society in a fruitless struggle, it became necessary to have a power, seemingly standing above society, that would alleviate the conflict and keep it within the bounds of 'order'; and this power, arisen out of society but placing itself above it, and alienating itself more and more from it, is the state"<sup>26</sup>.

It follows that states were formed along with the establishment of class structure and the imposition of class rule. The classes have been in a perpetual state of antagonist class conflict between those who maintain control over the resources and the ones who do not<sup>27</sup>. Similarly, Lenin maintained that the state was an instrument of class oppression and domination of the ruling class over the oppressed class. In Lenin's view, with the abolition of exploiting classes the state will wither away.

Although there is no binding definition of state in international law, the term must not be defined through its state apparatus or through its supreme power<sup>28</sup>. States are principal persons of international law; thus, they are original bearers of rights and duties under international law. Nevertheless, international law lacks legal norms regulating international legal subjectivity<sup>29</sup>. K. Czubocha noted that the issue of definition of state in international law gained significance at the beginning of the 19<sup>th</sup> century, when Spanish colonies in South America started to revolt against the Spanish rule. In 1822, the Government of the United States of America announced its intention to recognize the independence of the Spanish colonies in South America.

L. Oppenheim listed four conditions that are necessary for states to exist: (1) a people, (2) country (i.e. territory), (3) government, and (4) sovereign

<sup>&</sup>lt;sup>26</sup> Engels, F. 1976. The Origin of the Family, Private Property and the State. In Karl Marx and Frederick Engels. Selected Works in Three Volumes. Volume Three. 3<sup>rd</sup> ed. Moscow: Progress Publisher. Pp. 326–327.

<sup>&</sup>lt;sup>27</sup> Wiatr, J. 1983. *Marksistowska teoria rozwoju społecznego*. 2<sup>nd</sup> ed. Warszawa: Państwowe Wydawnictwo Naukowe. ISBN 83-01-03538-2. Pp. 297–298.

<sup>&</sup>lt;sup>28</sup> Antonowicz, L. 1988. *Państwa i terytoria. Studium prawnomiędzynarodowe*. Warszawa: Państwowe Wydawnictwo Naukowe. ISBN 83-01-08571-1. P. 10.

<sup>&</sup>lt;sup>29</sup> Klafkowski, A. 1966. *Prawo międzynarodowe publiczne*. 2<sup>nd</sup> ed. Warszawa: Państwowe Wydawnictwo Naukowe. P. 59.

1.1 The notion of state

government<sup>30</sup>. It is noticeable that the above criteria follow Jelinek's doctrine of three elements, i.e. the state only exists if it is established that a population lives in a territory under a government that is independent of any other authority inside or outside its borders.

With regard to the termination of the British mandate, Iraq's acquisition of independence, and for subsequent British attempts at admission of Iraq to the League of Nations, the Permanent Mandates Commission set up the following prerequisites for terminating the mandate in 1931: (1) a settled government and administration capable of running all public services, (2) the ability to maintain territorial integrity and political independence, (3) the ability to keep internal peace and order throughout its entire territory, (4) adequate financial resources for normal governmental requirements, and (5) a legal and judicial system affording regular and equal justice to all<sup>31</sup>. The above considerations demonstrate the fact that the League of Nations paid attention to the issue of statehood; however, the prerequisites set by the International Mandate Commission have not been met by state practice. For instance, some of the requirements, such as the administration running all public services, or the judicial system, have not been met in the case of so-called failed states. On the other hand, the practice of states has shown that the requirement of adequate financial resources for governmental requirements can hardly be met in certain cases, especially with regard to some developing states that are dependent on foreign resources. The ability to maintain territorial integrity could be nowadays considered obsolete to some extent since the principle of territorial integrity is generally considered as erga omnes, which other states are bound to respect. As for the ability to keep internal peace and order, this criterion could not be justified by any state going through an internal armed conflict or coup d'état.

In 1927, the International Commission of American Jurists proposed five requirements that a state, as a person of international law, must fulfill: (1) permanent population, (2) definitely defined territory, (3) constituted government, (4) capacity to enter into relations with other states, (5) degree

<sup>&</sup>lt;sup>30</sup> Oppenheim, L. 1912. International Law. A Treatise. Vol. 1. 2nd ed. London: Longman. P. 108.

<sup>&</sup>lt;sup>31</sup> Bentwich, N. 1933. The Termination of the A Mandates. In *Zeitschrift für ausländisches* öffentliches Recht und Völkerrecht. Vol. 3. Pp. 176–191. Kupferschmidt, U. M. 1987. *The* Supreme Muslim Council: Islam under the British Mandate for Palestine. Leiden: Brill. P. 387.

of civilization such as to enable it to observe the principles of international law<sup>32</sup>. The first four aforementioned requirements were the basis for the conditions listed in the 1933 Montevideo Convention. The last requirement, however, was later transformed into the willingness to carry out the principles of international law, which was included as a condition of membership in the UN.

In 1929, the German-Polish Mixed Arbitral Tribunal in *Deutsche Continental Gas-Gesellschaft* stated that a state "does not exist unless it fulfills the conditions of possessing a territory, and a public power that is exercised over the people and the territory"<sup>33</sup>. Following the negative definition provided by the Tribunal, three criteria of statehood can be identified: (a) territory, (b) population, and (c) supreme power.

The most widely accepted definition of state is to be found in Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, which reflects the customary international law in Latin America, pursuant to which a state as a person of international law possesses the following qualifications: (a) permanent population; (b) defined territory; (c) government; (d) capacity to enter into relations with the other states<sup>34</sup>. Whilst the first three criteria seem to be quite clear and do not tend to be disputed, the last criterion is often questioned due to its ambiguity, especially with regard to entities which seem to be able to enter into relations with states, but are not allowed to do so. What is more, this criterion was established as a result of specific circumstances in Latin America, where revolutions and coups d'état often tended to take place<sup>35</sup>.

The issue of defining the notion of state became relevant especially with regard to the admission of new members into the United Nations. Pursuant

- Preparatory Study Concerning a Draft Declaration on the Rights and Duties of States. Memorandum submitted by the Secretary-General. [online] [last retrieved 16-05-2019]. Available at: https://legal.un.org/docs/?path=../ilc/documentation/english/summary\_records/a\_cn4\_sr9.pdf&lang=E. P. 142.
- <sup>33</sup> d'Aspremont, J. and Singh, S. 2019. *Concepts for International Law: Contributions to Disci*plinary Thoughts. Cheltenham: Edward Elgar Publishing. ISBN 978-1-78347-467-7. P. 843.
- <sup>34</sup> Convention on Rights and Duties of States Adopted by the Seventh International Conference on American States. In *League of Nations Treaty Series. Treaties and International Engagements Registered with the Secretariat of the League of Nations*. [online] [last retrieved 12-05-2019]. Available at: https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20 165/v165.pdf P. 25.
- <sup>35</sup> Klafkowski, A. 1966. *Prawo międzynarodowe...*, p. 65.

1.1 The notion of state

to Article 4 of the UN Charter, only a peace-loving state which accepts the obligations contained in the Charter and is able and willing to carry out the obligations may become a member. In 1949, despite the efforts by the governments of the United Kingdom and India, the International Law Commission concluded that "no useful purpose would be served by an effort to define the term 'State' [...]. In the Commission's draft, the term 'State' is used in the sense commonly accepted in international practice. Nor did the Commission think that it was called upon to set forth in this draft Declaration the qualities to be possessed by a community in order to become a state"<sup>36</sup>. In 1966, the International Law Commission restated that the term "state" is used in the International Convention on the Law of Treaties "in the same meaning as in the Charter of the United Nations, the Statute of the Court [the International Court of Justice—P.S.], the Geneva Conventions on the Law of the Sea, and the Vienna Convention on Diplomatic Relations"<sup>37</sup>.

The Arbitration Commission of the European Conference on Yugoslavia noted that the state is "commonly defined as a community which consists of a territory and a population subject to an organized political authority; that such state is characterized by sovereignty"<sup>38</sup>. The Commission pointed out the three traditional criteria, i.e. territory, population and political authority.

It follows from the previous analysis that there has been a lack of willingness within the international community to agree upon a definition of the term "state". Bearing in mind that a state is a somewhat abstract system, it would be almost impossible to find a universally acceptable definition. Thus, legal definitions were rather focused on elements of statehood. Whilst some of the definitions put forward by different international bodies were incomplete, others included requirements that have become redundant or obsolete.

<sup>&</sup>lt;sup>36</sup> Report of the International Law Commission on the work of its first session, 12 April 1949, Official Records of the General Assembly, Fourth Session, Supplement No. 10. [online] [last retrieved 16-05-2019]. Available at: https://legal.un.org/docs/?path=../ilc/documentation/english/reports/a\_cn4\_13.pdf&lang=E. P. 289.

<sup>&</sup>lt;sup>37</sup> Yearbook of the International Law Commission. 1966. Volume II. Documents of the second part of the seventeenth session and of the eighteenth session including the reports of the Commission to the General Assembly. 1966. New York: United Nations. P. 192.

<sup>&</sup>lt;sup>38</sup> Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Dissolution of Yugoslavia. [online] [last retrieved 10-05-2019]. Available at: http://www.pf.uni-lj.si/media/skrk\_mnenja.badinterjeve.arbitrazne.komisije.1\_.10.pdf P. 1495.

However, as practice has shown, the criteria such as territory, permanent population, and effective government are included in most of the definitions as "traditional criteria" of statehood.

#### 1.2 Criteria of statehood

Following the definitions of statehood put forward by G. Jellinek and the 1933 Montevideo Convention, four criteria are usually highlighted: territory, population, effective government, and the capacity to enter into relations with other states.

#### (A) Territory

The majority of definitions of state pointed out territory as one of the fundamental requirements of statehood. "Without territory, a legal person cannot be a state. It is undoubtedly the basic characteristic of a state and the most widely accepted and understood"<sup>39</sup>. L. Oppenheim noted that "it matters not whether the country is small or large; it may consist, as with City States, of one town only"<sup>40</sup>. A state is usually characterized as a geopolitical unit although not every geopolitical unit classifies as a state. In other words, territory constitutes the basis for statehood.

It follows from international practice that the territorial requirement may be satisfied even in situations when the entity's boundaries are not precisely determined or are in dispute. In the case *Deutsche Continental Gas-Gesellschaft v. Polish State* (1921), the Polish-German Arbitration Tribunal held that "whatever may be the importance of the delimitation of boundaries, one cannot go so far as to maintain that as long as this delimitation has not been legally effected, the state in question cannot be considered as having any territory whatsoever. The practice of international law and historical precedents

<sup>&</sup>lt;sup>39</sup> Shaw, M. N. 2008. *International Law*. 6<sup>th</sup> ed. Cambridge: Cambridge University Press. ISBN 978-0-521-72814-0. P. 487.

<sup>&</sup>lt;sup>40</sup> Oppenheim, L. 1912. *International Law...*, p. 108.

point to the contrary. In order to say that a state exists and can be recognized as such [...] it is enough that this territory has a sufficient consistency, even though its boundaries have not yet been accurately delimited, and the State actually exercises independent public authority over that territory"<sup>41</sup>. Similarly, in 1924, the Permanent Court of International Justice stated that Albania became a state although its frontiers had not been fully established<sup>42</sup>.

In the *North Sea Continental Shelf* case (1969), the ICJ stated that "the appurtenance of a given area, considered as an entity, in no way governs the precise delimitation of its boundaries, any more than uncertainty as to boundaries can affect territorial rights. There is, for instance, no rule that the land frontiers of a state must be fully delimited and defined, and often in various places and for long periods they are not […]"<sup>43</sup>.

In international law, there is no requirement of a minimum area. For instance, the smallest state, Vatican City, has an area of 0.49 sq kilometers. Recently, the issue of territorial loss has gained significance due to the climate change and the rise of the sea level, which is likely to cause the territory of island states, such as Vanuatu or Tuvalu, to diminish. Thus, in my opinion, issues such as extinction of territory and, in a theoretical perspective, cessation of territory by other states in favor of those facing the threat of diminishment, must be addressed by the international community in the nearest future. In general, partial loss of a state's territory does not change the legal nature of the state. Neither does annexation change the legal title of the territory. "It is established that acquisition or loss of territory does not in itself affect the continuity of state" For instance, the legal existence of some states which were illegally submerged in the 20th century, such as Poland or Czechoslovakia, was preserved.

<sup>&</sup>lt;sup>41</sup> Akweenda, S. 1997. *International Law and the Protection of Namibia's Territorial Integrity:* Boundaries and Territorial Claims. The Hague: Kluver Law International. ISBN 90-411-0412-7. P. 168.

<sup>&</sup>lt;sup>42</sup> Advisory Opinion No. 9. Question of the Monastery of Saint-Naoum (Albanian Frontier). 1924. Permanent Court of International Justice. P. 10.

<sup>&</sup>lt;sup>43</sup> North Sea Continental Shelf Cases. Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands. Judgment of 20 February1969. [online] [last retrieved 22-04-2019]. Available at: https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf Para. 46.

<sup>44</sup> Crawford, J. 2006. *The Creation of States in International Law.* 2<sup>nd</sup> ed. New York: Clarendon Press. ISBN 0-19-826002-4. P. 673.

<sup>45</sup> Ibidem, p. 702.

#### (B) Population

Similarly as in the case of territory, population belongs to the fundamental requirements of statehood as international law does not allow for the creation of a state or for its existence without a population. In Oppenheim's view, "a people" is "an aggregate of individuals of both sexes who live together as a community in spite of the fact that they may belong to different races or creeds, or be of different color"<sup>46</sup>.

In the International Law Commission, a Soviet representative pointed out the Stalinist definition of the term "nation", which he defined as a "historically stable community of language, territory, economic life and of psychological features which found their expression in a community of culture"<sup>47</sup>.

International law does not require any minimum number of persons that would qualify for the population of a state. For instance, the smallest state, Vatican City, has a population of some 800 persons. In the international law doctrine, there have been different views on the issue whether a polity must have a population that is permanently settled in order to qualify for statehood<sup>48</sup>.

#### (C) Effective government

In relation to the two previously analyzed criteria of statehood, it needs to be noted that effective government is exercised over the territory of a state and over the population settled on that territory. Effective government is generally considered one of the fundamental requirements of statehood. In 1920, the International Committee of Jurists was confronted with the question when Finland became a state under international law. The Commission stated that "[t]his certainly did not take place until a stable political organization had been

<sup>&</sup>lt;sup>46</sup> Oppenheim, L. 1912. *International Law...*, p. 108.

<sup>&</sup>lt;sup>47</sup> Yearbook of the International Law Commission. 1949. Vol. I. [online] [last retrieved 22-04-2019]. Available at: https://legal.un.org/ilc/publications/yearbooks/english/ilc\_1949\_v1.pdf. P. 70.

<sup>&</sup>lt;sup>48</sup> Joyner, C. C. 2005. International Law in the 21<sup>st</sup> Century: Rules for Global Governance. Lanham: Rowman and Littlefield Publishers. ISBN 0-7425-0009-8. P. 25.

created, and until the public authorities had become strong enough to assert themselves throughout the territories of the State without the assistance of foreign troops<sup>249</sup>.

According to J. Crawford, a state is "a stable political community supporting a legal order to the exclusion of others in a given area" The best evidence of such a community is an effective government with centralized administrative and legislative organs. However, Crawford notes that some states arose and were admitted into the international community before the effective government was well-established (e.g. Rwanda). The recent practice by the international community is similar and does not require strictly that the whole territory be under effective control. For instance, Croatia and Bosnia and Herzegovina were recognized by the European Community in spite of the fact that they did not control some parts of their territory due to the ongoing internal armed conflict. Another case is Kosovo after the declaration of independence in 2008, when some states recognized its independence even though the central government did not control some Serb-inhabited areas.

A resolution of the Institut de Droit International (1936) indicated that a state should be "independent of any other existing state, and capable of observing the obligations of international law"<sup>52</sup>. Two aspects of effective government can be deduced from the aforementioned resolution. Firstly, the term *effective* government indicates that the government acts independently of foreign powers. On the other hand, states often conclude treaties with other subjects of international law, by which they limit their jurisdiction. In general, this does not affect their effectiveness as long as they have not given up on the exercise of government. The second aspect of effectiveness is the ability to enact and enforce rules within the state as well as to fulfill its obligations

<sup>&</sup>lt;sup>49</sup> Boas, G. 2012. *Public International Law: Contemporary Principles and Perspectives*. Cheltenham: Edward Elgar Publishing Ltd. ISBN 978-0-85793-955-5. P. 166.

<sup>&</sup>lt;sup>50</sup> Crawford, J. R. 2012. *Brownlie's Principles of International Law.* 8<sup>th</sup> ed. Oxford: Oxford University Press. 978-0-19-965417-8. P. 129.

<sup>&</sup>lt;sup>51</sup> Shaw, M. N. 2008. *International Law...*, p. 201.

<sup>&</sup>lt;sup>52</sup> Institut de Droit International: Resolutions Concerning the Recognition of New States and New Governments. In *The American Journal of International Law*. Vol. 30, no. 4. ISSN 0002-9300. Pp. 185–187.

under international law<sup>53</sup>. Thus, it is essential that an effective government, which regulates both the internal and external spheres of the state's conduct, exists. In case it does not exist, "it is meaningless for the outside world to seek to attribute rights and obligations to the population as a state"<sup>54</sup>.

In the *Western Sahara* case (1975), the International Court of Justice stated that "at the time of colonization, Western Sahara was inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them. It also shows that, in colonizing Western Sahara, Spain did not proceed on the basis that it was establishing its sovereignty over *terrae nullius*"55. Thus, the Court concluded that at the time of colonization by Spain, Western Sahara was not a territory belonging to no one due to the fact that the tribes were organized politically with sufficient representation.

If a state loses effective control over its territory, there arises the question whether it still continues to be a state. In general, a temporary loss of effective control in consequence of a foreign invasion, an internal armed conflict, riots or natural disasters does not affect the international legal status of a state since it is assumed that the state will be able to resume its effective control. This is true especially in the case of so-called failed states, which are not able to perform the most vital state functions and often do not exercise effective control over a large part of their territory<sup>56</sup>. Similarly, I. Brownlie claims that "a comprehensive breakdown in order and the loss of control by the central authorities in an independent state will not obviate statehood"<sup>57</sup>.

The governmental system as such falls within internal affairs of a state. Thus, the statehood of a geopolitical unit may not be denied only because its

<sup>53</sup> Cf. Doehring, K. 1987. State. In Encyclopedia of Public International Law. Vol. 10. Amsterdam: Elsevier Science Publishers. ISBN 0-444-86241-2. P. 426.

<sup>&</sup>lt;sup>54</sup> Blix, H. M. 1970. Contemporary Aspects of Recognition. In *Collected Courses of the Hague Academy of International Law. Vol. 130*. Maubeuge: Triangle Bleu. ISBN 978-80-218-9111-8. P. 633.

<sup>55</sup> ICJ Reports of Judgments, Advisory Opinions and Orders. Western Sahara Advisory Opinion of 16 October 1975. [online] [last retrieved 04-06-2019]. Available at: https://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN.pdf Par. 81.

<sup>56</sup> Sieniawski, P. 2016. Od zlyhávania k zániku? Problém disfunkčnosti štátu v medzinárodných vzťahoch. In Interpolis'16. Zborník vedeckých prác. Banská Bystrica: Fakulta politických vied a medzinárodných vzťahov. ISBN 978-80-557-1249-9. P. 233.

<sup>&</sup>lt;sup>57</sup> Shaw, M. N. 2008. *International Law...*, p. 201.

system of government is undesirable<sup>58</sup>. Furthermore, states are bound by the negative obligation not to interfere in domestic affairs of other states, and any attempt to influence the system of government may be seen as a foreign intervention. Pursuant to the 1970 Friendly Relations Declaration, "[e]very state has an inalienable right to choose its political, economic, social and cultural systems, without any interference in any form by another State"<sup>59</sup>.

### (D) Capacity to enter into relations with other states

This criterion, set by the 1933 Montevideo Convention, is difficult to assess in practice due to the fact that an entity in question might be able to enter into relations with states but is prevented to do so because of reluctance of the other states. The decision is often based on political rather than legal reasons. Moreover, this criterion is closely connected with the issues of recognition and non-recognition, which are analyzed in Chapter 2.

## (E) Sovereignty

With regard to the previous requirements of statehood, sovereignty is a requirement that blends all previous requirements together in the sense that some elements of sovereignty are present in each one of them (e.g. through territorial and jurisdictional sovereignty). In general, sovereignty in international law is understood as a legal status, which is an exclusive characteristic of states. In other words, if a geopolitical entity is a state, then it is sovereign. If a geopolitical unit is not sovereign, then it is not a state. Nevertheless, the concept of sovereignty in political science is different from legal science. Political science tends to perceive the notion of sovereignty rather through the actual conduct of state functions, and thus sovereignty is regarded as something divisible, especially when talking about "transfer

<sup>&</sup>lt;sup>58</sup> Doehring, K. 1987. *State...*, op. cit.

Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations. [online] [last retrieved 29-04-2019]. Available at: https://www.un.org/ruleoflaw/files/3dda1f104.pdf

of sovereignty" to an international organization. In contrast to political science, in international law, sovereignty is considered through its elements, and considerations about the division of sovereignty tend to be rejected. From the legal point of view, a state may transfer certain competences to an international organization but not its sovereignty. A state may, for instance, withdraw from an international organization and start exercising those competences on its own, as it has recently happened in the case of the United Kingdom and its withdrawal from the European Union<sup>60</sup>. On the other hand, international law provides for the limitation of sovereignty by general principles of international law as well as by treaty obligations<sup>61</sup>.

In legal science, the concept of sovereignty varies. In domestic law it rather means the authority to rule, whereas in international law—broadly speaking—sovereignty means independence. Nevertheless, the notion of sovereignty in international law seems to be more complex. L. Antonowicz notes that a negative aspect of sovereignty is the lack of subordination to other states<sup>62</sup>. In contrast to that, the positive aspects include: (1) conclusion of treaties; (2) maintenance of diplomatic and consular relations; (3) membership in international organizations; (4) commitment to peaceful resolution of international disputes, and (5) the right to self-defense<sup>63</sup>.

The act of concluding treaties is perceived as the exercise of sovereignty rather than its limitation. It may place certain obligations on states entering into international engagements, but in no way does it deprive the states of their sovereignty, which was confirmed by the Permanent Court of International Justice in the *Wimbledon* case (1923). "The Court declines to see in the conclusion of any treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into

<sup>60</sup> Sieniawski, P. 2016. Od zlyhávania k zániku? Problém..., p. 227.

<sup>&</sup>lt;sup>61</sup> Antonowicz, L. 1988. *Państwa i terytoria...*, p. 33.

<sup>62</sup> Ibidem, p. 32.

Muszyński, M. 2011. Państwo w prawie międzynarodowym. Istota, rodzaje, atrybuty. Bielsko-Biała: Wydawnictwo STO. ISBN 978-83-60003-40-4. P. 167.

international engagements is an attribute of State sovereignty"<sup>64</sup>. Thus, it is within the discretion of states whether they freely conclude an international agreement and in what particular way limit their sovereignty thereby.

Several elements of sovereignty can be deduced from the UN Charter, including:

- Sovereign equality of the UN member states (Article 2.1);
- Prohibition of the threat or use of force against the territorial integrity or political independence of any other state (Article 2.4);
- Prohibition of intervention within the domestic jurisdiction of any state (Article 2.7).

It is apparent that the notion of sovereignty overlaps to some extent with independence, which implies the rights and duties of states. Pursuant to the Draft Declaration on Rights and Duties of States, these include: (a) the freedom of choice of the government; (b) the freedom to exercise jurisdiction over the territory and over all persons and things within the state; (c) the duty to refrain from intervention in the external or internal affairs of any other state; (d) the duty to refrain from recognizing any territorial acquisition in violation of the prohibition of the threat or use of force; (e) the right of individual or collective self-defense against an armed attack<sup>65</sup>.

In 1999, in the case concerning *Kasikili/Sedudu Island*, the ICJ held that the following requirements have to be fulfilled in order to enable possession by a state to mature into a prescriptive title: (1) the possession must be exercised à *titre de souverain*; (2) the possession must be peaceful and uninterrupted; (3) the possession must be public; (4) the possession must endure for a certain length of time<sup>66</sup>.

With regard to sovereignty, the issue of foreign control over an entity needs to be considered, namely whether a state exercises effective control

<sup>&</sup>lt;sup>64</sup> Case of the S.S. "Wimbledon". 1923. Permanent Court of International Justice. [online] [last retrieved 30-04-2019]. Available at: https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie\_A/A\_01/03\_Wimbledon\_Arret\_08\_1923.pdf P. 25.

<sup>&</sup>lt;sup>65</sup> Draft Declaration on Rights and Duties of States with Commentaries. 1949. [online] [last retrieved 30-05-2019]. Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/2\_1\_1949.pdf

<sup>&</sup>lt;sup>66</sup> Case Concerning Kasikili/Sedudu Island (Botswana v. Namibia). Judgment of 13 December 1999. ICJ. [online] [last retrieved 28-05-2019]. Available at: https://www.icj-cij.org/public/files/case-related/98/098-19991213-JUD-01-00-EN.pdf Para. 94.

on its own or whether it is under foreign control of another state. "[T]here is no justification for ignoring foreign control exercised in fact through the ostensibly independent machinery of state. However, the emphasis is on foreign *control* overbearing the decision-making of the entity concerned on a wide range of matters and doing so systematically and on a continuing basis" In such a case, I believe that the territorial entity would likely be labelled a *puppet state* due to the fact that another country exercises effective control over the entity which pretends to be a state by having a state apparatus.

# 1.3 Modes of state creation

In traditional international law, there was a widespread belief that the creation of a state is the result of a historic process, i.e. something that is not regulated, but rather acknowledged by international law as a mere fact. Even though there is no norm regulating the creation of a state in contemporary international law, it is a generally accepted principle that a state cannot be created as a result of violation of peremptory norms of international law.

# (A) Original occupation of territory

The concept of original occupation rests upon the idea that a state is created on a territory that does not belong to any existing state, i.e. is unoccupied and unacquired (*terra nullius*). In order to acquire such a territory, the occupation has to be effective and accompanied by an intention to acquire sovereignty<sup>68</sup>. However, what is problematic is the legal status of any native population living on the territory as well as the question whether the territory might be considered as unoccupied. In the *Western Sahara* case, the UN General Assembly asked the International Court of Justice to deliver an advisory opinion on the question whether Western Sahara was a territory belonging to no one (*terra nullius*) at the time of colonization by Spain. The Court

<sup>&</sup>lt;sup>67</sup> Crawford, J. 2012. *Brownlie's Principles...*, p. 130.

<sup>68</sup> Crawford, J. 2006. The Creation..., p. 258.

established that "territories inhabited by tribes or peoples having a social and political organization were not regarded as *terrae nullius*. It shows that in the case of such territories the acquisition of sovereignty was not generally considered as effective unilaterally through 'occupation' of *terra nullius* by the original title, but through agreements concluded with local rulers" 69.

As an example of original occupation of a territory by a new state, J. Crawford lists Liberia<sup>70</sup>, which was founded as a colony for freed black volunteers from the United States. Liberia officially declared independence in 1847 and was recognized by the United States in 1862<sup>71</sup>.

However, this mode of state creation has become obsolete as nowadays there are no territories that could be seen as neither states nor territories administrated by states<sup>72</sup>, and thus could constitute *terrae nullius*, which could be subject to original occupation. Theoretical considerations regarding the so-called failed states pose the question whether complete disruption of state structures with no perspective of their re-establishment could possibly lead to the extinction of statehood.

# (B) Granting of independence to colonial entities

The obtaining of independence by colonial entities is closely connected with the right to self-determination of peoples. Whilst prior to 1945 this right was considered a political concept, after 1945 it became a binding principle of international law. Pursuant to Article 1(2) of the UN Charter, one of the purposes of the UN is "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples [...]"<sup>73</sup>. In 1960, the UN General Assembly adopted the *Resolution on the granting* 

<sup>&</sup>lt;sup>69</sup> Western Sahara. Advisory Opinion of 16 October 1975. [online] [last retrieved 01-06-2019]. Available at: https://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN. pdf Para. 79.

<sup>&</sup>lt;sup>70</sup> Crawford, J. 2006. *The Creation...*, p. 275.

<sup>71</sup> Liberia. [online] [last retrieved 28-05-2019]. Available at: https://www.britannica.com/place/Liberia

<sup>&</sup>lt;sup>72</sup> Antonowicz, L. 1988. *Państwa i terytoria...*, p. 75.

<sup>&</sup>lt;sup>73</sup> *United Nations Charter.* [online] [last retrieved 29-05-2019]. Available at: https://www.un.org/en/about-us/un-charter/full-text

of independence to colonial countries and peoples, in which it reaffirmed that "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"<sup>74</sup>. With the adoption of the resolution, it became apparent that the argument which claimed that the right to self-determination of peoples was merely a political concept was no longer sustainable.

In accordance with the 1970 Friendly Relations Declaration, "[t]he territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such a separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles" The Declaration, which serves as a binding interpretation of the UN Charter, reflects the establishment of the right to self-determination as a rule of international law. Thus, after 1945, colonies were no longer perceived as integral parts of metropolitan states.

The process of decolonization was particularly intensive in Africa in the 1960s. The year 1960 is referred to as the "Year of Africa" due to the number of countries which achieved independence. As many as 14 African countries became independent in 1960. For instance, in 1945 there were only four UN member states on the African continent. By 2020, the number of the UN member states in Africa has increased to 54.

#### (C) Unification of states

Two or more states can create a new state through their merger, which results in the extinction of the legal personality of the former states and cessation of their existence. In this respect, states give up their sovereignty for the sake of creation of a new subject of international law. This process needs to be distinguished from incorporation, when one state accedes to another,

<sup>74</sup> Declaration on the granting of independence to colonial countries and peoples. 14 December 1960. [online] [last retrieved 26-05-2019]. Available at: https://undocs.org/A/Res/1514(XV)

<sup>75</sup> Declaration on Principles of International Law..., op. cit.

the former losing its international personality and the latter becoming the successor of the former (for instance, the German Democratic Republic was incorporated into the Federal Republic of Germany in 1990).

In 1958, the United Arab Republic was created as a political union between Egypt and Syria. The initial idea was that other Arab states would follow the example, and this should have resulted in the creation of a unified Arab state. However, after the coup d'état in 1961, Syria separated from the Union. Interestingly, the United Arab Republic officially lasted until 1971, with Egypt as its only member. Another example is the unification of Tanganyika and Zanzibar in 1964 into the United Republic of Tanganyika and Zanzibar, which was later renamed the United Republic of Tanzania. In 1990, the People's Democratic Republic of Yemen and the Yemen Arab Republic merged together, thereby creating the Republic of Yemen.

Some authors also list the Senegambia Confederation (1982–1989) between Senegal and Gambia and the Moroccan-Libyan Union (1984–1986) as examples of unification<sup>76</sup>. However, they were not created as unitary states, but rather as loose associations. Moreover, they maintained their legal personalities and did not create a new subject of international law. For instance, according to the Agreement on Establishment of Senegambia Confederation, both Senegal and Gambia maintained their independence and sovereignty<sup>77</sup>.

The unification of states has to be done voluntarily by the expression of their free will. In some cases, unification of states might be prohibited by provisions of treaties. For instance, the 1955 State Treaty for the Re-establishment of an Independent and Democratic Austria included the "prohibition of anschluss". Pursuant to Article 4 of the Treaty, Austria must not conclude any agreement with Germany that would create a political or economic union between the two states<sup>78</sup>. Another example of such a prohibition is the 1960 Treaty on Guarantee, which related to the status of Cyprus. In accordance with

<sup>&</sup>lt;sup>76</sup> Crawford, J. 2006. *The Creation...*, pp. 489–490.

<sup>77</sup> Agreement concerning the establishment of a Senegambia Confederation. Signed at Dakar on 17 December 1981. [online] [last retrieved 27-05-2019]. Available at: https://treaties.un.org/doc/Publication/UNTS/Volume%201261/volume-1261-l-20735-English.pdf

<sup>78</sup> State Treaty for the Re-establishment of an Independent and Democratic Austria (Vienna, 15 May 1955). [online] [last retrieved 27-05-2019]. Available at: https://www.cvce.eu/content/publication/1999/3/2/5c586461-7528-4a74-92c3-d3eba73c2d7d/publishable\_en.pdf

Article 1 of the Treaty, the participation of the Republic of Cyprus in any political or economic union with any other state whatsoever was prohibited<sup>79</sup>.

### (D) Separation

Separation as a mode of state creation rests upon the fact that there is usually a constitutional mechanism within a state that foresees the process of withdrawal of a geopolitical unit from the state. After the process has ended, the previous state continues to exist as a subject of international law, in other words, the process of separation does not lead to the extinction of statehood.

A typical case of separation was Syria, which separated from the United Arab Republic in 1961. Another case was Singapore, which withdrew from the Federation of Malaysia in 1965. The procedural basis was an amendment to the constitution, which allowed for Singapore's withdrawal from the federation. The state union between Singapore and Malaysia lasted only for 23 months, and Malaysia continued to exist as a subject of international law afterwards. Moreover, the withdrawal of South Sudan from Sudan in 2011 qualifies as separation due to the fact that a referendum on independence had taken place.

## (E) Secession

The notion of secession is examined in detail in Chapter 2. At this point, it needs to be noted that the difference between separation and secession rests upon the fact that secession is a unilateral process which is not regulated by any constitutional mechanism under domestic law. Even if such a mechanism does exist in theory, it is not followed in practice; otherwise, this process could not be labeled as secession. Another significant characteristic of secession is that the parent state continues to exist as a subject of international law. Recent examples of secession include Kosovo (Serbia), Abkhazia (Georgia),

<sup>&</sup>lt;sup>79</sup> Treaty of Guarantee. Signed at Nicosia, on 16 August 1960. [online] [last retrieved 27-05-2019]. Available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/CY%20GR%20 TR\_600816\_Treaty%200f%20Guarantee.pdf

South Ossetia (Georgia), the Donetsk People's Republic (Ukraine), and the Lugansk People's Republic (Ukraine).

#### (F) Dissolution

The process of dissolution (*dismembratio*) means that a state ceases to exist as a subject of international law and is replaced by two or more successor states. For instance, the Czech and Slovak Federative Republic ceased to exist on 31 December 1992 and was replaced by two successor states on 1 January 1993—the Czech Republic and the Slovak Republic.

In the literature on state creation, there are controversies about the breakup of the Socialist Federative Republic of Yugoslavia (hereinafter referred to as SFRY) and about the breakup of the Soviet Union. In the former case, the Arbitration Commission of the Conference on Yugoslavia came to the conclusion that the SFRY was in a state of disintegration resulting from the will of a number of constitutive republics. The latter case seems to be even more controversial. Some authors claim that the USSR ceased to exist in consequence of *dismembratio* due to the fact that, pursuant to the 1991 Almaty Declaration, the USSR ceased to exist and was replaced by the Commonwealth of Independent States as a loose union of states<sup>80</sup>. However, another group of scholars claims that the process of breakup of the Soviet Union was a series of secessions until the Russian Federation remained as the very last constitutive state. Moreover, the Russian Federation considered itself a legal continuator of the USSR and continued its membership in the United Nations, including in the Security Council<sup>81</sup>. A legal assessment of the breakup of the USSR was even more complicated due to the fact that some of the constituent countries claimed that by declaring independence from the USSR, they only re-established their previous legal status, which had preceded their annexation by the Soviet Union (e.g. Georgia, Lithuania, Latvia, and Estonia).

<sup>80</sup> Almaty Declaration of 21 December 1991. [online] [last retrieved 28-05-2019]. Available at: https://cis-legislation.com/document.fwx?rqn=4744

<sup>81</sup> Cf. Karski, K. 2006. Kontynuacja prawnomiędzynarodowej podmiotowości ZSRR i jego części składowych przez państwa istniejące na obszarze postradzieckim. In Studia Iuridica. Vol. 45. ISSN 0137-4346. Pp. 73-101.

### (G) Creation of state based on an international legal act

It has to be noted that some authors do not consider this category as a separate mode of state creation. L. Antonowicz claims that "each mode of state creation is accompanied by some act of international law. It is merely the relationship between content and form"<sup>82</sup>. For instance, there seem to be different opinions on the establishment of Liberia as a state. Whilst A. Klafkowski listed this case as the creation of a state by an international legal act, J. Crawford considered Liberia to have been established by the original occupation of territory.

An example of this mode of state creation is the establishment of Rwanda and Urundi. The UN General Assembly Resolution of 27 June 1962 on the future of Ruanda-Urundi, in which the General Assembly took the decision to terminate the trusteeship agreement, established that Rwanda and Urundi should emerge as two independent states on 1 August 1962<sup>83</sup>.

As C. Mik noted, Bosnia and Herzegovina should also be seen as a state created by a decision of the international society, even though Bosnia and Herzegovina had declared independence from SFRY on 6 March 1992<sup>84</sup>. On the other hand, the Badinter Commission adopted the standpoint that Yugoslavia was in the process of dissolution instead of a series of secessions. In December 1995, the Dayton Agreement was signed, which is considered the legal basis for the creation of Bosnia and Herzegovina. Annex 4 of the above Agreement includes the Constitution of Bosnia and Herzegovina.

# 1.4 Functions of a state

Since the establishment of the first states, they have been conducting a range of different activities directed either towards the outer sphere (such as protection of their territory against attacks) or the inner sphere (for instance, redistribution of goods, providing justice, etc.). These activities served either the state's interests or the interests of members of the political community.

<sup>&</sup>lt;sup>82</sup> Antonowicz, L. 1988. *Państwa i terytoria...*, p. 75.

<sup>&</sup>lt;sup>83</sup> UN General Assembly, The future of Ruanda-Urundi, 27 June 1962. A/RES/1746. [online] [last retrieved 26-05-2019]. Available at: https://www.refworld.org/docid/3boof1dc4c.html

<sup>&</sup>lt;sup>84</sup> Muszyński, M. 2011. *Państwo w prawie międzynarodowym...*, p. 129.

These spheres of states' activities have evolved into what is today referred to as state functions.

W. Makowski distinguished between absolute and relative objectives of a state. The objectives belonging to the former group stem from the social contract and are divine. These include the common good<sup>85</sup>, freedom, and law. On the other hand, the relative objectives reflect the interests of the state. This group includes: (a) external security; (b) internal security along with the rights and interests of citizens, and preservation of the political system and institutions; (c) common interests of citizens, e.g. satisfaction of needs in the economic and cultural spheres<sup>86</sup>. The above approach to state functions can be viewed as solidarist, which is in contrast to the individualist approach pursuing—to some extent—egoist goals and not paying attention to what is referred to as the common good.

According to Marxist theories, the main functions of a state can be divided into: (1) internal; (2) external; (3) organizational and economic; (4) cultural and educational. Until the 1970s, the Marxist theory claimed that the last two functions were not present in capitalist states due to the fact that they were supposed to be only subsidiary in relation to the purpose of capitalist states, i.e. class exploitation. In the 1970s, there appeared classifications based on whose interests those functions were satisfying, and thus the so-called class function was distinguished. It was claimed that its purpose was to regulate the relationships within the ruling class<sup>87</sup>.

In 1986, K. W. Deutsch distinguished between three basic state functions. Unlike other classifications, which are based either on the territorial or the material scope of a state's actions, the classification provided by Deutsch is based on the future goals that states are attempting to achieve. In this respect, the basic functions of a state are<sup>88</sup>:

<sup>&</sup>lt;sup>85</sup> The "common good" is usually understood as "the creation of such conditions of social life that individuals as well as families could fully and easily achieve their goals and develop. It comprises a variety of material, civilizational and socio-cultural conditions, which enable the individual full personal development". (Turowski, J. 1994. Socjologia..., p. 111)

<sup>&</sup>lt;sup>86</sup> Makowski, W. 2014. *Nauka o państwie. Część pierwsza. Teoria państwa*. Warszawa: Wydawnictwo Sejmowe. ISBN 978-83-7666-297-8. Pp. 128–131.

<sup>&</sup>lt;sup>87</sup> Kowalski, J. et al. 1981. *Teoria państwa i prawa*. Warszawa: Państwowe Wydawnictwo Naukowe. ISBN 83-01-03067-4. P. 269.

Deutsch, K. W. 1986. State Functions and the Future of the State. In *International Political Science Review*. Vol. 7, no. 2. ISSN 0192-5121. Pp. 209–222.

- (1) Pattern maintenance. The purpose of this function is the preservation of a certain pattern of action or status, for instance, inequalities or class rule.
- (2) Power. This function includes actions aimed at the maintenance of power over the population of the state as well as conquest.
- (3) Pursuit of wealth. In this context, the state's action is focused on making the population richer, but not necessarily more equal.

Based on a combination of the above functions, Deutsch listed five different state types: (1) government regulation state; (2) laissez-faire state; (3) planning state; (4) welfare state; (5) revolutionary state<sup>89</sup>.

At the end of the 19<sup>th</sup> century, W. Donisthorpe listed the following functions of state actions: (1) defense against foreign aggression; (2) maintenance of law and order; (3) levying the necessary means for carrying out governmental work<sup>90</sup>. Apparently, the first function is to be applied in the external sphere towards other states, whilst in the second one, a state is supposed to take action in order to protect its citizens against lawlessness and enforce its rules. Unlike other works on state functions, Donisthorpe's stressed the significance of taxation in order to provide services, to which he refers as state interference.

According to R. Podgorzańska and A. Staszczyk, functions of a state are divided into external and internal ones. The external functions comprise: (a) defense, (b) attack, and (c) maintenance of the *status quo*. However, it is questionable whether "attack" may be considered as a legal function of states due to the universal prohibition of aggression in international relations, which is regarded as *jus cogens* norm. The internal functions include: (a) protection—in relation to public order and security; (b) regulation—creation of legal norms; (c) education—this includes research, ideology and culture; (d) adaptation—activities aimed at adapting to changing circumstances; (e) social protection—protection of the most vulnerable members of society; (f) economic activity—either direct or indirect actions of the state in the field of economy<sup>91</sup>.

<sup>89</sup> Loc. cit.

<sup>&</sup>lt;sup>90</sup> Donisthorpe, W. 1889. The Functions of the State. In *Donisthorpe's Individualism: A System of Politics*. [online] [last retrieved 27-05-2019]. Available at: https://www.libertarianism.org/essays/functions-state

Podgorzańska, R. and Staszczyk, A. 2002. Państwo jako podmiot życia politycznego. In Wybrane problemy teorii polityki. Szczecin: Wydawnictwo Uniwersytetu Szczecińskiego. ISBN 83-7241-233-2. Pp. 166–167.

E. Zieliński claims that a state can perform certain functions which depend on its goals, sphere of activities as well as on its level of cultural development. Therefore, Zieliński lists the following state functions: (1) external—it is present in the sphere of relations with other states; (2) internal—regulates the relations between the government and the society; (3) economic—regulates the sphere of economy; (4) cultural and educational—regards providing education; (5) social—concerns providing social services<sup>92</sup>. Perhaps it should be noted that the spheres of a state's activities and its functions do not reflect only its cultural development, but their scope may also be connected with its political system and ideology (e.g. socialist states).

Based on the territorial scope of a state's activity, K. A. Wojtaszczyk differentiates between external and internal functions of the state. The former is confined to the sphere of relations with other states and international organizations, whilst the purpose of the latter is to preserve order and security within the state. Apart from these functions, the state takes action in the spheres of economy, social welfare and culture<sup>93</sup>.

Criterion	Types of functions	Contents of the function	
Territorial scope	External function	Activities in international relations	
	Internal function	Relations within the state	
Spheres of state's action	External function	Maintaining relations with states and international organizations	
	Internal function	Preservation of order and security within the state	
	Economic and organizational function	Influencing economic processes through economic policy	
	Social function	Providing basic social services	
Aims of state's action	Adaptation	Adaptation of the state to changing circumstances	
	Regulation	Regulation of ongoing social processes	
	Innovation	Initiation of social transformation	

(Source: Wojtaszczyk, K. A. 2003. Państwo współczesne. In *Społeczeństwo i polityka. Podstawy nauk politycznych*. 3<sup>rd</sup> ed. Warszawa: Oficyna Wydawnicza Aspra. ISBN 83-88766-61-9. Pp. 233–234)

<sup>&</sup>lt;sup>92</sup> Zieliński, E. 2006. Nauka o państwie i polityce. 4<sup>th</sup> ed. Warszawa: Dom Wydawniczy Elipsa. ISBN 83-7151-726-2. P. 137.

<sup>&</sup>lt;sup>93</sup> Wojtaszczyk, K. A. 2003. Państwo współczesne. In Społeczeństwo i polityka. Podstawy nauk politycznych. 3<sup>rd</sup> ed. Warszawa: Oficyna Wydawnicza Aspra. ISBN 83-88766-61-9. P. 233.

There are neither any internationally recognized requirements for state functions nor any specific list of duties that a state is supposed to perform. This may vary depending on what the international community considers an indispensable state function at a time.

# 1.5 The right to self-determination of peoples

Pursuant to Article 1(1) of the 1966 International Covenants on Human Rights, the theory of international law defines the right to self-determination of peoples as "the right of the peoples to freely determine their political status internally and externally as well as freely pursue their economic, social and cultural development"<sup>94</sup>. It follows *ex definitione* that the right to self-determination functions in two directions, i.e. internally and externally. Thus, two basic aspects of this right can be distinguished.

The first one is the external aspect of the aforementioned right—the so-called offensive right to self-determination, which means the right to change the territorial status of a territory (from an administrative unit or, in the case of a federation, a federal unit to an independent state). The right to create an independent state is the core of this aspect<sup>95</sup>. "Supposing that the core of the right to self-determination is the right of a certain group of people (nation) to freely determine their international status, then at the same time their right to secede from a state, which they were part of, needs to be acknowledged"<sup>96</sup>. This right is, however, not unlimited, and it needs to be emphasized that the doctrine of international law interprets this right in this way almost exclusively in the context of decolonization.

The second one is the internal aspect of self-determination—it is perceived as the right of peoples to freely determine the most significant matters within a state. It can be also exercised through a certain degree of self-administration

<sup>&</sup>lt;sup>94</sup> Schöbener, B. 2014. Staatennachfolge. In *Völkerrecht. Lexikon zentraler Begriffe und Themen*. Heidelberg: C. F. Müller, ISBN 978-3-8114-4129-3. P. 370.

<sup>95</sup> Cf. Heintze, H. J. 2004. Völker im Völkerrecht. In Völkerrecht. 5<sup>th</sup> ed. München: C. H. Beck. ISBN 978-3-406-49636-3. P. 417.

Dembiński, L. 1969. Samostanowienie w prawie i praktyce ONZ. Warszawa: Państwowe Wydawnictwo Naukowe. P. 176.

or autonomy. The exercise of this right in a multinational state may lead to problems regarding the issue of participation of some minorities in the exercise of political power<sup>97</sup>. Considering that determining the political and economic systems, etc., belongs to the internal affairs of each state, all other states are bound by a negative duty to refrain from interfering in such matters.

In the light of the 1970 Declaration of Principles of International Law, the exercise of the right to self-determination may lead to "[t]he establishment of a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people [which] constitute modes of implementing the right of self-determination by that people"98. It follows from the above document that all other states have a negative duty to refrain from any action against the national unity or territorial integrity of any other state. "Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country"99.

Another international law principle included in the 1970 Declaration is the principle of sovereign equality of states, which seems the opposite of the right to self-determination at first glance. The reason is that the principle of sovereign equality comprises the inviolability of territorial integrity and political independence of states. The antagonist character of the above principles was often emphasized by some theorists. H. Armbruster states that "as long as international law guarantees the principle of sovereignty of existing states, it cannot allow for violating this principle by virtue of the right to self-determination. Since the principle of state sovereignty is older and more accomplished, it has priority over the right to self-determination"<sup>100</sup>.

<sup>97</sup> Heintze, H. J., Völker im Völkerrecht, p. 417. Schaller, C. 2009. Sezession und Anerkennung. Völkerrechtliche Überlegungen zum Umgang mit territorialen Abspaltungsprozessen. [online] [last retrieved 28-05-2019] Available at: https://www.ssoar.info/ssoar/handle/document/26139 P. 8.

<sup>&</sup>lt;sup>98</sup> Declaration on Principles of International Law..., 1970.

<sup>99</sup> Loc. cit

<sup>&</sup>lt;sup>100</sup> Armbruster, H. 1962. Selbstbestimmungsrecht. In *Wörterbuch des Völkerrechts. Band 3*. Berlin: de Gruyter. P. 253.

According to some authors, the right to self-determination of peoples was in practice subordinated to the principle of territorial integrity<sup>101</sup>.

The principle of territorial integrity was also prioritized over the right to selfdetermination of peoples by the Constitutional Court of the Russian Federation in the decision of 31 July 1995 on the constitutionality of the presidential decrees and resolutions of the federal government concerning the situation in Chechnya. The Constitutional Court, dealing with the secession of Chechnya, stated in the decision: "The constitutional goal of preserving the integrity of the Russian State accords with the universally recognized international legal principles concerning the right of nations to self-determination. It follows the Declaration of the principles of international law pertaining to friendly relations and co-operation between States in accordance with the Charter of the United Nations, adopted on 24 October 1970, that the exercise of the right to self-determination 'should not be construed as sanctioning or encouraging any acts leading to the dismemberment or complete disruption of territorial integrity or political unity of sovereign independent States acting pursuant to the principle of equality and self-determination of nations"102. On the one hand, the Constitutional Court of the Russian Federation based its decision on a part of the so-called safeguard clause<sup>103</sup>, contained in the 1970 Declaration of the Principles of International Law. Nevertheless, it clearly omitted its final part. In consequence, it has been noted that "it seems unquestionable that the saving clause has been misconstrued in the judgment [...] without some examination of the representative nature of the Russian government"<sup>104</sup>.

<sup>&</sup>lt;sup>101</sup> Czapliński, W. and Wyrozumska, A. 2014. *Prawo międzynarodowe publiczne*. 3<sup>rd</sup> ed. Warszawa: C. H. Beck. ISBN 978-83-255-5665-5. P. 185.

Judgement of the Constitutional Court of the Russian Federation of 31 July 1995 on the constitutionality of the Presidential Decrees and the Resolutions of the Federal Government concerning the situation in Chechnya. [online] [last retrieved 28-11-2018]. Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(1996)001-e

<sup>&</sup>lt;sup>103</sup> "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour [italics—P.S.]."

<sup>&</sup>lt;sup>104</sup> Gaeta, P. 1996. The Armed Conflict in Chechnya before the Russian Constitutional Court. In *European Journal of International Law*, vol. 7, no. 4. P. 566.

In my opinion, one cannot agree with the above theses about the contradictory character of the principle of territorial integrity and the right to self-determination of peoples nor with the opinions on precedence of the former principle over the latter for a couple of reasons. Firstly, there has been a significant development in the field of public international law since the 1960s. The gaining of independence by a number of countries in Africa and Asia as a result of the decolonization process, as well as after the fall of bipolarity, proves long-lasting practice and the general acceptance of this principle by states as an international customary rule. Not only does the right to self-determination of peoples nowadays constitute a general rule of customary international law, but it is also a peremptory norm of international law—jus cogens<sup>105</sup>. Secondly, there is a qualitative difference between the subjects to which the right to territorial integrity and the potential *jus secedendi* apply. "The right to self-determination concerns in its every aspect only the relations among states. This principle does not concern the relations between a state and a group of people living in its territory. A violation of that right could be an act of one state against another. Secession, as an act carried out by a group of people against the parent state, does not violate the principle of territorial integrity as a principle governing relations among states. That principle is addressed to states, and it can only be violated by them. It follows from this argumentation that a prohibition of secession cannot be derived from the principle of territorial integrity"106. This means that international law "protects the territorial integrity of states against being violated from the outside [by another state—P.S.]; however, it does not provide such protection from internal disintegration"<sup>107</sup>. This thesis was confirmed by the ICJ in its advisory opinion on the unilateral declaration of independence in respect of Kosovo, stating that "the scope of the principle of territorial integrity is confined to the sphere of relations between States"108. Thus, if state creation

<sup>&</sup>lt;sup>105</sup> Irmscher, T. H. 2014. Selbstbestimmungsrecht der Völker. In Völkerrecht. Lexikon zentraler Begriffe und Themen. Heidelberg: C. F. Müller. ISBN 978-3-8114-4129-3. P. 373.

<sup>&</sup>lt;sup>106</sup> Tyranowski, J. 1990. *Integralność terytorialna, nienaruszalność granic i samostanowienie w prawie międzynarodowym*. Warszawa: Państwowe Wydawnictwo Naukowe. P. 243.

<sup>&</sup>lt;sup>107</sup> Antonowicz, L. 2011. *Podręcznik prawa międzynarodowego*. 12<sup>th</sup> ed. Warszawa: LexisNexis. ISBN 978-83-7620-958-6. P. 48.

<sup>&</sup>lt;sup>108</sup> Accordance with international law of the unilateral declaration of independence in respect of Kosovo. [online] [last retrieved 10-04-2017]. Available at: https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf. Par. 80.

was prohibited as a result of elimination of the external aspect of the right to self-determination, or because of prioritizing the principle of territorial integrity over the right to self-determination, it would mean that the right to self-determination is just a legal fiction.

The above *opinio juris*, expressed by the ICJ in its advisory opinion on the unilateral declaration of independence in respect of Kosovo, did not remain without criticism by some international legal scholars. The criticism was directed mostly at the state-centrist perception of international law adopted by the Court, especially considering that if the principle of territorial integrity is applicable only to the sphere of relations among states, it follows from this construction that it is not legally binding for non-state actors, e.g. international organizations<sup>109</sup>. On the other hand, it has to be distinguished between violation of territorial integrity from the outside and internal disintegration processes, to which the principle of territorial integrity does not apply<sup>110</sup>.

The principle of territorial integrity is thus applicable only to the sphere of relations among states, not between a separatist entity and the parent state. A secession carried out by a breakaway group as a result of internal disintegration processes does not violate this principle. Only an act of one state against another, such as the Russian Federation against Ukraine in the case of incorporation of Crimea into the Russian Federation, can constitute a violation of the principle of territorial integrity. With regard to Crimea, its secession was not a result of internal disintegration processes, but was initiated, supported, and carried out by external forces from the Russian Federation. It can be agreed with the opinion expressed by the Czech legal scholar J. Ondřej that "if we consider the referendum on Crimea illegal, mostly because of the role that Russia played [Russia interfered into the internal affairs of Ukraine—P.S.], then, logically, the subsequently concluded Treaty on the Incorporation of Crimea into the Russian Federation must have been concluded in breach of international law. It would have meant an intervention into the subjectivity of another state, in this case of Ukraine. Russia would

<sup>&</sup>lt;sup>109</sup> Kwiecień, R. 2010. Glosa do opinii doradczej Międzynarodowego Trybunału Sprawiedliwości z 22.7.2010 r. w sprawie zgodności z prawem międzynarodowym jednostronnej deklaracji Kosowa. In Kwartalnik Prawa Publicznego, vol. X, no. 3/2010, p. 219.

<sup>&</sup>lt;sup>110</sup> Szpak, A. 2014. Secesja części terytorium w świetle prawa międzynarodowego (na przykładzie Kosowa i Krymu). In *Państwo i Prawo*, vol. LXIX, no. 12/2014, p. 49.

have violated the rules on territorial integrity and political independence of another state, which are untouchable, as it is expressed in Article 2 of the UN Charter"<sup>III</sup>.

According to some scholars<sup>112</sup>, in the light of the above quoted "safeguard clause", the right to territorial integrity can be claimed only by those states that respect the internal aspect of the right to self-determination of peoples and do not expose their residents to discrimination based on their race, religion or skin color. It follows from this thesis that racist regimes such as Bantustans (Transkei, Bophuthatswana, Ciskei, or Vendaland), which were created with the consent of the parent state with the aim to enforce an illegal policy of racial discrimination, can be denied the right to territorial integrity. These puppet states, created in the territory of South Africa, were not effective since they were completely dependent on the parent state<sup>113</sup>. The denial of the right to self-determination was represented by the imposition of "statehood" against the will of the people living in these territories. The policy of so-called bantustanization, the aim of which was to "consolidate the inhuman policies of apartheid, to perpetuate white majority domination and to dispossess the African people of their inalienable right to self-determination"114, was condemned by the UN Security Council in several resolutions. Despite that, the process of creation of the Bantustans was, however, not in violation of the principle of territorial integrity, which does not apply to the sphere of relations between the parent state and a breakaway territorial unit. "The principle of territorial integrity does not provide a permanent guarantee of present territorial divisions, nor does it preclude granting of independence to part of its territory, even where such granting is contrary to the wishes of the majority of the people of the State as a whole"115.

Ondřej, J. 2014. Mezinárodní právo veřejné, soukromé, obchodní. 5<sup>th</sup> ed. Praha: Aleš Čeněk. ISBN 978-80-7380-506-7. P. 107.

<sup>&</sup>lt;sup>112</sup> Cf. Czubocha, K. 2012. *Pojęcie państwa i procesy państwotwórcze we współczesnym prawie międzynarodowym.* Toruń: Wydawnictwo Adam Marszałek. ISBN 978-83-7780-392-9. P. 186.

<sup>&</sup>lt;sup>113</sup> Crawford, J. 2006. *The Creation...*, p. 344.

Resolution 3411 (XXX). [online] [last retrieved 07-12-2018]. Available at: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NRo/001/24/IMG/NR000124. pdf?OpenElement

<sup>&</sup>lt;sup>115</sup> Crawford, J. 2006. *The Creation...*, p. 344.

Ch. Tomuschat points out the fact that the Friendly Relations Declaration lists different forms through which the right to self-determination can be exercised, specifically, in addition to statehood, through free association or integration with an independent state, or through emergence into any other political status. At the same time, the people concerned is given a free choice<sup>116</sup>. Nevertheless, it is worth mentioning that in practice it is impossible that the exercise of the right to self-determination would lead to secession in every single case. Thus, it is important to set objective requirements that have to be fulfilled so that the right to secede from an existing state could be invoked.

Similarly, J. Crawford, while acknowledging the very existence of the right to self-determination of peoples, rejects its universal applicability. "International law recognizes the principle of self-determination. It is, however, not a right applicable just to any group of people desiring political independence or self-government. [...] It applies as a matter of right only after the unit of self-determination has been determined"<sup>117</sup>. According to A. Cristescu, a special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *jus secedendi* (law on secession) undoubtedly does exist, however, neither the UN Charter nor the Friendly Relations Declaration grant an unlimited right of secession to populations living in the territory of a sovereign state. What is more, it cannot be considered *lex lata* either. The right of secession is limited to rather specific cases; this right exists when peoples or ethnic groups are subjugated in violation of international law, or their very existence is threatened<sup>118</sup>.

The international law doctrine often emphasizes the fact that in multinational states the right to self-determination should be exercised primarily through its internal aspect. "The obligation in international law to abide by the principle of equality of peoples can be exercised within different socio-political systems. Its choice is confined to the internal competence of every state. The fulfillment of the obligation to abide by the principle of equality of peoples implies that the peoples of the respective state comprise

Tomuschat, Ch. 1993. Self-Determination in a Post-Colonial World. In Modern Law of Self-Determination. Dordrecht: Kluwer Academic Publishers Group. ISBN 978-0-521-84928-9. P. 12.

<sup>&</sup>lt;sup>117</sup> Crawford, J. 2006. *The Creation...*, p. 127.

<sup>&</sup>lt;sup>118</sup> Cristescu, A. 1981. The Right to Self-Determination. Historical and Current Developments on the Basis of United Nations Instruments. Par. 173.

a voluntary union [...]"<sup>119</sup>. The primacy of the internal aspect of the right to self-determination of peoples was also emphasized by the Supreme Court of Canada, stating that "the right to self-determination of a people is normally fulfilled through internal self-determination—a people's pursuit of its political, economic, social and cultural development within the framework of an existing state"<sup>120</sup>. It appears that the international community prioritizes the internal aspect of the right to self-determination. This was reaffirmed in the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007. On the one hand, the aforementioned document in its Article 3 acknowledges the right to self-determination of indigenous peoples<sup>121</sup>. On the other hand, Article 4 of the Declaration limits the exercise of this right to "autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions"<sup>122</sup>.

<sup>&</sup>lt;sup>119</sup> Antonowicz, L. 1988. *Państwa i terytoria...*, p. 83.

<sup>&</sup>lt;sup>120</sup> Reference re Secession of Quebec, par. 126.

<sup>&</sup>quot;Indigenous peoples have the right to self-determination. By the virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." (United Nations Declaration on the Rights of Indigenous Peoples. [online] [last retrieved o8-12-2018]. Available at: http://undocs.org/A/RES/61/295)

<sup>&</sup>lt;sup>122</sup> Loc. cit.

# 2 Secession and de facto statehood

## 2.1 The notion of secession

The historical roots of secession are sometimes traced back to the period of antic Rome, when this term referred to "separation of plebs citizens of the 'Eternal City' from Roman patricians, and subsequently the separation of whichever province or its part from the Roman Empire"<sup>123</sup>. The term "secession" appeared later in the 18<sup>th</sup> century in connection with the declaration of independence from Great Britain by the thirteen American colonies. Since that moment until now, secession has been a phenomenon associated with the creation of a new state. However, international law does not contain any legal definition of secession. Almost all existing definitions of this term have a doctrinal character although one definition is contained in an advisory opinion of the Supreme Court of Canada regarding the potential secession of the Canadian province of Quebec.

C. Haverland defines secession as "the separation of a territory of a state carried out by the resident population with the aim of creating a new independent state or acceding to another existing state [...] which originally

<sup>&</sup>lt;sup>123</sup> Łaski, P. 1990. *Secesja części terytorium państwa w świetle prawa międzynarodowego*. Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej. P. 6.

takes place in the absence of consent of the previous state"<sup>124</sup>. It follows from the above definition that the term "secession" refers to a unilateral separation in the sense of withdrawal from an existing state, and the separated territorial unit subsequently either becomes an independent state or accedes to another state that already exists. Secession is also perceived as a unilateral withdrawal and subsequent accession to another existing state by M. Kohen, according to whom "secession can also take the form of the separation of part of the territory of a state in order to be incorporated by as part of another state, without the consent of the former"<sup>125</sup>. Both of the above definitions emphasize the absence of consent between the separating geopolitical unit and the former state. In the case of consent, the process could no longer be labeled as secession, but it would rather be a qualitatively different process, referred to as separation.

J. Crawford defines secession as "the process by which a particular group seeks to separate itself from the state, to which it belongs, and to create a new state"<sup>126</sup>. A few years later, Crawford narrowed down this definition by adding the element of the threat or use of force. Thus, he defined secession as "the creation of a state by the use or threat of force without the consent of the former sovereign"<sup>127</sup>. This definition is sometimes referred to as a narrowed definition of secession<sup>128</sup>. The reason for such labeling is the requirement of the threat or use of force, the absence of consent of the former state, as well as the fact that Crawford does not consider the case when a withdrawn territorial unit accedes to another state as secession. Neither is this fact taken into consideration by H.-J. Heintze, who refers to secession as "the case of state continuity, in which a part of the territory becomes independent and the former state, although yet with reduced territory, remains in existence as

<sup>&</sup>lt;sup>124</sup> Haverland, C. 2000. Secession. In *Encyclopedia of public international law. Vol. 4*. Amsterdam: North-Holland. ISBN 0-444-86247-1. P. 354.

<sup>&</sup>lt;sup>125</sup> Kohen, M. G. 2006. *Secession: International Law Perspectives*. Cambridge: Cambridge University Press. ISBN 978-0-521-84928-9. P. 3.

<sup>&</sup>lt;sup>126</sup> Crawford, J. 1999. State Practice and International Law in Relation to Secession. In *British Yearbook of International Law*. Vol. 69, no. 1. ISSN 0068-2691. P. 85.

<sup>&</sup>lt;sup>127</sup> Crawford, J. 2006. *The Creation...*, p. 375.

<sup>&</sup>lt;sup>128</sup> Pavković, A. and Radan, P. 2011. Introduction: What is Secession? In *The Ashgate Research Companion to Secession*. Farnham: Ashgate. ISBN 978-0-7546-7702-4. Pp. 1–7.

a subject of international law"<sup>129</sup>. A similar problem appears in the definition by S. Hobe, who defines secession as "the withdrawal of a part of the territory from a state, which continues to exist after the withdrawal, with the creation of a new state on the withdrawn territory"<sup>130</sup>.

P. Radan characterized secession as "the process of state creation in particular contexts, that is, where the new state was formerly part of, or a colonial entity belonging to, a host state"<sup>131</sup>. This definition emphasizes explicitly that the case of state creation in the process of decolonization is undoubtedly secession. However, the author seems to have failed to take into consideration the question of further existence of the previous state, as well as the problem of its consent to the creation of a new state.

The literature in the Czech language provides definitions of secession such as "the withdrawal of a part of the territory and its population from an existing state and the transformation of that part into a new independent state" 132. The authors of the above definition perceive secession as a mode of state creation, listing the secession of Bangladesh from Pakistan and the *separation* of Croatia from the SFRY 133 as examples. Nevertheless, the international community was convinced that the new states on the territory of the former SFRY arose as a result of its break-up rather than secession 134. What is more, the above definition remains silent about the requirement of consent of the previous state or its absence although the unilateral character of this process may be deduced from the term "withdrawal" (in Czech *odštěpení*), not separation (in Czech *oddělení*). On the other hand, V. Balaš defines secession as "the separation of a part of the territory carried out by the population of this territory with the aim of creating a new independent state or adhering to another already existing

<sup>&</sup>lt;sup>129</sup> Heintze, H. J. 2004. Völker im Völkerrecht, p. 421.

Hobe, S. 2014. Einführung in das Völkerrecht. 10<sup>th</sup> ed. Tübingen: A. Francke Verlag. ISBN 978-3-8252-0469-3. P. 107.

<sup>&</sup>lt;sup>131</sup> Radan P., 2008. Secession: A Word in Search of a Meaning. In *On the Way to Statehood: Secession and Globalisation*. Aldershot: Ashqate. ISBN 978-0-7546-7379-8. P. 32.

<sup>&</sup>lt;sup>132</sup> Potočný, M. and Ondřej, J. 2011. *Mezinárodní právo veřejné. Zvláštní část*. Praha: C. H. Beck. ISBN 978-80-7400-398-1. P. 23.

<sup>133</sup> Ibidem.

Pellet, A. 1992. The Opinions of the Badinter Arbitration Committee. A Second Breath for the Self-Determination of Peoples. In *European Journal of International Law*. Vol. 3, no. 1. ISSN 1464-3596. P. 183.

state [...], which at the beginning occurs without the consent of the former sovereign"<sup>135</sup>. On the one hand, the above definition characterizes secession as a *separation* instead of a unilateral withdrawal and fails to emphasize the continuation of the international legal personality of the former state. On the other hand, it appropriately emphasizes the lack of consent of the previous state and allows for the consent of the previous state to be expressed *ex post* (such as in the case of recognition of Bangladesh by Pakistan).

The most recent literature in the Slovak language<sup>136</sup> perceives secession in connection with state creation as the withdrawal of a territory and its population and the subsequent creation of a new state on the territory that had withdrawn. Surprisingly, the cases of separation of Bosnia and Herzegovina, Croatia, Macedonia and Slovenia from the SFRY in the 1990s are listed as examples of secession despite the fact that, according to the Badinter Commission, this process was *dismembratio* rather than the secession of particular states. Similarly, J. Azud defines secession as "the withdrawal of a part of the territory and population of an existing state and the creation of a new independent state"<sup>137</sup>.

In the doctrine of public international law, notions such as "secession" (withdrawal), separation and others related to obtaining independence in the process of decolonization and state break-up are often mixed up. In some definitions, secession is understood in its broadest sense, including the cases of state division or break-up (*dismembratio138*). In this context, G. Dördelmann defines secession as "the withdrawal of a territory of an existing state carried out by part of the population. It shall be distinguished neither between dissolution and secession nor between peaceful and violent secessions"<sup>139</sup>. Another example of the ambiguity of the notion of secession

<sup>&</sup>lt;sup>135</sup> Balaš, V. 1998. Secese (Ústavněprávní a mezinárodněprávní aspekty). In *Právník*, vol. 137, no. 4. ISSN 0231-6625. P. 254.

<sup>&</sup>lt;sup>136</sup> Vršanský, P. 2016. Medzinárodné právo verejné. Osobitná časť. Bratislava: Wolters Kluwer. ISBN 978-80-8168-376-3. P. 24 and 77; Jankuv, J. et al. 2015. Medzinárodné právo verejné. Prvá časť. Plzeň: Aleš Čeněk. ISBN 978-8-0738-0559-3. P. 53.

<sup>&</sup>lt;sup>137</sup> Azud, J. 2003. *Medzinárodné právo*. Bratislava: Veda. ISBN 978-80-224-0753-4. p. 193.

<sup>&</sup>lt;sup>138</sup> A situation, in which a state, as a subject of international law, ceases to exist and new states, as subjects of international law, are created on its former territory.

<sup>&</sup>lt;sup>139</sup> Dördelmann, G. 2002. *Rechtsethische Rechtsfertigung der Sezession von Staaten.* (Dissertationsarbeit). Universität Erfurt. P. 14.

is the classification provided by A. Pavković and P. Radan, who distinguish five types of secession<sup>140</sup>:

- 1. *Colonial secession*: the case where a colonial entity becomes a new state;
- 2. *Unilateral secession*: a part of the host state, notwithstanding its opposition, becomes independent, and the old state continues to exist;
- 3. *Devolutionary secession:* breaking away of a part of the territory with the consent of the previous state, which continues to exist;
- 4. *Consensual secession*: it is based on consent—the former state is dissolved, which leads to the creation of new states;
- 5. *Dissolving secession*: the demand for the creation of a new state leads to the dissolution of the host state and to the creation of new states.

Similarly, G. Andersson defines secession as "the withdrawal of territory (colonial or non-colonial) from part of an existing state to create a new state"<sup>141</sup>, noting that his definition includes "consensual and unilateral secession, excludes irredentism, which does not involve the creation of a new state [...], and includes the independence of colonial territories"<sup>142</sup>. As examples of secession, he lists the withdrawal of Syria from the United Arab Republic or even the peaceful *dissolution* [italics—P.S.] of Czechoslovakia in 1993 as a result of "the respective secessions of the Czech Republic and the Slovak Republic"<sup>143</sup>. This is, in my opinion, a very peculiar mixture of two different processes—secession and dissolution. Supposing that the Czech Republic had seceded from Czechoslovakia, Slovakia would now be the only successor and vice versa, which is not the case.

The terminological ambiguity is also caused by the fact that separation<sup>144</sup> is sometimes labeled in literature as "approved" or "assented" secession.

<sup>&</sup>lt;sup>140</sup> Pavković, A. and Radan, P. 2011. Introduction..., p. 4.

<sup>&</sup>lt;sup>141</sup> Anderson, G. 2013. Secession in International Law and Relations: What Are We Talking about? In *Loyola of Los Angeles International and Comparative Law Review*. Vol. 35, issue 3. P. 344.

<sup>&</sup>lt;sup>142</sup> Ibidem, p. 345.

<sup>&</sup>lt;sup>143</sup> Ibidem, p. 353.

Separation is the case when a part of the territory becomes independent in order to create a new state. This process either occurs with the approval of the previous state, or there is a constitutional mechanism regulating the possibility to separate from the state. (Ott, M. 2008. Das Recht auf Sezession als Ausfluss des Selbstbestimmungsrechts der Völker. Berlin: Berliner Wissenschafts-Verlag. ISBN 978-3-8305-1533-1. Pp. 47-49)

A similarity between secession and separation is that in both cases a part of the territory becomes independent; moreover, from the legal point of view, there is a continuance of the existence of the previous state as a subject of international law in both cases<sup>145</sup>. The basic difference between these two processes is the fact that in the case of secession the approval of the previous state (or the central government) is absent, while separation occurs with its approval, or, alternatively, there is a constitutional norm regulating the process of withdrawal, for instance in the case of a federation<sup>146</sup>. The separation of Syria from the United Arab Republic or the separation of Singapore from Malaysia may serve as examples of separation. On the other hand, the Czech lawyer J. Malenovský claims that "constitutional law may even explicitly set the right to external self-determination (secession), carried out according to precise requirements by a certain group of citizens considered as a people by this constitutional law"<sup>147</sup>.

In 1998, the Supreme Court of Canada issued an advisory opinion concerning Quebec, which included a definition of secession. The Court defined the term as follows: "Secession is the effort of a group or section of a state to withdraw itself from the political and constitutional authority of that state, with a view to achieving statehood for a new territorial unit on the international plane. In a federal state, secession typically takes the form of a territorial unit seeking to withdraw from the federation" According to the above advisory opinion, secession is the process of a unilateral withdrawal from a state in order to create a new state as a subject of international law, but not in order to accede to another state; however, there is again a blurring

<sup>&</sup>lt;sup>145</sup> Loc. cit.

<sup>&</sup>lt;sup>146</sup> Such an option was provided in Art. 72 of the 1977 Constitution of the USSR, reading: "Each Union Republic shall retain the right to freely secede from the USSR." (Конституция [Основной Закон] Союза Советских Социалистических Республик принята на внеочередной седьмой сессии Верховного Совета СССР девятого созыва 7 октября 1977). [online] [last retrieved 14-11-2018]. Available at: http://www.hist.msu.ru/ER/Etext/cnst1977.htm)

<sup>&</sup>lt;sup>147</sup> Malenovský, J. 2014. *Mezinárodní právo veřejné. Obecná část a poměr k jiným právním systémům.* Praha: C. H. Beck. ISBN 978-80-7239-318-3. P. 112.

<sup>&</sup>lt;sup>148</sup> Reference re Secession of Quebec. 1998. [online] [last retrieved 14-11-2018]. Available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do. Para. 83.

of the difference between unilateral secession and separation regulated by the norms of constitutional law.

A common feature of the above definitions is the perception of secession as a mode of state creation. For the purposes of this monograph, secession shall be understood as a *process*<sup>149</sup>. The basic defining elements thereof are as follows:

- 1. A unilateral withdrawal of an integral part of the territory of an existing state, carried out by the population of that state;
- 2. There is neither consensus nor the approval of the state, from which the territorial part seeks withdrawal;
- 3. The actual creation of a geopolitical unit<sup>150</sup> independent from the previous state, which aspires to become an independent state or accedes to another already existing state;
- 4. The continuous existence of the previous state as a subject of international law.

The creation of a state or its accession to another already existing state is an ideal, successful completion of the process of secession. However, J. Crawford argues that the only ideal case of a successful secession after 1945, beyond the decolonization process, with the recognition of a separatist unit by the previous state and its admission into the UN is Bangladesh<sup>151</sup>. However, in my opinion, the creation of a geopolitical unit, over which the former state no longer exercises effective control, would qualify as secession. As it will be pointed out later, the process of secession is *ex post* subject to legal analysis from the point of view of its legality.

In order to label a certain process as secession, it is crucial that all four of the above criteria are met simultaneously. As for the relationship between a unilateral declaration of independence and secession, some states in the

<sup>&</sup>lt;sup>149</sup> Anderson, G. 2013. Secession in International Law..., p. 349. This process is characterized by a separatist struggle, the purpose of which is the creation of a sovereign state or integration with another state. (Perkowski, M. 2012. Samostanowienie narodów w prawie międzynarodowym. Warszawa: PWN. ISBN 83-88296-59-0. P. 81)

The term "geopolitical unit" reflects the territorial substance as well as a political character of such unit. Although each state is a geopolitical unit, not all geopolitical units are states. (Antonowicz, L. 2012. Rzecz o państwach i prawie międzynarodowym. Lublin: Wydawnictwo Naukowe Wyższej Szkoły Ekonomii i Innowacji w Lublinie. ISBN 978-83-6207-464-8. P. 20)

<sup>&</sup>lt;sup>151</sup> Crawford, J. 2006. *The Creation...*, p. 415.

discourse on the unilateral declaration of independence by Kosovo argued that a declaration of independence should be regarded as a political act not regulated by international law, but by domestic constitutional law<sup>152</sup>. In this context, J. Crawford stated that "a declaration issued by persons within a state is a collection of words writ in water; it is the sound of one hand clapping. What matters is what is done subsequently, especially the reaction of the international community"153. On the contrary, the Czech scholar O. Svaček considers a unilateral declaration of independence as "inseparable part of the process of secession"<sup>154</sup>. According to this author, "the relationship between secession and a unilateral declaration of independence can be perceived as a relationship between content and form"155. A declaration of independence as a political act usually precedes the process of secession and may become one of the causes that lead to secession. I would like to point out that a mere declaration of independence does not mean the creation of a new state at all since "a successful state creation requires more than a declaration of independence"156. On the other hand, there have been cases when the purpose of a declaration of independence was to validate an already existing unlawful situation (e.g. in the case of the so-called bantustans)<sup>157</sup>. Thus, I believe that a declaration of independence should not be seen as part of the process of secession.

Some German scholars distinguish between the term "secession" and "pseudo-secession" (in German: *unechte Sezession*). The latter stands for "the case in which a territory unilaterally withdraws from the previous state

<sup>&</sup>lt;sup>152</sup> Accordance with international law of the unilateral declaration..., para. 26.

Public sitting held on Thursday 10 December 2009, at 10 a.m. at the Peace Palace, President Owada, presiding, on the Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo. [online] [last retrieved 17-11-2018]. Available at: https://www.icj-cij.org/files/case-related/141/141-20091210-ORA-01-00-Bl.pdf. P. 47.

<sup>154</sup> Svaček, O. 2013. Mezinárodněprávní aspekty vzniku Kosova. In Vznik a uznání státu – Aktuální pohled mezinárodního práva. Praha: Leges. ISBN 978-80-87576-83-0. P. 67.

<sup>155</sup> Loc cit

<sup>&</sup>lt;sup>156</sup> Vidmar, J. 2012. Conceptualizing Declarations of Independence in International Law. In Oxford Journal of Legal Studies. Vol. 32, no. 1. ISSN 0143-6503. P. 153.

<sup>&</sup>lt;sup>157</sup> Ibidem, p. 174; Crawford, J. 2006. The Creation..., p. 342; UN General Assembly Resolution 31/6 (1976). [online] [last retrieved 17-11-2018]. Available at: https://treaties.un.org/doc/source/docs/A\_RES\_31\_39-E.pdf

in order to annul an unlawful territorial status"158. In such a case, "with regard to territorial sovereignty, there is no legal title which could de jure prevent a territorial unit, struggling to exercise its right to self-determination, from becoming independent"159. The process of achieving independence of the Baltic states from the Soviet Union in 1991 may serve as an example of "pseudo-secession". The illegality of the territorial status stemmed from their annexation by the Soviet Union in 1940, considering that the USSR had been a party to the Kellog-Briand Pact since 1928. Some countries reacted to this situation by restoring their diplomatic relations with the Baltic states instead of establishing them<sup>160</sup>. It follows from this theory that the cited cases did not constitute a secession, but rather a restoration of the previous legal situation. In my opinion, the prefix "pseudo" emphasizes the fact that the breakaway territorial unit had been independent in the past and later lost this status in consequence of an unlawful situation. With regard to separation from the USSR, the 1977 Constitution of the USSR allowed for the possibility of leaving the Union, which indicates that the regaining of independence by the Baltic states was not a secession, but rather a separation. On the other hand, a specific law regulating the mechanism of leaving the Union was adopted as late as in April 1990, and it was almost unenforceable in practice<sup>161</sup>. In this context, K. Karski claims that the process of gaining independence by the member states from the USSR (except for the Russian Federation) was not a dismembratio, but a series of secessions. Moreover, the Russian Federation does not constitute a new subject of international law, but only continues the legal subjectivity of the USSR<sup>162</sup>.

Another significant question is whether obtaining independence by colonies can be counted as secession. In my opinion, the answer to that question is no. Obtaining independence from a colonial power by a colony is

<sup>&</sup>lt;sup>158</sup> Ott, M. 2008. Das Recht auf Sezession..., p. 49.

Oeter, S. 1992. Selbstbestimmungsrecht im Wandel. Überlegungen zur Debatte um Selbstbestimmung, Sezessionsrecht und vorzeitige Anerkennung. In Zeitschrift für Ausländisches und Öffentliches Recht und Völkerrecht. Vol. 53. ISSN 0044-2348. P. 750.

<sup>&</sup>lt;sup>160</sup> Czubocha, K. 2012. *Pojęcie państwa...*, pp. 31–32.

<sup>&</sup>lt;sup>161</sup> Karski, K. 2015. Rozpad Związku Radzieckiego a prawo międzynarodowe. Warszawa: Bellona. ISBN 978-83-11-13717-2. Pp. 85–89.

<sup>&</sup>lt;sup>162</sup> Ibidem, pp. 188–189; Antonowicz, L. 2012. *Rzecz o państwach...*, p. 83.

a mode of state creation different from secession 163. The reason is that a colony is generally not considered an integral part of the territory of a colonial power, which only administrates the colony<sup>164</sup>. In the traditional international law before 1945, the territory of a colony was perceived as an integral part of the colonial power<sup>165</sup>; however, such a perception is nowadays seen as obsolete. The 1970 Declaration on Principles of International Law contains the following provision in regard to the previous question: "The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of selfdetermination in accordance with the Charter, and particularly its purposes and principles"166. The above thesis is confirmed by the provision of Article 16 in the light of Article 2:1(f) of the 1978 Vienna Convention on Succession of States in respect of Treaties, pursuant to which new independent states that have arisen in the process of decolonization are not automatically bound by the treaties which were in force in respect of their territories at the date of their succession; on the contrary, these states are perceived as tabula rasa (clean state)167.

When a seceding territorial unit attempts to merge with another already existing state, a logical question regarding the difference between the term "secession" and "irredentism" comes up. As N. Chazan points out, the term "irredentism" covers "any political effort [to] unite ethnically, historically or geographically related segments of a population in adjacent countries

<sup>&</sup>lt;sup>163</sup> Potočný, M. and Ondřej, J. 2011. *Mezinárodní právo...*, p. 23.

<sup>&</sup>lt;sup>164</sup> Czubocha, K. 2007. Wojna secesjonistyczna w dobie globalnego zagrożenia terroryzmem. In Zeszyty naukowe SCENO. Vol. 4/2007. P. 47.

<sup>&</sup>lt;sup>165</sup> Antonowicz, L. 1988. *Państwa i terytoria...*, p. 164.

<sup>&</sup>lt;sup>166</sup> Declaration on Principles of International Law..., op. cit.

Vienna Convention on Succession of States in respect of Treaties. [online] [last retrieved 20-11-2018]. Available at: http://legal.un.org/ilc/texts/instruments/english/conventions/3\_2\_1978.pdf; D'Aspremont, J. 2013. Decolonization and the International Law of Succession: Between Regime Exhaustion and Paradigmatic Inconclusiveness. In Chinese Journal of International Law. Vol. 12, no. 2. ISSN 1540-1650. Pp. 328-330; Craven, M. 2007. The Decolonization of International Law. State Succession and the Law of Treaties. Oxford: Oxford University Press. ISBN 978-0-1995-7788-0. P. 137 and 234.

within a common political framework"<sup>168</sup>. Irredentism may, however, take two forms. The first one is a situation when an ethnic group that forms a majority within a state demands to incorporate a part of the territory and population of another state, in which this particular ethnic group forms a minority. The second one is a situation when an ethnic group that is a minority in a state seeks to unite with this particular ethnic group living in another state or seeks independence<sup>169</sup>. It follows that the difference between secession and irredentism rests upon the fact that irredentism is a political phenomenon which may lead to secession, and thus is one of its possible causes. Given that the aim of secession is the merger of a territorial unit with another already existing state, the causal link between irredentism and secession is undeniable.

# 2.2 Legality of secession

In traditional international law, secession was perceived as a "legal mode of state creation"<sup>170</sup> because at that time the highest priority was given to the criterion of effectiveness. Several different positions on the issue of secession presented by scholars of international law can be distinguished<sup>171</sup>:

- (a) Secession is an integral part of the right to self-determination, and thus it is legal;
- (b) Secession is prohibited by international law, and thus it is illegal [i.e. secession as a result of an unlawful use of force or violation of peremptory norms of international law—P.S.];
- (c) The existing legal norms do not allow adopting a clear position whether the right to secede does or does not exist;
- (d) From the legal point of view, secession is neutral, and so is civil war because civil wars are not banned by international law;

<sup>&</sup>lt;sup>168</sup> Chazan, N. 1991. *Irredentism and International Politics*. London: Adamantine. ISBN 1-555-87221-2. P. 1.

<sup>&</sup>lt;sup>169</sup> Ibidem, pp. 1–2.

<sup>&</sup>lt;sup>170</sup> Schaller, C. 2009. Sezession und Anerkennung..., p. 7.

<sup>&</sup>lt;sup>171</sup> Czubocha, K. 2012. *Pojęcie państwa...*, pp. 172-173.

(e) Ethnic groups have the right to unilateral secession as a response to mass and grave violations of human rights [i.e. the right to *remedial secession—*P.S.].

With regard to approach (a), it highlights the perception of the right to self-determination in its extensive meaning as the conduct of the external aspect of this right. H. Heintze noted that in this context the right to self-determination "in general includes the right to state creation"<sup>172</sup>.

Approach (b) prohibits secession as a result of an illegal use of force in international relations, or if the aim of secession is the exercise of racist discrimination as a complete denial of the right to self-determination, e.g. when the majority of the people are dominated by a minority of a different race<sup>173</sup>, or if secession poses a threat to international peace and security. Such cases were South Rhodesia, Katanga, and the Turkish Republic of Northern Cyprus<sup>174</sup>. Other examples of recent illegal secessions resulting from the violation of peremptory norms of international law, first and foremost of the prohibition of the threat or use of force, include the Donetsk People's Republic, the Lugansk People's Republic, or the secession of Crimea from Ukraine.

Approach (c) emphasizes the fact that international law only takes note of state creation as a result of secession since there is no explicit norm that would either prohibit or permit secession. J. Crawford noted that "if the seceding entity is acting illegally under international law, it follows that the entity is a subject of international law, although the main object of the resolutions cited was to deny to the entities in question any international status. [...] [S]ecession is neither legal nor illegal in international law, but a legally neutral act, the consequences of which are regulated by international law"<sup>175</sup>. Moreover, it follows from the provisions of the Convention on State Succession that secession cannot be illegal under international law since it is included in the Convention as a type of succession<sup>176</sup>. It follows that international law does preclude the existence of a general rule prohibiting

<sup>&</sup>lt;sup>172</sup> Heintze, H. J. 2004. Völker im Völkerrecht, p. 421.

<sup>&</sup>lt;sup>173</sup> Emerson, R. 1971. Self-determination. In *The American Journal of International Law*. Vol. 65, no. 3. ISSN 0002-9300. Pp. 467–468.

<sup>&</sup>lt;sup>174</sup> Cf. Crawford, J. 2006. *The Creation...*, s. 389.

<sup>&</sup>lt;sup>175</sup> Ibidem, pp. 389–390.

<sup>&</sup>lt;sup>176</sup> Ipsen, K. 2014. Völkerrecht. 6<sup>th</sup> ed. München: C. H. Beck. ISBN 978-3-406-57294-4. P. 354.

secession, except for acknowledging its illegality *ex post* in specific cases<sup>177</sup>. The ICJ stated in its advisory opinion regarding Kosovo that despite the fact that since the 18<sup>th</sup> century there have been numerous instances of declarations of independence, the practice of states does not indicate that international law would contain any norm prohibiting a unilateral declaration of independence, nor that such a declaration would be regarded as a violation of international law<sup>178</sup>. Nevertheless, state practice does not seem to be in favor of secession. As K. Ipsen notes, "public international law, oriented towards state sovereignty, is hostile to secession"<sup>179</sup>.

Secession in the form of an internal armed conflict constitutes a specific case, (d). This type of secession can be defined as "a conflict between the government of a state and the population that inhabits a certain part of the state and attempts to withdraw from that state"<sup>180</sup>. Recalling the words of H. Lauterpacht, international law does not condemn insurgency or secession, which aims to gain independence<sup>181</sup>. This type of secession is not illegal from the standpoint of international law since the prohibition of the threat or use of force pursuant to Article 2(4) of the UN Charter applies only to relations among states, not between a state and a separatist entity attempting to withdraw. Thus, international law remains neutral towards revolutions, rebellions and insurgencies; it only regulates their consequences such as the creation of a state as a result of secession<sup>182</sup>. Examples of secession in the form of an internal armed conflict include the secession of Biafra from Nigeria (1967–1970) or the secessionist armed conflict in Chechnya (1994–1996).

Approach (e) is the so-called remedial secession, which will be analyzed later in this chapter.

With regard to the issue of legality of secession, the principle of *ex injuria jus non oritur* is often emphasized in the theory of international law, i.e. that a state cannot be created as a result of violation of peremptory norms of international

<sup>&</sup>lt;sup>177</sup> Tyranowski, J. 1990. *Integralność terytorialna...*, pp. 242–243.

<sup>&</sup>lt;sup>178</sup> Accordance with international law..., para. 389.

<sup>&</sup>lt;sup>179</sup> Ipsen, K. 2014. Völkerrecht, p. 354.

Bílková, V. 2007. Úprava vnitrostátní ozbrojených konfliktů v mezinárodním humanitárním právu. Praha: Univerzita Karlova v Praze. ISBN 80-85889-82-X. P. 66.

<sup>&</sup>lt;sup>181</sup> Lauterpacht, H. 2003. *Recognition in International Law.* Cambridge: Cambridge University Press. ISBN 978-1-107-60943-3. P. 390.

<sup>&</sup>lt;sup>182</sup> Tyranowski, J. 1990. *Integralność terytorialna...*, p. 242.

law, such as the prohibition of the threat or use of force in relations among states (secession as a result of an illegal foreign intervention) or the prohibition of racial discrimination (creation of the so-called bantustans). In these cases, third states are bound by the obligation not to recognize unlawful situations, which has the character of a customary norm of international law.

In spite of the aforementioned legal regulations, the practice of states is not consistent. Bangladesh, which is considered by J. Crawford as the only successful secession since the end of World War II outside of the decolonization process framework, has been created thanks to an illegal intervention by India. After being recognized by Pakistan, it became a member state of the UN in 1974. In the case of Bangladesh, the decisive element for recognition by the international society was the principle of effectiveness<sup>183</sup>. M. Kohen pointed out that "the principle of non-intervention is unable to prevent the creation of a new state if this is the final result"<sup>184</sup>. Similarly, in the case of Kosovar Albanians, a new state was created after an illegal intervention by NATO.

Even though the application of the principle of effectiveness seems like the implementation of the principle of *ex factis jus oritur*, there arises a logical question whether it may be concluded that effective control automatically implies the legality of state creation. According to some authors<sup>185</sup>, the legality of state creation should be assessed based on the ability of a state to adhere to its international legal obligations. On the other hand, states commit unlawful acts but do not cease to be states as a result of that. Despite the fact that several legal scholars regard the principle of effectiveness as a *condition sine qua non* for the purpose of recognition by other states, it is not always the decisive criterion<sup>186</sup>. Recognition granted by the parent state, however, serves as a legalizing element. It was also perceived in the same way by traditional international law. L. Oppenheim stated that "as soon as the mother-state itself recognizes the new state, there is no reason for the other states to withhold any

<sup>&</sup>lt;sup>183</sup> Tomuschat, Ch. 1993. *Self-Determination...*, p. 30. The principle of effectiveness means "stability and efficiency of the government of the newly created state as well as its ability to enter into international relations". (Bierzanek, R. and Symonides, J. 2004. *Prawo międzynarodowe publiczne*. 8<sup>th</sup> ed. Warszawa: Wolters Kluwer. ISBN 978-83-7334-294-1. P. 144)

<sup>&</sup>lt;sup>184</sup> Kohen, M. G. 2006. Secession: International Law Perspectives, p. 11.

<sup>&</sup>lt;sup>185</sup> Cf. Antonowicz, L. 1988. *Państwa i terytoria...*, pp. 36–38.

<sup>&</sup>lt;sup>186</sup> Kohen, M. G. 2006. Secession: International Law Perspectives, pp. 1–20.

longer their recognition"<sup>187</sup>. Similarly, in the case of secession as an internal armed conflict, "international practice indicates (and it is also emphasized in literature) that granting recognition by the parent state to a newly created state as a result of a secessionist armed conflict is the reason for other states to follow without violating international law"<sup>188</sup>. In contemporary international law, "recognition opens the way to membership in the UN as well as to full participation of the state in the international sphere"<sup>189</sup>. In the past, recognition by the parent state was decisive for recognition by other states even if the state had not fulfilled the criterion of effectiveness based on the theory of three basic elements<sup>190</sup>.

Currently, there is an ongoing discourse on the legality of remedial secession in the doctrine of international law. This is derived by some legal scholars from the so-called safeguard clause contained in the 1970 Friendly Relations Declaration. The aforementioned clause states that if a government does not represent the interests of the whole people, commits grave forms of discrimination of an ethnic group as a whole, mostly because of race, religion, or creed, the entity at stake has the right to secede from an existing state. In such cases, the right to self-determination of peoples in its external aspect represents the struggle of the endangered entity for survival.

German legal scholars support the theory about the legality of remedial secession, noting that an ethnic group may not unilaterally secede from an existing state as long as this state guarantees equal rights, including participation in the exercise of political power, to all its citizens without distinction as to race, religion, etc. K. Hailbronner claims that "the right to secession is admissible only in extraordinary cases, for instance, if remaining in the state would threaten the very existence of a people" <sup>191</sup>. Therefore, secession is admissible as a form of remedy to grave violations

<sup>&</sup>lt;sup>187</sup> Oppenheim, L. 1912. *International Law...*, p. 120.

<sup>&</sup>lt;sup>188</sup> Skubiszewski. K. 1956. Uznanie międzynarodowe. In *Zarys prawa międzynarodowego publicznego. Tom II.* Warszawa: Wydawnictwo Prawnicze. P. 7.

<sup>&</sup>lt;sup>189</sup> Czubocha, K. 2012. *Pojęcie państwa...*, p. 182.

<sup>&</sup>lt;sup>190</sup> Haverland, C. 2000. *Secession*, pp. 356–357. This practice was used mostly in the decolonization period, when the criteria of statehood were not examined in detail, but the creation of a state was accepted as a fact after being recognized by the parent state.

<sup>&</sup>lt;sup>191</sup> Hailbronner, K. 2007. Der Staat und der Einzelne als Völkerrechtssubjekte. In *Völkerrecht*. Berlin: De Gruyter. ISBN 978-3-899-49425-9. P. 161.

of human rights and if an ongoing armed conflict between a seceding entity and the parent state poses a threat to international peace and security, and there are no alternative perspectives to resolving such a long-lasting conflict<sup>192</sup>. According to C. Schaller, the admissibility of remedial secession requires that two conditions are met simultaneously: discrimination of a people (e.g. precluding the exercise of free elections, peaceful assembly, free associations, etc.) and exhaustion of alternative means to resolve the conflict<sup>193</sup>.

J. Castellino developed a thesis on the legality of *remedial secession*, claiming that secession is legal if the biological existence of a nation or an ethnic group is at stake<sup>194</sup>. In this context, sovereignty cannot be used as a justification for grave violations of human rights. On the contrary, secession may be justified even if it is a result of foreign intervention. Unlimited sovereignty would otherwise be in breach of some fundamental norms of international law (e.g. prohibition of genocide) and would thereby serve as legitimization of lawlessness. Nevertheless, I cannot fully agree with such views because for the purpose of foreign intervention, the UN Charter states situations in which the use of force is admissible. However, foreign intervention does not necessarily mean an armed intervention, but can be conducted in different forms, for instance, as military supply, diplomatic support, or sending paramilitaries to another state in order to support secessionists<sup>195</sup>. Such actions are seen as violations of the fundamental principles of international law as they constitute an intervention into the domestic affairs of states.

The admissibility of *remedial secession* was confirmed by the Supreme Court of Canada, which stated that "[the] right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances"<sup>196</sup>. The Supreme Court of Canada in its above advisory opinion in the case of potential secession of Canada

<sup>&</sup>lt;sup>192</sup> Heintze, H. J. 2004. Völker im Völkerrecht, p. 424.

<sup>&</sup>lt;sup>193</sup> Schaller, C. 2009. Sezession und Anerkennung..., p. 15.

<sup>&</sup>lt;sup>194</sup> Cf. Castellino, J. 2014. International Law and Self-Determination. Peoples, Indigenous Peoples and Minorities. In *Self-Determination and Secession in International Law*. New York: Oxford University Press. ISBN 978-0-198-70237-5. Pp. 27–44.

<sup>&</sup>lt;sup>195</sup> Czubocha, K. 2012. *Pojęcie państwa...*, p. 180.

<sup>&</sup>lt;sup>196</sup> Reference re Secession of Quebec, para. 126.

admitted the existence of the right to remedial secession only if the right to self-determination of peoples cannot be exercised through its internal aspect within the framework of an existing state. "[The] right to secession only arises under the principle of self-determination of peoples at international law where 'a people' is governed as part of a colonial empire; where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state"197. For instance, with regard to the 2014 secession of Crimea, it needs to be stressed that Crimea had the status of an autonomous republic within Ukraine, and the residents of Crimea were not subject to such violations of human rights that anyone could claim to be a threat to their biological survival. Moreover, the population of Crimea could freely exercise their right to internal self-determination, which was in no way severely breached by Ukraine<sup>198</sup>. Therefore, the argument of remedial secession used by the Russian Federation seems rather absurd. In this case, the right of Ukraine to its territorial integrity has to be respected erga omnes, especially by the Russian Federation. "A state whose government represents the whole of the people or peoples resident within its territory, on the basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states"199.

The ICJ in its advisory opinion on the unilateral declaration of independence by Kosovo stated that it did not consider it necessary to resolve the issue whether international law included any permission for the so-called *remedial secession* and refused to take any position on this question<sup>200</sup>. Following the above advisory opinion, some authors assume that the ICJ "implicitly excluded the existence of a norm of international law

<sup>&</sup>lt;sup>197</sup> Ibidem, para. 154.

<sup>&</sup>lt;sup>198</sup> Kranz, J. 2014. Kilka uwag na tle aneksji Krymu przez Rosję. In *Państwo i Prawo*, rok LXIX, z. 8/2014. ISSN 0031-0980. P. 29.

<sup>&</sup>lt;sup>199</sup> Reference re Secession of Quebec. 1998. Para. 154.

<sup>&</sup>lt;sup>200</sup> Accordance with international law..., para. 83.

authorizing unilateral withdrawal from a parent state"<sup>201</sup>. Another argument against the concept of *remedial secession* is the fact that this right follows from the Declaration on Principles of International Law only implicitly. Apart from the Declaration, there is no other international legal document establishing the right to *remedial secession*. State practice, except for the case of Kosovo as a *sui generis* case<sup>202</sup>, does not support secession. Thus far, the UN GA resolutions have stressed the principles of state sovereignty and territorial integrity.

It also seems that an incoherent, even hypocritical approach of some states remains to be a practical issue of *remedial secession*. In this context, I may again recall the Russian Federation as an example. In 2009, in its written statement addressed to the ICJ regarding the unilateral declaration of independence by Kosovo, the Russian Federation argued that international law allows for *remedial secession* only "in extreme circumstances, when the people concerned is continuously subjected to most severe forms of oppression that endangers the very existence of the people"<sup>203</sup>, noting that these requirements had not been met in the case of Kosovo. Nevertheless, there is no doubt that the requirements for *remedial secession*, as outlined by the Russian Federation in the above written statement, were not met in the 2014 case of Crimea either.

Recently, a tendency of Western countries to underline the moral dimension of international relations<sup>204</sup> has been observed. This tendency has crystallized through the adoption of the *Responsibility to Protect* concept by the UN GA at the World Summit in 2005. This document embodies the responsibility of each state to "protect its populations from genocide, war

<sup>&</sup>lt;sup>201</sup> Svaček, O. 2013. Mezinárodněprávní aspekty..., p. 77.

<sup>&</sup>lt;sup>202</sup> The EU member states that had recognized Kosovo stated that this was "a *sui generis* case, setting no precedent for others". (Biermann, R., 2013. Secessionism, irredentism and EU enlargements to the Western Balkans. Squaring the circle? In *European Integration* and Transformation in the Western Balkans. Europeanization or business as usual? Oxon: Routledge. ISBN 978-0-415-59452-3. P. 159.)

<sup>&</sup>lt;sup>203</sup> Written Statement by the Russian Federation. [online] [last retrieved 02-08-2019]. Available at: https://www.icj-cij.org/files/case-related/141/15628.pdf

<sup>&</sup>lt;sup>204</sup> Czubocha, K., 2012. *Pojęcie państwa...*, p. 195.

crimes, ethnic cleansing and crimes against humanity"<sup>205</sup> as well as the commitment of the international community to act if national authorities fail to protect their populations. However, the use of force must be in line with one of the exceptions to Article 2(4) of the UN Charter, otherwise it would constitute an illegal intervention. Despite the fact that the above document aims to legitimize the use of force in international relations outside of the legal framework, from the standpoint of international law, it lacks the quality of being a commonly binding norm since there is neither general practice by states nor a perception thereof as a binding law<sup>206</sup>. Considering the current state of international law, I see the concept of *Responsibility to Protect* as being of a more political than legal nature.

# 2.3 The notion of de facto state

Neither in political science nor in public international law is there any binding or universal definition of a *de facto* state. What is more, there are a few other terms that are often applied to describe the same or similar phenomena, such as *quasi*-states, as if states, unrecognized states, states-within-states, parastates, pseudo-states, separatist states, contested states, *de facto* regimes, etc. M. Muszyński noted that from the political point of view, states are divided into two categories: "recognized states" and "unrecognized states". The latter are geopolitical subjects significantly differing from one another in their status<sup>207</sup>. The definitions applicable to such territorial units usually differ from one another in their material and temporal scope. In this subchapter, I shall examine the definitions of a *de facto* state and relating phenomena, as well as draw key elements of the definition of a *de facto* state. The definitions relating to particular phenomena are listed in chronological order.

<sup>&</sup>lt;sup>205</sup> 2005 World Summit Outcome. [online] [last retrieved 03-08-2019]. Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/global-compact/A\_RES\_6o\_1.pdf

<sup>&</sup>lt;sup>206</sup> Cf. Payandeh, H. 2010, With Great Power Comes Great Responsibility? The Concept of Responsibility to Protect Within the Process of International Lawmaking. In Yale Journal of International Law. Vol. 35, Issue 2. ISSN 0889-7743. P. 484.

<sup>&</sup>lt;sup>207</sup> Muszyński, M. 2012. *Państwo w prawie międzynarodowym...*, p. 188.

### De facto state

In 1998, Scott Pegg was among the first scholars to have introduced a definition of a de facto state. According to him, a de facto state exists "where there is an organized political leadership which has risen to power through some degree of indigenous capability; receives popular support; and has achieved sufficient capacity to provide governmental services to a given population in a defined territorial area, over which effective control is maintained for an extended period of time. The *de facto* state views itself as capable of entering into relations with other states and it seeks full constitutional independence and widespread international recognition as a sovereign state. It is, however, unable to achieve any degree of substantive recognition and therefore remains illegitimate in the eyes of international society"208. The aforementioned definition stresses all four basic elements of a state, i.e. territory, permanent population, effectiveness, and the ability to enter into international relations. Therefore, what differentiates a "state" from a "de facto state" is substantive recognition by other states. This means that a de facto state has the ability (or at least is convinced to be able) to enter into international relations with other states, but other states are unwilling to do so.

Later, in 2008, Pegg provided another definition of a *de facto* state, consisting of six basic elements<sup>209</sup>:

- There is an organized political leadership that receives popular support;
- This leadership has achieved sufficient capacity to provide governance or governmental services to a defined population;
- The *de facto* state effectively controls its territory or a large majority of it for at least two years;
- The *de facto* state views itself as capable of entering into relations with other states;

Pegg, S. 1998. De Facto States in the International System. [online] [last retrieved 18-10-2018]. Available at: https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.695. 2796&rep=rep1&type=pdf P. 1.

Pegg, S. 2008. The Impact of De Facto States on International Law and the International Community. [online] [last retrieved 14-11-2018]. Available at: https://unpo.org/images/ professor%20scott%20pegg.pdf. P. 1.

- The *de facto* state actively seeks widespread international recognition of its sovereignty;
- The *de facto* state is unable to achieve widespread recognition of its sovereignty and remains largely or totally unrecognized by the international society of sovereign states.

It is worth mentioning that S. Pegg argues in the above definition that a *de facto* state seeks to have its sovereignty recognized by other states. It follows from this definition that sovereignty is indirectly attributed to *de facto* states. However, the question that would require further examination is whether *de facto* states are sovereign or not, and only then the question of their statehood may be answered.

Another important aspect of a *de facto* state in the light of Pegg's definition is that it "remains unrecognized no matter how effective its governance capabilities or how long it has actually controlled the territory it claims to rule"<sup>210</sup>. Thus, regardless of effective control, *de facto* states remain without international recognition. On the other hand, the situation when a state is not able to exercise effective control over part of its territory is quite common in international relations<sup>211</sup>. In spite of that, they still enjoy broad international recognition and do not cease to be states.

According to D. Lynch, *de facto* states fulfill the first three Montevideo criteria, i.e. a permanent population, a defined territory, and a government; however, they fail to fulfill the criterion of the capacity to enter into relations with other states despite the fact that they claim the ability to do so. Moreover, a *de facto* state claims "to be sovereign over its self-defined territory and people, and to be constitutionally independent of any other state"<sup>212</sup>. The key difference between a state and a *de facto* state is, in the view of the above author, the fact that "the *de facto* state resides in its lack of recognized external sovereignty, which prevents it from enjoying membership of the exclusive and all-encompassing club of states"<sup>213</sup>. The legitimacy of *de facto* states rests on three pillars justifying their claims to statehood. The first

<sup>&</sup>lt;sup>210</sup> Ibidem, p. 2.

<sup>&</sup>lt;sup>211</sup> In literature, they are usually referred to as "failed states".

<sup>&</sup>lt;sup>212</sup> Lynch, D. 2002. Separatist States and Post-Soviet Conflicts. In *International Affairs*. Vol. 78, no. 4. ISSN 1473-8104. P. 835.

<sup>&</sup>lt;sup>213</sup> Loc. cit.

is the ability to fulfill the Montevideo criteria. The second one is the right to self-determination expressed by popular will, which stems from their struggle against the previous state from which they seceded. The third one is the long-lasting historical tradition that they claim to have maintained. In his later article, D. Lynch pointed out that the concept of a *de facto* state "underlines both the state-like nature of the entities that have emerged in these regions [around the Black Sea—P.S.] (they have created all the recognizable institutions of statehood) and it draws attention to the statist aspiration behind these projects (for recognition)"<sup>214</sup>. Referring to these entities as *de facto* states is essential for three reasons:

- 1. Separatism should be understood as an essentially political project aimed at the establishment of independent institutions of an independent statehood;
- 2. The objective of separatist leaders is neither to seize power in the capital nor to renegotiate the division of state powers within a given territory, but to exit the metropolitan state and build new relations with it on an inter-state level as equal units;
- 3. The exclusive nature of statehood means that "most self-determination movements will be content with nothing less than state sovereignty in order to achieve what they perceive as justice"<sup>215</sup>.

J. Mc Garry notes that "[d]e facto states are a result of a strong secessionist bid, on the one hand, and the unwillingness of the international system to condone secession on the other. They are regions which carry out the normal functions of the state on their territory, and which are generally supported by significant proportions of their population. They are not 'de jure states', because they are not sanctioned by the international order" 216. The above definition highlights the elements of territoriality and popular support for the authorities of de facto states. On the other hand, it implies that their illegitimacy is questioned by the lack of recognition as well as by

<sup>&</sup>lt;sup>214</sup> Lynch, D. 2007. De facto 'States' around the Black Sea: The Importance of Fear. In *Southeast and European Black Sea Studies*. Vol. 7, no. 3. ISSN 1468-3857. P. 487.

<sup>&</sup>lt;sup>215</sup> Ibidem, pp. 486–487.

<sup>&</sup>lt;sup>216</sup> Mc Garry, J. 2004. Foreword. In *De Facto States. The Quest for Sovereignty*. Oxon: Routledge. ISBN 0-203-48576-9.

the international community's disapproval of secession, the process through which they have been created.

N. Caspersen and G. Stansfield define *de facto* states based on the following three criteria:

- "They have achieved de facto independence, including territorial control, and have managed to maintain this for at least for two years. Unrecognized states control most of the territory they lay claim to, including the territory's 'capital' and key regions, and this distinguishes them from other separatist movements. However, the territorial control is not necessarily absolute; they may aspire to more territory than they currently control and the extent of their control is likely to vary over time.
- They have not gained international recognition, or even if they have been recognized by some states, they are still not full members of the international system of sovereign states.
- They have demonstrated an aspiration for full, *de jure* independence, either through a formal declaration of independence, through the holding of a referendum, or through other actions or declarations that show a clear desire for a separate existence"<sup>217</sup>.

Adrian Florea describes *de facto* states as "separatist entities that exercise a monopoly over the use of violence in a given territory but lack universal recognition"<sup>218</sup>. Such a definition is, however, incomplete since other non-state actors may, under certain circumstances, exercise the monopoly of violence in a given territory, e. g. terrorist organizations in a so-called failed state or insurgents during an internal armed conflict. Thus, Florea specifies his definition in the same work. According to him, a *de facto* state is "a polity that:

• belongs to (or is administered by) a recognized country, but is not a colonial possession,

<sup>&</sup>lt;sup>217</sup> Caspersen, N. and Stansfield, G. 2011. *Unrecognized States in the International System*. London: Routledge. ISBN 978-0-415-58210-0. Pp. 3–4.

Florea, A. 2014. De Facto States in International Politics (1945–2011): A New Data Set. In Empirical and Theoretical Research in International Relations. Vol. 40, no. 5. ISSN 0305-0629. P. 4.

- seeks some degree of separation from that country and has declared independence (or has demonstrated aspirations for independence, for example, through a referendum or "sovereignty declaration"),
- exerts military control over a territory or portions of a territory inhabited by a permanent population,
- is not sanctioned by the government,
- performs at least basic government functions (provision of social and political order),
- · lacks international legal sovereignty, and
- exists for at least 24 months"219.

The Slovak legal scholar J. Jankuv defines *de facto* states as "states that have declared independence but have not been recognized by the international community, or have been recognized only by a very small number of states, mostly because their creation was in breach of the norms of international law"<sup>220</sup>. The above-quoted author points out that a *de facto* regime is often perceived in literature as an illegally created government that aspires to be recognized as an official government in an already existing state. It is worth mentioning that despite the attempt to distinguish between a *de facto* state and a *de facto* regime, the above author tends to consider such entities as *states*.

R. Toomla provides a definition of the term "de facto state" based on two pillars: juridical and empirical statehood. According to him, a de facto state has to "provide some basic services to the population [...]. [I]t has to be independent from the parent state from which it tries to secede. All states have some influence on their autonomy and decision-making, but independence from their former 'master' is crucial"<sup>221</sup>. It follows from the above definition that in the internal sphere, the key definition element of a de facto state is the fact that it is able to provide services to the population. In the internal sphere, it is marked by "independence from the parent state", which, as I assume, means effective territorial control over the territory.

<sup>&</sup>lt;sup>219</sup> Ibidem, pp. 4-5.

<sup>&</sup>lt;sup>220</sup> Jankuv, J. et al. 2014. (Ne) uznanie štátov v medzinárodnom práve a jeho dopad na vnútroštátne právo. Kraków: Towarzystwo Słowaków w Polsce. ISBN 978-83-7490-800-9. P. 52.

Toomla, R. 2014. De facto states in the international system: Conditions for (in-)formal engagement. Tartu: University of Tartu Press. ISBN 978-9949-32-467-5. P. 58.

R. Toomla has dropped some elements of the definitions due to various reasons. For instance, the temporal criterion has been dropped since all present *de facto* states have been existing for at least two years. With regard to the declaration of independence, R. Toomla noted that "the declaration is useful in determining whether there has been secession, but it does not determine whether a particular entity is a *de facto* state. There can be *de facto* states that have not declared independence or even lack the intention to become independent"<sup>222</sup>. In my opinion, a declaration of independence is completely unnecessary as a definition element of a *de facto* state as it has very little implication for determining the actual *de facto* statehood. For instance, the Declaration of Independence of Catalonia was passed on 27 October 2017, but hardly can Catalonia be yet referred to as a *de facto* state. As I have explained in this work, I am convinced that a declaration of independence as such should not be mixed with secession.

### De facto regime

J. A. Frowein avoids the term "de facto states" and replaces it with the term "de facto regimes". These are "entities [...] frequently claiming to be states or governments, which control more or less clearly defined territories without being recognized—at least by many states—as states or governments"<sup>223</sup>. This approach towards unrecognized entities is common in public international law since the use of the term "de facto states" might imply that the entities in question are states even though it does not necessarily have to be so in every case.

J. van Essen argues that a *de facto* regime is "an entity which exercises at least some effective authority over a territory within a state. This degree of effective authority is coupled with a certain degree of political and organizational capacity. Moreover, this entity intends to represent the state of which it partially or completely controls the territory in the capacity of the

<sup>&</sup>lt;sup>222</sup> Loc. cit.

Frowein, J. A. 2012. De Facto Regime. In *Encyclopedia of Public International Law. Vol. 4*. Amsterdam: Elsevier Science B. V. ISBN 0-444-86247-1. P. 1052.

official government. In order for a *de facto* regime to attain official government status, it is argued, some form of agreement or recognition is needed from the actors that constitute the international community"<sup>224</sup>. The aforementioned author distinguishes between a *de facto* regime and a *de facto* state. He defines the latter as "a geographical and political entity that has all the features of a state, but is unable to achieve any degree of substantive recognition and therefore remains illegitimate in the eyes of international society. [...] The entity that constitutes a *de facto* regime [...] aspires to be recognized by the international community as being the official government of an already existing state"<sup>225</sup>. As for the difference between the *de facto* state and the *de facto* regime, the author argues that whilst the former pursues secession or independence from the parent state, the latter seeks to be recognized as the official government, leaving the parent state and its territories intact<sup>226</sup>.

Ch. Raap defines a *stabilized de facto* regime as "an entity [in German: *Gemeinwesen*] that effectively controls a territory over a longer period of time, without being a state in the sense of public international law. It is seen as a limited subject of international law"<sup>227</sup>. As examples, he lists the Confederate States of America (1861–1865), the Empire of Manchuria (1932–1945), the Republic of China (since 1972), the Turkish Republic of Northern Cyprus (since 1983), the Republic of Abkhazia (since 2008), the Republic of South Ossetia (since 2008), the Pridnestrovian Moldovan Republic (since 1992), and the Taliban in Afghanistan (1996–2001). What the above-listed examples have in common is that they either existed during a civil war or have been created as a result of secession.

Similarly, S. Hobe characterizes *de facto* regimes as "entities that no longer or not yet possess the full quality of a state, whilst they are not subordinate to any foreign sovereignty"<sup>228</sup>. The question of sovereignty is, however, more

<sup>&</sup>lt;sup>224</sup> Van Essen, J. 2012. De Facto Regimes in International Law. In *Merkourios. Utrecht Journal of International and European Law.* Vol. 28, no. 74. ISSN 0927-460X. P. 32.

<sup>&</sup>lt;sup>225</sup> Ibidem, pp. 32–33.

<sup>&</sup>lt;sup>226</sup> Ibidem, p. 33.

<sup>&</sup>lt;sup>227</sup> Raap, Ch. 2014. De-facto regime, stabilisiertes. In *Völkerrecht. Lexikon zentraler Begriffe undThemen*. Heidelberg: C. F. Müller. ISBN 978-3-8114-4129-3. P. 50.

<sup>&</sup>lt;sup>228</sup> Hobe, S. 2014. *Einführung in das Völkerrecht...*, p. 175.

complex since the sustainability of some of the *de facto* regimes is mostly dependent on third states.

S. Oeter characterizes a *de facto* state or a *de facto* regime (used interchangeably) as an "entity in question [that—P.S.] fulfills all basic preconditions that usually constitute statehood. There is a consolidated power structure with a set of instructions (under a responsible government), which exercises exclusive authority over a defined territory and given people (the inhabitants of the territory controlled)"<sup>229</sup>. This definition points out three main elements of a state, specifically a defined territory, inhabitants of that territory, and an effective government (exclusive authority) although it does not explicitly mention the ability to enter into international relations.

#### States-within-states

Another term that appears in literature relating to *de facto* states is "stateswithin-states". I. S. Spears uses this term to describe entities that "have imposed effective control over a territory within a larger state and may have an impressive array of institutional structures that, among other things, allow taxes to be collected, services to be provided, and business with other international actors to be conducted"<sup>230</sup>. The definition by Spears emphasizes four elements, namely effective control, institutional structures, provision of services, and economic interaction with international actors. However, in some cases, as it will be shown later, it may be disputed whether effective control is exercised by the *de facto* entities themselves or rather by the patron state. Nevertheless, Spears' work places emphasis on the phenomenon usually referred to as weak states.

According to K. Pełczyńska-Nałęcz, K. Strachota and M. Falkowski, the term "states-within-states" encompasses "regions that formally recognize the

<sup>&</sup>lt;sup>229</sup> Oeter, S. 2019. De facto Regimes in International Law. In *Unrecognised Subjects in International Law*. Warsaw: Scholar Publishing House. ISBN 978-83-7383-964-9. P. 65.

<sup>&</sup>lt;sup>230</sup> Spears, I. S. 2004. Introduction. States-Within-States: Historical and Theoretical Perspectives. In *States-Within-States*. *Incipient Political Entities in the Post-Cold War Era*. New York: Palgrave. ISBN 978-1-349-52777-9. P. 16.

central government but in fact maintain a very high degree of independence"<sup>231</sup>. At the same time, states-within-states fall within the scope of a broader term: "para-state entities". As the authors further put it, states-within-states have defined institutions of power, but they do not seek international recognition and adhere to the parent state. This notion is to be distinguished from the term "almost-states", which covers "para-state organisms that have managed to gain de facto independence from the home country and aspire to the status of a full-fledged state, but are not recognized by the international community"<sup>232</sup>.

#### Quαsi-states

Another term often used in this context is "quasi-state". R. Jackson characterized it in 1990 as lacking institutional features of sovereign states and disclosing empirical statehood. This phenomenon is further described as a deficiency in political will, institutional authority and organized power to protect human rights or provide socioeconomic welfare. What is more, he addresses these states as purely judicial, in other words, existing only on paper, in the sphere of international law, but not in real life<sup>233</sup>. In my opinion, Jackson's definition of a quasi-state matches the definition of a dysfunctional state, often described as a "failed state", "failing state", "fragile state", "disintegrated state" or "collapsed state". A dysfunctional state is a geopolitical unit that is unable to fulfill the basic functions of a state, and the government is usually not even able to control the territory of the state. However, even if it no longer matches the traditional definition of a state, it continues *de jure* to be considered a state<sup>234</sup>.

<sup>&</sup>lt;sup>231</sup> Pełczyńska-Nałęcz, K. et al. 2008. Para-States in the Post-Soviet Area from 1991 to 2007. In *International Studies Review*. Vol. 10, no. 2. ISSN 1468-2486. P. 371.

<sup>232</sup> Loc. cit.

<sup>&</sup>lt;sup>233</sup> Jackson, R. 1990. States and Quasi-States. In *Quasi-States: Sovereignty, International Relations and the Third World*. Cambridge: Cambridge University Press. ISBN 978-0521-44783-6. P. 21.

<sup>&</sup>lt;sup>234</sup> Sieniawski, P. 2016. *Od zlyhávania k zániku? Problém...*, pp. 226–235.

P. Kolstø used the term "quasi-states" for "a political entity [whose] leadership must be in control of (most of) the territory it lays claim to, and it must have sought but not achieved international recognition as an independent state" Finally, Kolstø excluded those entities that have not persisted in the state of non-recognition for at least two years. Kolsto's definition, however, raises certain questions, especially with regard to the scope of recognition. The above definition remains silent as to whether in order to qualify as a quasi-state an entity has to be without any recognition at all or whether it might be recognized by a number of UN member states. In this respect, the number of recognitions may vary from zero, e.g. in the case of Transnistria, to as many as 97, as in the case of Kosovo<sup>236</sup>.

According to M. Rywkin, *quasi*-states share the following characteristics: Firstly, they became detached from their parent state as a result of an internal conflict or state disintegration. Secondly, faulty policies of the parent state often led to the exacerbation of the problem and accelerated their withdrawal. Thirdly, there was an outside protector that took advantage of the situation and later continued to provide support for the *quasi*-state. Fourthly, *quasi*-states are not officially recognized as independent states by the UN or by more than one other state. Fifthly, in spite of their need for outside support, *quasi*-states function like real mini-states<sup>237</sup>. With regard to the current situation, especially granting of recognition by the Russian Federation to Abkhazia and South Ossetia in 2008, the fourth criterion seems to have become obsolete.

V. Kolossov and J. O'Loughlin distinguish between the terms "pseudo-states" and "quasi-states". The former is understood as "a network of islands of 'transitional' or 'incomplete' statehood [which] is emerging. [They] have

<sup>&</sup>lt;sup>235</sup> Kolstø, P. 2006. The Sustainability and Future of de facto States. In *Journal of Peace Research*. Vol. 43, no. 6. ISSN 0022-3433. Pp. 725–726.

<sup>&</sup>lt;sup>236</sup> It is problematic to establish the exact number of UN member states that have recognized Kosovo because the authorities in Prishtina assumed recognition in some cases although the states that had allegedly recognized Kosovo later denied having done so. Moreover, since 2017 there has been a wave of de-recognition, resulting in the withdrawal of a number of recognitions that had previously been granted to Kosovo. For example, according to the webpage Kosovo thanks you, as many as 116 countries have recognized Kosovo as on 16 December 2018 (https://www.kosovothanksyou.com/, last retrieved 16-12-2018).

<sup>&</sup>lt;sup>237</sup> Rywkin, M. 2006. The Phenomenon of Quasi-States. In *Diogenes*. Vol. 53, no. 2. ISSN 0392-1921. P. 27.

achieved varying but low levels of recognition by the international community, are highly involved in local wars whilst their unsettled political status makes further conflict possible. They typically constitute [...] places where scarcity, crime, overpopulation, tribalism and disease are rapidly destroying the social fabric of our planet"238. The latter are characterized as "non-institutionalized and represent a conglomerate of areas under the authority of local chiefs, field commanders, big landowners, and/or drug barons"239. It follows from the above distinction that "quasi-states" are marked by a lesser degree of institutionalization aimed at illegal trade, while "pseudo-states" are considered as entities of a somewhat similar nature to a state although their status has not been resolved, and they lack recognition by the international community. Some of the "pseudo-states" are labeled by the authors as "institutionalized pseudo-states", which "declared sovereignty, have all necessary attributes of a 'normal' state, and are in full control of their territories" <sup>240</sup>. The examples include Transnistria, Chechnya, Abkhazia, Nagorno-Karabakh, Republika Srpska, Kosovo, Somaliland, and the TRNC. It seems, however, contradictory to some extent that the authors characterize such entities as "emerging" or with "incomplete statehood", but they simultaneously assume that there are some with all necessary attributes of a "normal" state. Based on the genesis and functions of these entities, "pseudo-states" are further divided into three categories. The first category is marked by self-identification of an area with a specific minority (TRNC; Palestine), the second category includes entities that arose as a result of splintering of an empire or a large multi-national state (Abkhazia; Chechnya), and the third one consists of areas of conflict with no permanent control (Afghanistan; Bosnia)<sup>241</sup>.

M. Kosienkowski defined a *quasi*-state as a geopolitical unit that fulfills the following elements:

1. "is sovereign in the material sense and exercises exclusive, full and sovereign power in its territory and is independent from other states

<sup>&</sup>lt;sup>238</sup> Kolossov, V. and O'Loughlin, J. 2007. Pseudo-States as Harbingers of a New Geopolitics: The Example of the Trans-Dniester Moldovan Republic (TMR). In *Geopolitics*. Vol. 3, no. 1. ISSN 1465-0045. Pp. 151–52.

<sup>&</sup>lt;sup>239</sup> Loc. cit.

<sup>&</sup>lt;sup>240</sup> Ibidem, p. 155.

<sup>&</sup>lt;sup>241</sup> Loc. cit.

- and subjects in international relations, given that it participates in international relations;
- 2. is not sovereign in the formal sense; thus, in the light of international law, it is subject to the jurisdiction of the state whose integral part it constitutes, which, however, it refuses to acknowledge;
- 3. conducts at least basic functions of a state within a narrow scope"<sup>242</sup>. It follows from this definition that a *quasi*-state is defined by its territory, the effective control that it exercises over this territory, and by the ability to conduct some basic functions of a state. However, it remains not completely clear what independence from other states should look like as this is precisely the case of most *quasi*-states that they are characterized by a significant level of dependence on their patron state. Moreover, it appears that the above-quoted author blurs the distinction between different interpretations of the notion of "sovereignty". It can also be assumed implicitly that a *quasi*-state has the ability, but not necessarily the opportunity, to participate in international relations. Other elements that follow from the definition are non-recognition by the international community, and being *de jure* an integral part of the state that the entity attempted to secede from.

#### **Contested states**

D. Geldenhuys provided another set of characteristics of *de facto* states, which he refers to as contested states. According to Geldenhuys, contested statehood is marked by the following characteristics: First of all, such states have a settled population; however, the support of the population for unilateral secession is often questionable. Secondly, contested statehood is marked by a lack of settled borders, which are often seen only as internal regional borders of the parent state since breakaway territories are usually perceived as integral parts thereof. Thirdly, although such states do have effective control over their territories, the legitimacy of their rulers is often questioned. Fourthly, even though the contested states have the ability to enter into international relations with

<sup>&</sup>lt;sup>242</sup> Kosienkowski, M. 2018. *Współpraca społeczności międzynarodowej z państwami de facto. Studium przypadków.* Lublin: Wydawnictwo KUL. ISBN 978-83-8061-566-3. Pp. 37–38.

recognized states, the latter refuse to do so. Fifthly, the mechanisms of their creation are often contested not only by the parent state, but also by the international community. This stems from the fact that several of the contested states have been created in violation of the peremptory norms of international law. In consequence—and perhaps this is the most important characteristic of such states—they lack *de jure* recognition<sup>243</sup>.

## Sui generis entities

J. deLisle introduced a somewhat broad definition of "sui generis" entities" or "near states", which he defined as "entities [that] hold many attributes of sovereignty but lack full standing as states. They typically fail to satisfy one of the elements of statehood reflected in the 1933 Montevideo Convention [...] whether it be a substantial, stable, and contiguous territory; a permanent, numerous and identifiable population; a government that effectively rules the territory and people without being accountable to another state's government; or the capacity to engage in relations with other states. In some cases, the issue is the failure to satisfy another implicit factor, that of claiming to be a state" that "near states" would in some cases qualify for entities lacking international recognition, whilst in others they could qualify for "failed states" if they were lacking effective government. The author also leaves it to the reader's discretion to choose the element that does not necessarily have to be fulfilled and adjust the definition accordingly.

<sup>&</sup>lt;sup>243</sup> Geldenhuys, D. 2009. *Contested States in World Politics*. New York: Palgrave Macmillan. ISBN 978-0-230-57552-3. Pp. 23–24.

deLisle, J. 2002. Law's Special Answer to the Cross-Strait Sovereignty Question. In *Orbis*. Vol. 46, no. 4. ISSN 0030-4387. P. 741.

Table 4: Key elements of de facto state definitions

Pegg <sup>245</sup>	Spears <sup>246</sup>				
Organized political leadership with popular support     Capability to govern and to provide governmental services     Effective control over the territory for at least two years     Capability to enter into relations with other states     Seeking widespread international recognition     Lack of the ability to obtain international recognition	Control over a territory within a larger state     Existence of institutional structures     Providing services     Conducting business with international actors				
Kolstø <sup>247</sup>	Geldenhuys <sup>248</sup>				
Control of most of the territory which the geopolitical unit lays claim to     Attempt to achieve international recognition     Non-recognition by the majority of the international community     Existence for at least two years	<ul> <li>Settled population</li> <li>Lack of settled borders</li> <li>Contested legitimacy of the rulers</li> <li>Limited relations with full-fledged states</li> <li>Contested mechanisms of creation (created in breach of <i>jus cogens</i>)</li> </ul>				
Caspersen-Stansfield <sup>249</sup>	Florea <sup>250</sup>				
<ul> <li>De facto independence; territorial control over the territory including its capital</li> <li>Existence for at least two years</li> <li>Non-recognition by the international society or only limited recognition</li> <li>Aspiration for <i>de jure</i> independence</li> </ul>	<ul> <li>Belonging to an internationally recognized country</li> <li>Struggle to separate from that country alongside the demonstration of the struggle</li> <li>Military control over a territory</li> <li>Lack of being sanctioned by the government</li> <li>Performing basic government functions (social and political order)</li> <li>Lack of membership in the UN</li> <li>Existence for at least two years</li> </ul>				

# Definition of a de facto state

In public international law, there are some other non-state entities with partial legal subjectivity that are to some extent similar to *de facto* states. For instance,

<sup>&</sup>lt;sup>245</sup> Pegg, S. 1998. *De Facto States...*, op. cit.

<sup>&</sup>lt;sup>246</sup> Spears, I. S. 2004. Introduction. States-Within-States..., op. cit.

<sup>&</sup>lt;sup>247</sup> Kolstø, P. 2006. *The Sustainability...*, op. cit.

<sup>&</sup>lt;sup>248</sup> Geldenhuys, D. 2009. *Contested States...*, op. cit.

<sup>&</sup>lt;sup>249</sup> Caspersen, N. and Stansfield, G. 2011. *Unrecognized States...*, op. cit.

<sup>&</sup>lt;sup>250</sup> Florea, A. 2014. *De Facto States...*, op. cit.

Χ

insurgency and belligerency as legal institutions exist within an internal armed conflict. In order to acquire legal subjectivity, insurgents have to meet the following minimum criteria<sup>251</sup>: (1) the exercise of effective control over some part of the territory; (2) a certain degree of intensity and violence of an armed conflict. As A. Cassese notes, "if the insurrection is widespread and protracted in time, and rebels come to acquire stable control over part of the territory, the central authorities or third states may grant the *recognition of belligerency*"<sup>252</sup>. The difference between the recognition as insurgency and belligerency rests upon the temporal criterion. At the beginning, the insurgents are fighting against the central government in an attempt to create their own organizational structure. In the second phase, provided that the insurgents have been fighting the central government successfully, they gain control over the territory, establish their own government, and exercise effective control for a certain period of time. In this case, third states may recognize belligerency.

The above-analyzed definitions can be summarized in the following table, based on the elements that appear most often. The following key elements have been identified: (*de jure*) belonging to a recognized country, capability of entering into international relations, disputed borders, institutional structures, non-recognition, organized political leadership, popular support, population, provision of services, questioned legitimacy, seeking of recognition, territorial control, and the temporal aspect.

	(a	) (b	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(1)
(De jure) be to a recognized countr	longing 'y	X	X		X							
Capability of entering into IR			X		X			X	X		X	
Disputed borders			X									

Table 5: An overview of key elements of de facto state definitions

x | x | x | x | x | x | x | x | x | x

Institutional structures

Non-recognition

<sup>&</sup>lt;sup>251</sup> Cf. Cassese, A. 2005. *International Law*. 2<sup>nd</sup> ed. Oxford: Oxford University Press. ISBN 0-19-925-939-9. P. 125.

<sup>252</sup> Loc. cit.

	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(1)
Organized political leadership						X		X	X			
Popular support						X	X	X	X			
Population		X	X			X		X				
Provision of services		X			X			X	X			
Questioned legitimacy			X				X	X				X
Seeking of recognition	X			X				X	X			X
Temporal aspect	X	X		X				X		X		
Territorial control	X	X	X	X	X	X	X	X	X	X	X	

(Author's own compilation based on the definitions by the following authors: [a] Caspersen and Stansfield; [b] Florea; [c] Geldenhuys; [d] Kolstø; [e] Kosienkowski; [f] Lynch; [g] Mc Garry; [h] Pegg; [i] Pegg; [i] Raap; [k] Spears; [l] van Essen)

Out of the 13 definitions included in the above table, non-recognition as a criterion appears in 12 cases. This, in my view, highlights the fact that *de facto* states lack broad international recognition. They are usually either not recognized by any UN member state or are recognized only by a small number of states. In this context, interesting cases are Kosovo, which has been recognized by 97 UN member states, and Palestine, recognized by 138 UN member states.

Another essential factor present in 12 cases is territorial control. This seems vital for defining a *de facto* state and, in my opinion, proves that territoriality is perceived as a key element of a state.

In the aforementioned definitions, the temporal aspect of two-year existence (the so-called temporal criterion) appears often even though, as R. Toomla noted, there is no theoretical justification specifically for two years' time<sup>253</sup>. This serves sometimes to distinguish between *de facto* regimes and insurgency, belligerency or, as the case may be, terrorist organizations controlling certain territories. Insurgency and belligerency are later either defeated by the central government, or they constitute a new legal government, which means their existence is only temporary. Thus, the temporal criterion

<sup>&</sup>lt;sup>253</sup> Cf. Toomla, R. 2014. *De facto states...*, p. 54.

demonstrates the durability of *de facto* regimes and their ability to persist over time. What is more, in contrast to belligerency or insurgency, the term "*de facto* state" (or "*de facto* regime") in my view describes a rather accomplished state of affairs.

Based on the above analysis, I am convinced that the notion of *de facto* state consists of the following key elements:

- 1. It is a geopolitical unit created as a result of secession from the previous state.
- 2. It exercises effective control over its territory with a degree of stability (insurgencies and belligerencies are excluded from this definition).
- 3. It has not been recognized by the majority of the international community (it has been recognized by no UN member states or only by a few of them).
- 4. It has the ability to exercise most of the internal and external functions of a state, including the provision of services.

With regard to the notion of *de facto* state, I believe it is necessary to bear in mind two aspects. The first is the political framework of a state. In this context, the term "*de facto* state" applies to geopolitical units functioning as states. As I have previously noted, the existence of these units stems from accomplished facts, accomplished states of affairs, which in reality do exist and perform certain functions. The second aspect is the legal doctrine questioning the statehood of these geopolitical units and precluding the international community from recognizing them as states. From the legal perspective, a state either exists or it does not. Assuming that they are—legally speaking—not states, it would be, however, incorrect to consider them as some sort of vacuum. Moreover, statehood is something that these geopolitical units aspire to achieve. Thus, the attribute "*de facto*" in connection with the term "state" seems satisfactory in order to overcome the discrepancy between the political and the legal perception.

## 2.4 Factors of secession

J. R. Wood in his article *Secession: A Comparative Analytical Framework* specified five basic preconditions of secession<sup>254</sup>:

- (1) *Geographical preconditions*. These include the existence of a territory that contains the bulk of the potentially secessionist population. Apart from that, it is crucial that the withdrawal of the territory does not cause unacceptable harm to access to markets and raw materials.
- (2) *Social preconditions*. These are based on the common identity of an ethnic group, especially on the characteristic features that differentiate the ethnic group from the major nation (such as race, language, religion, etc.).
- (3) *Economic preconditions*. These are caused by the struggle for control over raw materials, which are seen as the source of wealth (e.g. Biafra, Katanga). Another reason is the perception of economic deprivation and frustration of an ethnic group whose economic resources are plundered by the dominant ethnic group.
- (4) *Political preconditions*. A separatist group does not perceive the central government as legitimate. As a result of increasing centralization and bureaucratization, ethnic groups are not represented proportionally on the central level.
- (5) *Psychological preconditions*. There is often a feeling of threat, which strengthens the intensity of the struggle for biological survival and the desire for an independent homeland.

The above-presented theory of causes of secession has, however, a number of weak points. For instance, the economic arguments cannot sufficiently explain why in some cases the population of a poor region aims to secede (e.g. South Sudan), while in other cases it is the population of a rich region (e.g. Northern Italy). Taking into consideration the political preconditions of secession, there comes naturally the question why there are secessionist tendencies in countries with a high level of decentralization, such as the UK, where a referendum on the independence of Scotland took place in 2014.

<sup>&</sup>lt;sup>254</sup> Wood, J. R. 1981. Secession: A Comparative Analytical Framework. In *Canadian Journal* of *Political Science*. Vol. 14, no. 1. Pp. 107–134.

According to S. van Evera, there are three basic factors that cause a separatist conflict, specifically<sup>255</sup>:

- (1) Structural factors. These apply in the relations between a separatist group and the central government, as well as in regional ethnic intermingling. The above author suggested that ethnic intermingling raises the risk of a separatist conflict and intervention of a third state in order to protect the rights of a minority. The risk is lower in the case of ethnically homogenous territories. This category also includes the issue of borders, namely their legitimacy, stability, and correspondence with an ethnic division. In this respect, natural borders will be much more stable than the geometric ones; similarly, borders that respect ethnic divisions will be questioned less than borders dividing ethnic groups.
- (2) *Political factors*. They depend on the relations between states, but also on the relations between a state and the ethnic groups. Memories of crimes and suffering may spur nations to oppress the old tormentors who now live among them as minorities. For instance, if nation A oppressed the members of nation B, the latter is likely to oppress the former, living on its territory, after gaining independence. The oppression of an ethnic group may lead to foreign intervention by a third state.
- (3) *Perceptual factors*. These depend on self-perception and the perception of neighbors, on the perception of history, on creating historical myths, and self-glorification, which serve the process of legitimacy-building. In practice, they are reflected in various claims of cultural inferiority of others and false blame of others ("other-maligning") as well as in myths, which deny past wrongdoings against others ("self-whitewashing").

According to S. van Evera, the primary reason of a separatist conflict, which precedes the above-mentioned factors, is nationalism<sup>256</sup>. The way how nationalism is manifested depends on the fact whether statehood has been attained or not. In the absence of an own state, nationalism may be manifested through a secessionist struggle. Another important characteristic is the attitude of a nation towards its diaspora—whether it seeks to incorporate

<sup>&</sup>lt;sup>255</sup> Van Evera, S. 2001. Hypotheses on Nationalism and War. In *Nationalism and Ethnic Conflict*. Cambridge: MIT. ISBN 978-0-2626-2315-8. Pp. 26–60.

<sup>256</sup> Loc. cit.

the diaspora and receives emigrants from there. The third characteristic is the attitude of a nation towards the statehood of other nations, i.e. whether they should be entitled to independence. The fourth characteristic is the treatment of its own minorities, i.e. whether their rights are respected or abused. The weak point of this theory is, in my opinion, the fact that it is unable to explain why some ethnic groups are satisfied with autonomous status, while others seek to change the structure of the state or pursue secession.

- D. S. Siroky approaches secession on a group level, focusing his research on ethnic groups. He distinguishes three basic causes of secession, specifically political grievances, economic inequality, and demography/geography<sup>257</sup>.
- (1) *Political causes*. It is the disproportionality between the claims of an ethnic group (considering the relative size of an ethnic group, its history, etc.) and its actual representation, i.e. the disproportionality between the "deserved" and the "achieved". In practice, such grievances may lead to political exclusion of an ethnic group, legislative discrimination, etc.
- (2) *Economic grievances*. They are connected with the redistribution of commodities, economic development of regions as well as with the exploitation of raw materials by the central government (e.g. in Biafra or Katanga). Nevertheless, separatist tendencies occur not only in poor regions (such as South Sudan or Bangladesh), but also in rich ones (e.g. secession of Slovenia from Yugoslavia, separatist tendencies in Northern Italy, etc.).
- (3) *Demographics*. Secession is often caused by settlement policies that encourage members of one ethnic group to settle areas occupied by another ethnic group. Such a policy, often referred to as "internal colonization", has been pursued by China in the provinces of Xinjang and Tibet and also by Georgia in the Javakheti Region, which is settled mostly by people of Armenian origin.

What is more, D. Siroky added geographic factors, which may encourage separatist tendencies, to the aforementioned causes of secession. There are theories that secession occurs more often in areas with mountainous terrain since there are more suitable conditions for an insurgent struggle. The character of a territory may have influence not only on the strategy of a separatist conflict, but also on its duration.

<sup>&</sup>lt;sup>257</sup> Siroky, D. S. 2011. Explaining Secession. In *The Ashgate Research Companion to Secession*. Farnham: Ashgate. ISBN 978-0-7546-7702-4. Pp. 45–79.

- M. Brown distinguishes four basic factors of an internal conflict, which may serve as causes of secession<sup>258</sup>:
- (1) Structural factors. One of the main factors is the weakness of a state. States like the USSR were built on military power, not on political consensus. A natural consequence of the declining central power is the tendency of ethnic groups, which feel oppressed, to gain more autonomy or to break away from the common state. Another structural factor is ethnic geography. Ethnic groups that live in separate provinces of a country are, according to M. Brown, more likely to secede than those living intermingled with different ethnic groups.
- (2) *Political factors*. In times of political and economic turmoil, ethnic groups are often attacked and blamed for the existing situation (the so-called ethnic bashing and scapegoating). Similarly, if political institutions are weak, ethnic nationalism may become a unifying element and may also serve to distract public attention from a failing institutional framework.
- (3) *Economic/social factors*. Economic instability, high unemployment, economic stagnation, collapsing social system, or, on the contrary, economic development and urbanization place strains on the existing social system, which falls behind and no longer corresponds to the pace of social development. These factors may cause social frustration and, if they are not resolved, further lead to the struggle of an ethnic group to secede.
- (4) *Cultural/perceptual factors*. In this case, it is the common (mostly negative) perception of ethnic groups, stemming from historical experience, as well as different forms of discrimination concerning the use of their minority language, religion, etc.

Despite the fact that M. Brown's theory is fairly complex, in my opinion, it indicates that secession may happen only in politically instable and economically backward states, in which ethnic groups are exposed to different forms of oppression by the central government. However, separatist tendencies in developed regions with autonomy guaranteed by the constitution, e.g. in Catalonia or in Scotland, do not prove the above theses.

<sup>&</sup>lt;sup>258</sup> Brown, M. E. 2001. The Causes of Internal Conflict. An Overview. In *Nationalism and Ethnic Conflict*. Cambridge: MIT. 978-0-2626-2315-8. Pp. 3–25.

2.4 Factors of secession 101

M. Brown's theory was categorically rejected by H. E. Hale, who claimed that the richest regions would be most disposed to secede, because "rich regions have the most to lose in case of exploitation [by the central government—P. S.], while, conversely, poor regions only risk cutting themselves off from technology transfer, access to high-value goods, the creation of higher-wage jobs, and development subsidies" 259. However, if this assumption is correct, then one should ask why the 2014 referendum in Scotland was not successful.

The level of cultural and economic development of ethnic groups and the economic development of the regions they inhabit are, according to D. Horowitz, the key factors influencing not only the precipitants of secession, but also its timely beginning. With regard to the level of economic and cultural development, he differentiates between advanced and backward groups. An advanced group is characterized by benefitting from opportunities in education and non-agricultural employment and by a relatively high income *per capita*. A backward group is characterized by less favorable opportunities in education and by a lower income *per capita*. The difference between an economically advanced and an economically backward region stems from their position in the national economy as well as from the income *per capita*. Based on the combination of the above criteria, four models can be distinguished<sup>260</sup>:

(a) Backward group in a backward region. An example of such a combination is South Sudan or the Kurds in Iraq. Ethnic groups are not interested in preserving the unity of the parent state and usually secede early. They also demand their own political representation, but due to their backwardness, they lack eligible candidates. The ambition to become independent prevails over potential economic losses that might be caused by secession.

<sup>&</sup>lt;sup>259</sup> Hale, D. S. 2000. The Parade of Sovereignties: Testing Theories of Secession in the Soviet Setting. In *British Journal of Political Science*. Vol. 30, no. 1. ISSN 0007-1234. P. 34.

<sup>&</sup>lt;sup>260</sup> Horowitz, D. 2008. *Ethnic Groups in Ethnic Conflict*. 2<sup>nd</sup> ed. Berkeley: University of California Press. ISBN 978-0-520-22706-4. Pp. 229–288.

- (b) *Backward group in an advanced region*. D. Horowitz regards Katanga (DR Kongo) and the Bakonzo tribe (Uganda) as such cases. Members of the backward group are treated as second-class citizens compared to members of the dominant group, who often internally colonize the region and seize employment opportunities.
- (c) Advanced group in a backward region. According to D. Horowitz, the examples include the Ibo people in Nigeria and the Tamils in Sri Lanka. Members of an advanced ethnic group often search for opportunities outside of their home region. Thus, secession occurs relatively late and only as a last resort in case of serious discrimination and a threat to the group's survival since the economic costs of secession for the backward region are high.
- (d) Advanced group in an advanced region. The Basque Country or Catalonia in Spain as well as the Sikhs in the Punjab Region qualify for this category. Secession is quite unlikely, given that economic ties discourage the separatist group from secession. Ethnic groups in advanced regions are usually ambivalent to secession: on the one hand, they are subsidizing poorer regions, but on the other hand, they prefer to stay in the common state because the protectionist state policy grants them outlets for their goods outside of their own region. The reason for separatist tendencies is the belief that ethnic groups "generate more income and contribute more revenue to the treasury of the undivided state than they receive" The ethnic groups secede only if economic costs are low, and secessions occur late and rarely.

The above theses by D. Horowitz on the separatist tendencies of ethnic groups, based on their development and economic characteristics of a region, are summarized in the table below:

<sup>&</sup>lt;sup>261</sup> Ibidem, pp. 250-251.

2.4 Factors of secession 103

Table 6: Factors of secession according to D. Horowitz

	Political claims	Precipitants	Calculations	Timing and relative frequency
Backward group in a backward region	Proportionality in civil service, occasionally also in revenues	Disproportion- ality in civil ser- vice; religious and language issues	Secession despite economic costs	Early; frequent
Backward group in an advanced region	Proportionality in civil service; revenue spent where generated	Disproportion- ality in civil ser- vice; internal col- onization	Secede only if economic costs are low	Late; rare
Advanced group in a backward region	Nondiscrimina- tion; no revenue issue	Discrimina- tion; violence; migration back to home region	Secede only if economic costs are low	Late; somewhat frequent
Advanced group in an advanced region	Nondiscrimi- nation; revenue spent where gen- erated	Discrimina- tion; violence; migration back to home region	Secede only if economic costs are low	Late; rare

(Source: Horowitz, D. 2008. Ethnic Groups..., p. 258)

The above theory by D. Horowitz allows, in my opinion, for examination of the causes of secession based on a comparison of socio-economic indicators within a single state. However, it does not provide an answer to the question why some ethnic groups struggle for independence, while other would be satisfied with autonomy. It follows from the above table that secession is most likely to occur in the case of a backward group in a backward region. Nevertheless, separatist tendencies in rich regions prove that secession is not an issue limited to poor regions. For instance, Scotland is an advanced region (Scotland's GDP *per capita* in 2014 was GBP 23,102; compared to GBP 17,573 in Wales<sup>262</sup>), but independence would probably be economically harmful for the region. Nevertheless, a referendum on its independence from the United Kingdom took place in 2014.

Regional Gross Value Added (Income Approach). [online] [last retrieved 30-03-2019]. Available at: https://www.ons.gov.uk/economy/grossvalueaddedgva/bulletins/regionalgrossvalueaddedincomeapproach/december2015

In my view, the extensive stereotyping of ethnic groups, which assumes that members of an ethnic group are either well-educated or ill-educated and either motivated and active or completely passive, seems to be a weak point of D. Horowitz's theory. Another soft spot is the assumption of ethnically and economically homogenous regions. In practice, however, it is difficult to find a region inhabited by members of a single ethnic group who would all be characterized by the same socio-economic features.

Another phenomenon is the so-called recursive secession, i.e. withdrawal of a territory and people from a state created through secession (bluntly speaking—secession from secession). An example of recursive secession is the withdrawal of Republika Srpska from Bosnia and Herzegovina in 1992 (Bosnia and Herzegovina declared independence from Yugoslavia in October 1991). The reason for recursive secession is in most cases the dissatisfaction of an ethnic group with its position in a newly created state. As D. Horowitz noted, "one group's independence is another's servitude" 263.

Below is my summary of factors and causes of secession based on the preceding theories. In most cases, three essential actors taking part in the process of secession can be distinguished, namely: (1) a separatist group struggling to withdraw from an existing state; (2) the central government, which tries to prevent secession in order to preserve territorial integrity; (3) a third state as an external actor, which either (a) supports the secessionist group by providing it with different forms of aid (e.g. military, economic, diplomatic, etc.) or (b) supports the central government in combating separatism. An example of such a situation is the secession of Biafra, which was supported by Tanzania, Ivory Coast, Gabon, Zambia, and Haiti through the recognition of its statehood, while the central government of Nigeria received military support from the USSR.

Since each case of secession occurs in specific conditions, I argue that there is no single theory that would be applicable universally and could explain the causes of secession. In my opinion, secession is the result of a combination of several causes and factors, which make the above actors launch or join a separatist conflict. These factors can be divided into five groups as follows:

<sup>&</sup>lt;sup>263</sup> Horowitz, D. 2008. Ethnic Groups..., p. 278.

- (1) *Cultural/perceptual*: they reflect cultural differences between ethnic groups living in a common state;
- (2) *Economic*: they reflect the economic situation in a state as well as the economic goals of different actors;
- (3) *Political*: these follow from the political situation in a state, specifically from the relations between the ethnic group and the central government as well as from potential consequences of such a situation for a third state;
- (4) *Demographic*: they are connected with ethnic and demographic policies and their consequences;
- (5) *Normative*: they reflect viewpoints of the actors as well as the efforts to legitimize their actions.

From the legal point of view, normative factors play a specific role in the process of secession since they reflect the actors' perception of legal and other social norms in international relations. A separatist group will clearly recall the right to self-determination of nations or the right to remedial secession in a situation in which their existence is threatened by activities of the central government. On the other hand, the central government, in its effort to suppress the separatist group and prevent secession, will claim its right to territorial integrity. The position of third states is often influenced by their perception of the duty not to interfere in the domestic affairs of the state with the separatist conflict. Nevertheless, in the last two decades, we have often encountered interventions by third states. They usually occurred in the cases where an ongoing armed conflict was accompanied by a large-scale humanitarian crisis. The efforts to legitimize interventions of third states crystallized in the adoption of the document *Responsibility to Protect*.

Table 7: An overview of factors and causes of secession

Factors and causes	Separatist group	Central government	Third state
Cultural/ percep- tual	<ul> <li>Self-glorification</li> <li>Creating historical myths</li> <li>Fears of subordination to a different ethnic group</li> <li>Policy of cultural assimilation</li> </ul>	Feelings of deprivation of the dominant position     Others-maligning; scapegoating     Historical grievances	Perceptions of ethnic bonds (ethnic closeness, diaspora, etc.)
Economic	<ul> <li>Exploitation of raw materials</li> <li>Disproportionality between revenues and subsidies</li> <li>Attempts to control trade (arms, drugs, etc.)</li> </ul>	Economic crisis within a state     Limiting investments into the separatist region	Economic crisis within a region
Political	Disproportionality in political representation on the central level     Existence of a separatist political party     Limitations of political rights of an ethnic group	Fear of secession/state failure     Attempts to restore territorial integrity	Respecting the rights of an ethnic group     Fear of possible spillover effect     Dismembratio     Irredentism     Erosion of regional stability
Demo- graphic	Internal colonization	• Migration from the separatist region into other regions	Migration; influx of refugees     Regional destabilization
Norma- tive	The right to self-determination of peoples     The right to remedial secession	The principle of territorial integrity	Attitude towards state sovereignty and territorial integrity     R2P

(Author's own compilation based on: Wood, J. R. 1981. *Secession: A Comparative...*, op. cit.; Van Evera, S. 2001. *Hypotheses on Nationalism...*, op. cit.; Siroky, D. S. 2011. *Explaining Secession*, op. cit.; Brown, M. E. 2001. *The Causes...*, op. cit.; Horowitz, D. 2008. *Ethnic Groups...*, op. cit.)

It follows from the above table that one of possible demographic factors of secession is the so-called internal colonization, i.e. targeted resettlement of a certain ethnic group to the territories in which they do not represent the native ethnic group. The attribute "internal" indicates that this process takes place within one state. On the other hand, from the point of view of the central government, it is a measure aimed at preventing separatist

2.4 Factors of secession 107

tendencies. Therefore, the central government supports resettling of the majority population in regions that could potentially be affected by separatism. Creation of new jobs, easier access to housing, and other benefits offered by the central government seem to be the motivation for the majority population to resettle in such regions.

The policy of internal colonization has been pursued for the past several decades by the Government of the People's Republic of China towards the Uyghurs. This policy has resulted in a change of the ethnic composition of the Xinjang population as well as in the large-scale exploitation of raw materials, which led to mass anti-Chinese demonstrations in 1997 and their subsequent suppression by the central government. While in 1945 the Uyghurs made up 82.7 per cent of the population of the Xinjang Region, with the Chinese making up 6.2 per cent, this proportion changed to 46.1 per cent made up by Uyghurs and 39.2 per cent by the Chinese by 2011264. Should such a demographic trend continue, it is highly probable that the Uyghur will become a minority on their own territory within the next few years. Such a situation has already taken place in some autonomous republics of the Russian Federation, in which internal colonization has been pursued since the 16<sup>th</sup> century<sup>265</sup>, including a period of intense internal colonization associated with a large-scale industrialization of Siberia in the 20th century. For instance, in the Sakha Republic (Yakutia), the Yakuts made up 82 per cent of the whole population, compared to Russians with 10.5 per cent in 1926. At the beginning of the 21st century, the Yakuts made up only 45.5 per cent of the total population in 2002, thus being a minority in their own territory<sup>266</sup>.

<sup>&</sup>lt;sup>264</sup> Howell, A. and Fan, C. C. 2011. Migration and Inequality in Xinjang: A Survey of Han and Uyghur Migrants in Urumqi. In *Eurasian Geography and Economics*. Vol. 52, no. 1. ISSN 1538-7216. P. 123.

<sup>&</sup>lt;sup>265</sup> Белов, Н. В. 2008. *История России*. Минск: Харвест ISBN 978-985-16-4066-5. Pp. 313-318. <sup>266</sup> *Sakha (Yakutia) Since the Fall of the Soviet Union*. 2012. [online] [last retrieved 26-09-2018]. Available at: http://www.geocurrents.info/place/russia-ukraine-and-caucasus/siberia/sakha-yakutia-since-the-fall-of-the-soviet-union

	1926	1939	1959	1979	2002
Yakuts	82.0	56.4	46.4	35.9	45.5
Russians	10.5	35.5	44.2	50.4	41.15

Table 8: Ethnic composition of the Sakha Republic in 1926-2002<sup>267</sup>

Tables 9 and 10 depict the process of internal colonization conducted by the Soviet government in Estonia and Latvia. While in 1934 the proportion of the Russian population in Estonia was 8.2 per cent, it increased to 24.7 per cent by 1977, and in 1989 Russians comprised one third of the whole population of Estonia. In Latvia, the proportion of the Russian population increased from 8.8 per cent in 1935 to 34 per cent in 1989. On the other hand, the proportion of ethnic Latvians decreased from 77 per cent in 1935 to 52 per cent in 1989. In consequence, they have almost become a minority in their own state.

Table 9: Development of the ethnic structure in Estonia in 1934–1989 (in per cent)

Nationality/ year	1934	1959	1970	1977	1989
Estonians	88.1	74.6	68.2	64.7	61.5
Russians	8.2	20.1	24.7	27.9	30.3

(Source: Estonia Today. Population by Nationality. [online] [last retrieved 28-09-2018]. Available at: https://vm.ee/sites/default/files/content-editors/web-static/460/Nationalities.pdf; Демоскоп. Всесоюзная перепись населения 1959 года. Национальный состав населения по республикам СССР: ЭССР. [online] [last retrieved 28-09-2018]. Available at: http://www.demoscope.ru/weekly/ssp/sng\_nac\_59.php; Демоскоп. Всесоюзная перепись населения 1970 года. Национальный состав населения по республикам СССР: ЭССР. [online] [last retrieved 28-09-2018] Available at: http://www.demoscope.ru/weekly/ssp/sng\_nac\_70.php; Демоскоп. Всесоюзная перепись населения 1979 года. Национальный состав населения по республикам СССР: ЭССР. [online] [last retrieved 28-09-2018]. Available at: http://www.demoscope.ru/weekly/ssp/sng\_nac\_79.php)

<sup>&</sup>lt;sup>267</sup> Loc. cit.; Maryański, A. 1987. *Geografia ekonomiczna Związku Radzieckiego*. Warszawa: Państwowe Wydawnictwo Ekonomiczne. P. 287; *Национальный состав населения Республики Саха (Якутия)*. [online] [last retrieved 27-09-2018]. Available at: http://worldgeo.ru/russia/lists/?id=33&code=14

Nationality/ year	1935	1959	1970	1977	1989
Latvians	77.0	62.0	56.8	56.8	52.0
Russians	8.8	26.6	29.8	29.8	34.0

Table 10: Development of the ethnic structure in Latvia in 1935–1989 (in per cent)

(Source: Heleniak, T. 2006. *Latvia Looks West, But Legacy of Soviets Remains*. [online] [last retrieved 28-09-2018]. Available at: https://www.migrationpolicy.org/article/latvia-looks-west-legacy-soviets-remains)

## 2.5 Recognition of states.

### The obligation not to recognize unlawful situations

The term "recognition" is defined in legal doctrine as "a statement by an international legal person as to the status in international law of another real or alleged international legal person or of the validity of a particular factual situation"<sup>268</sup>. It follows from the above definition that it is a unilateral expression of will, through which a subject of international law announces that a particular legal situation exists and that it is ready to respect the legal consequences stemming therefrom. Thus, the situation "which may have been in dispute will not be put into question"<sup>269</sup>. In practice, recognition can be granted to states, governments, nations, insurgencies, belligerencies, acquisitions of territory, or any other legal situation.

With regard to recognition of states, two approaches can be distinguished. The first approach is the constitutive theory, which was applied mostly in the era of traditional international law and conditioned the legal subjectivity of states by the recognition granted by other states. The constitutive theory regards recognition as an act "which confers international subjectivity and formally creates a new international subject" In other words, recognition is necessary for the acquisition of statehood. As L. Oppenheim noted,

<sup>&</sup>lt;sup>268</sup> Shaw, M. N. 2008. International Law, p. 445.

<sup>&</sup>lt;sup>269</sup> Frowein, J. A. 1987. Recognition. In *Encyclopedia of Public International Law. Vol. 10*. Amsterdam: Elsevier Science Publishers. ISBN 0-444-86241-2. P. 341.

<sup>&</sup>lt;sup>270</sup> Makowski, J. 1948. *Podręcznik prawa międzynarodowego*. Warszawa: Spółdzielnia Wydawnicza Książka. P. 61.

"[t]hrough recognition only and exclusively a State becomes an International person and a subject of International Law"<sup>271</sup>. Oppenheim rejected the view that a state may become a member of the international community ("Family of Nations") *ipso facto* through the existence of statehood alone, since "[f]or every state that is not already, but wants to be, a member, recognition is necessary"<sup>272</sup>. The drawback of the constitutive theory is that it creates a type of legal vacuum for subjects that claim to be states but lack international recognition. The constitutive theory has lost its significance and is nowadays considered obsolete by the majority of scholars<sup>273</sup>.

The second approach is the declaratory theory, which perceives the existence of a state not only as a factual, but also as a legal issue. In other words, a state exists *ipso facto* as soon as the basic elements of statehood are fulfilled, and its existence is independent of recognition by other states. A state acknowledges the existence of another state through recognition; therefore, it is "merely an acceptance by states of an already existing situation" <sup>274</sup>. The German-Polish Mixed Arbitral Tribunal in the case Deutsche Gasgesellschaft v. Polish State (1929) expressly relied on the declaratory theory. "According to the opinion rightly admitted by the great majority of writers on international law, the recognition of a state is not constitutive but merely declaratory. The State exists by itself and recognition is nothing else than a declaration of this existence, recognized by the States from which it emanates"275. What is more, the 1933 Montevideo Convention on the Rights and Duties of States adopted a similar approach. Pursuant to Article 3, "[t]he political existence of the state is independent of recognition by the other states. Even before recognition, the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts"276. According to the view adopted

<sup>&</sup>lt;sup>271</sup> Oppenheim, L. 1912. *International Law. A Treatise. Vol. 1. Peace*, p. 117.

<sup>272</sup> Loc cit

<sup>&</sup>lt;sup>273</sup> Antonowicz, L. 1988, *Państwa i terytoria...*, p. 97.

<sup>&</sup>lt;sup>274</sup> Shaw, M. N. 2008. *International Law...*, p. 446.

<sup>&</sup>lt;sup>275</sup> Chen, T. 1951. The International Law of Recognition with Special Reference to Practice in Great Britain and the United States. New York: Frederick A. Praeger, Inc. P. 92.

<sup>&</sup>lt;sup>276</sup> Convention on Rights and Duties of States..., op. cit.

by the Institute of International Law in 1936, "recognition has a declaratory effect" What seems to be the decisive factor for state recognition is effectiveness. In this respect, the declaratory approach appears to be more in line with the doctrine of international law and decisions of international judicial bodies.

C. Berezowski attempted to combine the above approaches, claiming that recognition had both the constitutive and the declaratory effect. A state exists independently of its recognition by other states, and the formal act of recognition merely confirms its very existence (the declaratory approach). However, there are obligations arising under international law for the recognizing state (the constitutive approach). Thus, recognition is still significant since it allows the entity to enter into international relations<sup>278</sup>. J. Crawford maintains that "the status of an entity as a state is, in principle, independent of recognition, although [...] the differences between declaratory and constitutive schools are less in practice than has been depicted"279. Undoubtedly, the act of recognition has both the constitutive and the declaratory effect; thus, the theoretical distinction is to some extent blurred by state practice. Nevertheless, it is essential to bear in mind the political nature of recognition. In other words, the decision to recognize or not to recognize an entity as a state often depends on the political agenda of states rather than on the fulfillment of the criteria of statehood by the entity in question.

Recognition of a state may be granted expressly (e.g. by a treaty or diplomatic note) or implicitly, i.e. by actions of a state that "imply that this state treats another geopolitical unit as a state"<sup>280</sup>, for instance, by establishing diplomatic relations. In this context, it is essential to distinguish between *de jure* and *de facto* recognition. *De facto* recognition implies some sort of hesitation<sup>281</sup> and is perceived as conditional, temporary, and reversible and

<sup>&</sup>lt;sup>277</sup> Resolutions Concerning the Recognition of New States and New Governments. In *American Journal of International Law*. Vol. 30, no. 4. P. 185. Art. 1.

<sup>&</sup>lt;sup>278</sup> Cf. Berezowski, C. 1957. Niektóre zagadnienia uznania międzynarodowego. Księga pamiątkowa ku czci Juliana Makowskiego z okazji 50-lecia pracy naukowej. Warszawa: Państwowe Wydawnictwo Naukowe. Pp. 38–39.

<sup>&</sup>lt;sup>279</sup> Crawford, J. 2006. *The Creation...*, p. 28.

<sup>&</sup>lt;sup>280</sup> Antonowicz, L. 1988. *Państwa i terytoria...*, p. 111.

<sup>&</sup>lt;sup>281</sup> Frowein, J. A. 1987. *Recognition...*, p. 342.

may appear to be similar to premature recognition<sup>282</sup>. It follows from state practice that the granting of recognition is sometimes subject to fulfillment of certain criteria. In 1824, British Minister of Foreign Affairs G. Canning laid down the following essential criteria for the recognition of Spanish colonies in Latin America<sup>283</sup>: (1) notification of independence by public acts; (2) possession of the whole country; (3) reasonable consistency and stability; (4) the abolishment of slave trade.

On the other hand, *de jure* recognition is seen as complete, unconditional, permanent, and irreversible since withdrawal of such recognition might lead to estoppel<sup>284</sup>. L. Oppenheim noted that "the Powers assembled at the Berlin Congress in 1878 recognized Bulgaria, Montenegro, Serbia, and Romania under the condition that these states did not impose any religious disabilities on their subjects"285. For instance, according to P. Malanczuk, Great Britain and France recognized Israel in January 1949 only de facto<sup>286</sup>. In J. Frowein's view, state practice does not seem to confirm the view that *de facto* recognition may be revoked without a change of circumstances<sup>287</sup>. However, the recent practice of states with regard to the recognition of Kosovo does not seem to prove this assertion. Since 2017, there has been a process of withdrawal of recognitions. Suriname was the first country to withdraw its recognition of Kosovo's independence in November 2017<sup>288</sup>. Burundi, Papua New Guinea, Lesotho, Comoros, Dominica, Grenada, Solomon Islands, and Madagascar followed in 2018. Palau, Togo, Central African Republic, Ghana, and Nauru rescinded their recognitions of Kosovo in 2019. In March 2020, Serbia

<sup>&</sup>lt;sup>282</sup> Bierzanek, R. and Symonides, J. 2004. *Prawo międzynarodowe publiczne...*, p. 140.

<sup>&</sup>lt;sup>283</sup> Temperley, H. 2006. *The Foreign Policy of Canning 1822-1827. England, the Neo-Holy Alliance, and the New World.* Oxon: Frank Cass & Co. ISBN 0-7146-1517-X. P. 500.

<sup>&</sup>lt;sup>284</sup> Muszyński, M. 2011. *Państwo w prawie międzynarodowym...*, p. 188.

<sup>&</sup>lt;sup>285</sup> Oppenheim, L. 1912. *International Law. A Treatise. Vol. I. Peace...*, p. 119.

<sup>&</sup>lt;sup>286</sup> Malanczuk, P. 1990. Israel and the Arab States. In *Encyclopedia of Public International Law. Vol. 12. Geographic Issues*. Amsterdam: Elsevier Science Publishers. ISBN 0-444-86243-9. Pp. 165–166.

<sup>&</sup>lt;sup>287</sup> Frowein, J. 1987. Recognition..., p. 342.

<sup>&</sup>lt;sup>288</sup> Serbia's gratitude for Suriname's decision to revoke recognition of the unilaterally declared independence of Kosovo. [online] [last retrieved 11-06-2020]. Available at: http://www.mfa. gov.rs/en/press-service/statements/17134-serbias-gratitude-for-surinames-decision-to-revoke-recognition-of-the-unilaterally-declared-independence-of-kosovo

announced that Sierra Leone had withdrawn its recognition<sup>289</sup>. It follows that as many as 15 UN member states have rescinded their recognitions of Kosovo.

In some cases, third states tend to recognize entities as states even before the entities have obtained sufficient effectiveness. A situation in which recognition is granted before the alleged situation actually exists as a matter of fact or in which the conditions of recognition are not fulfilled<sup>290</sup> is referred to as *premature recognition*<sup>291</sup>. Premature recognition may also take place during an internal armed conflict, i.e. when a seceding entity is fighting against the central government. An example is the recognition of Biafra by Tanzania, Ivory Coast, Gabon, Zambia, and Haiti during an ongoing internal armed conflict with Nigeria (1967–1970).

According to Sir Lauterpacht, "[i]t is contrary to international law to grant premature recognition [...]. It is generally agreed that premature recognition is more than an unfriendly act; it is an act of intervention and an international delinquency" In this respect, Sir Lauterpacht noted that France had committed a breach of international law by recognizing the independence of the United States in 1778<sup>293</sup>, i.e. five years before Great Britain did so. Another example of a premature recognition is the recognition of Israel by the United States of America, which took place only several hours after its declaration of independence. Sir Lauterpacht claimed that "in relation to the parent state, recognition is governed by a duty of restraint, the disregard of which entails responsibility on the part of the recognizing state" Even though internal armed conflicts are not prohibited by international law, recognition of a seceding entity in an internal armed conflict is generally perceived as illegal since it "disregards the right to respect territorial integrity

<sup>289</sup> Serbia claims Sierra Leone has withdrawn Kosovo recognition. [online] [last retrieved 12-06-2020]. Available at: https://prishtinainsight.com/serbia-claims-sierra-leone-has-withdrawn-kosovo-recognition/

<sup>&</sup>lt;sup>290</sup> Teuscher, H.-H. 1959. Die vorzeitige Anerkennung im Völkerrecht. Eine rechtssystematische Untersuchung der völkerrechtlichen Grundlagen der Anerkennung von bürgerkriegführenden Parteien, Regierungen und Staaten. Frankfurt am Main: Alfred Metzner Verlag. Pp. 26–27.

<sup>&</sup>lt;sup>291</sup> In older literature, it is also referred to as *precipitate recognition*. (Cf. Oppenheim, L. 1912. *International Law...*, p. 119)

<sup>&</sup>lt;sup>292</sup> Lauterpacht, H. P. 1944. Recognition of States in International Law. In *The Yale Law Journal*. Vol. 53, no. 3. 391.

<sup>&</sup>lt;sup>293</sup> Loc. cit.

<sup>294</sup> Loc. cit.

enjoyed by the original state"<sup>295</sup> and "amounts to unlawful intervention"<sup>296</sup>. Therefore, other forms of recognition might be more appropriate, for instance, recognition of insurgency or belligerency. Statehood should not be recognized unless the seceding geopolitical unit has achieved a certain degree of internal and external stability, demonstrated by defending its independence from the parent state in case of an internal armed conflict. From this perspective, the secession of Biafra from Nigeria was unsuccessful. It has been argued that a number of premature recognitions were granted with respect to Kosovo<sup>297</sup>.

In the case of secessionist regimes, state practice seems to imply that effectiveness is necessary for recognition by third states, i.e. that the regime has been stabilized, and it is not probable that the former sovereign takes over the secessionist territory. The problem of recognition by third states gained significance in the 19<sup>th</sup> century, when Spanish colonies in Latin America declared independence, but Spain refused to recognize them. According to C. Haverland, state practice proves that after the former sovereign has granted recognition to a secessionist unit, the level of effectiveness no longer plays a decisive role. "In such cases, the new entity is commonly considered a state and recognized as such, even if the degree of actual control does not correspond to the traditional prerequisites of effectiveness" However, this seems, in my opinion, to have been true in traditional international law, but after 1945 the number of cases in which the former sovereign recognized a secessionist unit is not sufficient to prove this view.

Following the creation of new states in Eastern Europe and in the Balkans, the European Communities adopted *Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union*. The member states affirmed their readiness to recognize states which "have constituted themselves on a democratic basis, have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process and

<sup>&</sup>lt;sup>295</sup> Richter, D. 2019. Illegal States? In *Unrecognised Subjects in International Law*. Warsaw: Scholar Publishing House. ISBN 978-83-7383-964-9. P. 23.

<sup>&</sup>lt;sup>296</sup> Ibidem, p. 392.

<sup>&</sup>lt;sup>297</sup> Milano, E. 2019. Recognition (and Non-Recognition) of Non-state Actors. In *Unrecognised Subjects in International Law*. Warsaw: Scholar Publishing House. ISBN 978-83-7383-964-9.

<sup>&</sup>lt;sup>298</sup> Haverland, C. 1987. Secession. In *Encyclopaedia of Public International Law. Vol. 10*. Amsterdam: Elsevier Science Publishers. ISBN 0-444-86241-2. P. 386.

to negotiations"<sup>299</sup>. In particular, the document included the following requirements:

- (1) Respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights;
- (2) Guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the OSCE;
- (3) Respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement;
- (4) Acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability;
- (5) Commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning state succession and regional disputes<sup>300</sup>.

The above document seems to include requirements of *soft law* character, such as the 1975 Helsinki Final Act. Moreover, it appears to extend the requirements of statehood established by the Montevideo Convention. It is also questionable to what extent the elements such as democracy, human rights, etc. are universally applicable.

It has to be noted that recognition is rather a political than a legal question, and international law leaves a relatively high degree of discretion regarding this issue. This may lead to completely different perceptions of the same situation by states, or even to paradoxical differences. Therefore, I tend to agree with H. Kelsen's statement that "[t]he problem of recognition of states and governments has neither in theory nor in practice been solved satisfactorily. Hardly any other question is more controversial, or leads in the practice of states to such paradoxical situations" <sup>301</sup>.

Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union' (16 December 1991). [online][last retrieved 11-06-2019]. Available at: http://www.ejil.org/pdfs/4/1/1227.pdf

<sup>300</sup> Loc. cit.

<sup>&</sup>lt;sup>301</sup> Kelsen, H. 1941. Recognition in International Law. Theoretical Observations. In *The American Journal of International Law*. Vol. 35, no. 4. ISSN 0002-9300. P. 605.

The principle of non-recognition as a legal principle has to be distinguished from the policy of non-recognition, which is based on political reasons. Several doctrines of foreign policy which applied the policy of non-recognition are well known. For example, the Tobar Doctrine, often referred to as the "doctrine of legitimacy", affirmed that the American republics302 "ought to intervene indirectly into internal dissentions of the continent. Such recognition might consist, at least, in the denial of recognition to de facto governments springing from revolution against constitutional order"303. In 1907 and later in 1927, this policy was incorporated into the Washington treaties pursuant to which "the governments of the contracting parties will not recognize any government which may come into power in any of the five republics through a coup d'état or revolution against a recognized government"304. It follows that the Tobar Doctrine was constructed to prevent governments which came into power by extra-constitutional means from being recognized. However, this approach has not been adopted in general international law. An opposite approach was adopted by Mexico in 1930 in the so-called Estrada Doctrine, in which the Mexican government announced that it would "no longer give any expression regarding the recognition of new governments which come into power by coups d'état or revolution"305. Despite the popularity of this approach among international scholars, it failed to receive further support among states, which continued to grant recognition towards new extraconstitutional governments.

In this context, it is necessary to distinguish between non-recognition as a legal principle and non-recognition as a policy. An example of such a policy is the Hallstein Doctrine, applied by the Federal Republic of Germany between 1955 and 1967. Following this doctrine, the FRG severed diplomatic relations with states entering into diplomatic relations with the German Democratic Republic, with the exception of the USSR. Recognition of the

<sup>&</sup>lt;sup>302</sup> The republics involved were Guatemala, Honduras, Costa Rica, Nicaragua and El Salvador.

<sup>&</sup>lt;sup>303</sup> Stansifer, Ch. L. 1967. Application of the Tobar Doctrine to Central America. In *The Americas*. Vol. 23, no. 3. P.253.

Proceedings and Debates of the Second Session of the Sixty-Ninth Congress of the United States of America. Vol. LXVIII—Part 2. January 7 to January 26, 1927. Washington: United States Government Printing Office. P. 1324.

<sup>&</sup>lt;sup>305</sup> Jessup, P. C. 1931. The Estrada Doctrine. In *The American Journal of International Law*. Vol. 25, no. 4. ISSN 2161-7953. P. 720.

GDR by a third state was considered an unfriendly act by the FRG and led to severance of diplomatic relations. In practice, the FRG broke off diplomatic relations with Yugoslavia in 1957 and with Cuba in 1963. By virtue of this doctrine, the FRG attempted to establish that it was the only legitimate successor to Germany. Nevertheless, the Hallstein Doctrine had only a limited effect<sup>306</sup>. It was abandoned in 1972, when the GDR and the FRG concluded the Basic Treaty (in German: *Grundlagenvertrag*), which regulated their mutual relations. In other words, recognition of a government should be based on its *de facto* existence rather than on its legitimacy.

The obligation not to recognize situations contrary to international law was put into practice by the Stimson Doctrine in relation to the forceful territorial changes carried out by Japan against China. In 1932, U.S. Secretary of State Henry L. Stimson notified both the Imperial Japanese Government and the Government of the Chinese Republic that "the American Government [...] cannot admit the legality of any situation *de facto* nor does it intend to recognize any treaty or agreement entered into between those Governments, or agents thereof, which may impair the treaty rights of the United States or its citizens in China, including those that relate to the sovereignty, the independence or the territorial and administrative integrity of the Republic of China, or to the international policy relative to China, commonly known as the open door policy [...]"307.

After 1945, the prohibition of the threat or use of force in international relations, expressed in Article 2(4) of the UN Charter, was significant for the development of the principle of non-recognition of territorial acquisitions resulting from the threat or use of force. This principle was later expressed in the 1970 *Declaration on Principles of International Law concerning Friendly* 

Gf. Fraude, A. 2006. Die Außenpolitik der DDR. Erfurt: Landeszentrale für Politische Bildung Thüringen. ISBN 3-937967-03-6. P. 27. Grewe, W. G. 1998. Hallstein's Conception of German–German Policy and Relations. In Walter Hallstein: The Forgotten European? New York: St. Martin's Press, Inc. ISBN 978-0-312-21293-3. Pp. 39–59. Wilczynski, J. 1981. Hallstein Doctrine. In An Encyclopedic Dictionary of Marxism, Socialism and Communism. Economic, Philosophical, Political and Sociological Theories, Concepts, Institutions and Practices – Classical and Modern, East–West Relations Included. London: The Macmillan Press Ltd. ISBN 978-1-349-05808-2. P. 226.

<sup>&</sup>lt;sup>307</sup> The Stimson Doctrine. [online] [last retrieved 02-01-2019]. Available at: http://courses.knox.edu/hist285schneid/stimsondoctrine.html

*Relations and Co-operation among States*, which stated that "[t]he territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal"<sup>308</sup>.

The principle of non-recognition was later emphasized by UN General Assembly Resolution 3314 (XXIX—Definition of Aggression): "No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful"<sup>309</sup>. In 1975, the participating states pledged not to recognize territorial acquisitions resulting from a breach of international law in the OSCE Final Act. "The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal"<sup>310</sup>.

The prohibition of recognizing unlawful situations created by a breach of an obligation arising under a peremptory norm of international law was expressed in Article 41(2) of the Draft Articles on Responsibility of States for Internationally Wrongful Acts: "No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation"<sup>311</sup>. It follows that the obligation not to recognize unlawful situations has two central elements of abstention: (1) the obligation not to recognize a situation created by a serious breach of international law, and (2) the obligation not to render aid or assistance in maintaining the situation<sup>312</sup>.

The above principle was also acknowledged by international judicial bodies. In 1966, the UN General Assembly passed a resolution that terminated

<sup>&</sup>lt;sup>308</sup> Declaration on Principles of International Law..., op. cit.

<sup>309</sup> Resolution 3314 (XXIX)..., op. cit.

<sup>&</sup>lt;sup>310</sup> Conference on Security and Co-operation in Europe Final Act. 1975. [online] [last retrieved 28-12-2018]. Available at: https://www.osce.org/helsinki-final-act?download=true

<sup>311</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement No. 10 (A/56/10). 2001. [online] [last retrieved 29-12-2018]. Available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9\_6\_2001.pdf

<sup>&</sup>lt;sup>312</sup> Crawford, J. 2012. Brownlie's Principles..., p. 155.

the mandate of South Africa over Namibia. In 1970, the UN Security Council approved a resolution that called upon South Africa to immediately withdraw from that territory. In 1971, the International Court of Justice delivered an advisory opinion in which it stated that "State Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration"<sup>313</sup>.

In the case concerning East Timor (Portugal v. Australia), Judge *ad hoc* K. Skubiszewski stated that "[w]hile recognition of States or Governments is still 'a free act', it is not so with regard to the irregular acquisition of territory: here the discretionary nature of the act has been changed by the rule on the prohibition of threat or use of force"<sup>314</sup>. On the other hand, it has been pointed out in the same case by Judge Weeramantry that the duty to respect the right to self-determination and the right to permanent sovereignty over natural resources, as the basic constituent of the right to self-determination, are not restricted to specific directions or prohibitions issued by the United Nations<sup>315</sup>.

The topicality of the issue of non-recognition can be demonstrated by the fact that Palestine filed an application with the ICJ in September 2018 to initiate proceedings against the United States. Palestine claimed that the United States had breached their obligations stemming from the Vienna Convention on Diplomatic Relations by moving their embassy to Jerusalem. Earlier, the ICJ in its advisory opinion on legal consequences of the construction of a wall in the Occupied Palestinian Territory held that "all States are under obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance

<sup>313</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970). 1971. [online] [last retrieved 29-12-2018]. Available at: https://www.icj-cij.org/files/case-related/53/5597.pdf

<sup>&</sup>lt;sup>314</sup> ICJ East Timor (Portugal v. Australia). Dissenting Opinion of Judge Skubiszewski. [online] [last retrieved 02-01-2019]. Available at: https://www.icj-cij.org/files/case-related/84/084-19950630-JUD-01-06-EN.pdf

<sup>&</sup>lt;sup>315</sup> Dissenting Opinion of Judge Weeramantry. [online] [last retrieved 04-01-2019]. Available at: https://www.icj-cij.org/files/case-related/84/084-19950630-JUD-01-05-EN.pdf.

in maintaining the situation created by such construction. It is also for all States, respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to exercise by the Palestinian people of its self-determination is brought to an end"<sup>316</sup>. Judge Higgins in her separate opinion further stated "[t]hat an illegal situation is not to be recognized or assisted by third parties is self-evident, requiring no invocation of the uncertain concept of 'erga omnes'"<sup>317</sup>.

It is worth mentioning that non-recognition of situations created by a breach of international law upholds the certainty of the international system<sup>318</sup>. If recognition was based purely on the criterion of effectiveness, the stability of the international system would be at stake. "The duty of non-recognition envisages the nullity of the consequences that a grave violation of international law might have regardless of the consequences emerging from such a violation"<sup>319</sup>. As W. Czapliński notes, it includes the obligation not to enter into international relations with an unrecognized subject, including economic relations, the prohibition of establishing and maintaining diplomatic relations as well as the obligation not to recognize any legal or administrative acts issued by such an unrecognized subject<sup>320</sup>.

In my view, abidance by the principle of non-recognition of unlawful situations belongs to basic preconditions of international security. There were cases when an unlawful situation resulting from a breach of peremptory norms was referred to by the UN Security Council as a threat to international peace and security, e.g. the policies of apartheid and "bantustanization" constructed to deprive the native peoples of South Africa of their right to self-determination. Another example is the creation of the "Turkish Republic

<sup>316</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. 2004. [online] [last retrieved 29-12-2018]. Available at: https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf

<sup>317</sup> Separate opinion of Judge Higgins. [online] [last retrieved 04-01-2019]. Available at: https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-02-EN.pdf

<sup>&</sup>lt;sup>318</sup> Chen, T. 1951. *The International Law...*, op. cit.

<sup>&</sup>lt;sup>319</sup> Ryngaert, C. & Sobrie, S. 2011. Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia. In *Leiden Journal of International Law*. Vol. 24, issue 02. ISSN 0922-1565. Pp. 467–490.

Czapliński, W. 2015. Samostanowienie – secesja – uznanie (Uwagi na tle inkorporacji Krymu do Federacji Rosyjskiej). In *Państwo i terytorium w prawie międzynarodowym*. Warszawa: C. H. Beck, 2015. ISBN 978-83-255-7881-7. Pp. 231–249.

of Northern Cyprus" as a result of the use of force by Turkey. This act was condemned by UN SC Resolution 541 (1983), which called upon all states not to recognize any Cypriot state other than the Republic of Cyprus. Thus, the principle of non-recognition "fulfills [...] an important function in the maintenance of the authority of the law"<sup>321</sup>.

With regard to *de facto* entities, parent states are usually reluctant to recognize their independence and attempt to influence other states to adopt a similar view. "For a third state that does not recognize the *de facto* regime as a state under international law, but treats it as a legal nullity, the 'mother state' retains territorial sovereignty"<sup>322</sup>. Following this view, states that refuse to recognize *de facto* regimes uphold territorial integrity of the parent states.

<sup>&</sup>lt;sup>321</sup> Dugard, J. 1987. Recognition and the United Nations. Cambridge: Grotius Publications Limited. ISBN 0-949009-00-8. P. 11.

<sup>322</sup> Hillgruber, Ch. 1998. The Admission of New States to International Community. In European Journal of International Law. Vol. 9., no. 2. ISSN 0938-5428. P. 495.

# 3 Case study: Abkhazia

#### 3.1 Historical development

Abkhazia (also referred to as the Republic of Abkhazia) is located in the north-west of Georgia, bounded by the Psou River in the north, the Ingur(i) River in the south, the Black Sea in the west and the Caucasus Mountains in the east. It borders Russia in the north and Georgia in the south, covering an area of 8,660 square kilometers. The capital of Abkhazia is Sukhum(i)<sup>323</sup>.

Gagra
Gudauta
Sukhum(i)

Gudauta
Sukhum(i)

Gudauta

Sukhum(i)

Gudauta

Gudauta

Sukhum(i)

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Gudauta

Gudauta

Sukhum(i)

Gudauta

Gudauta

Sukhum(i)

Gulripshi

Gudauta

Tkuarchal

Tkuarchal

Tkuarchal

Tkuarchal

GEORGIA

Gal(i)

Zugdidi

GEORGIA

Map 1: The territory of Abkhazia

Source: O'Loughlin, J. et al. Inside Abkhazia: Survey of Attitudes in a *De Facto* State. In *Post-Soviet Affairs*. Vol. 27, no. 1. ISSN 1060-586X. P. 9

323 The name of the capital is Sukhum in Abkhaz (also Сухум) and Sukhumi in Georgian.

Abkhazians are a Northwest Caucasian ethnic group, one of the autochthonous ethnic groups of the Black Sea Basin<sup>324</sup>. They refer to their land as "Apsny", which in the Abkhaz language means "the land of the soul". Even though geographically Abkhazia belongs to the South Caucasus, the closest peoples in terms of language, such as the Abazin, the Adyghe people, the Circassians, the Kabardin people, and the Shapsugs<sup>325</sup>, live in the North Caucasus. The native language of Abkhazians is the Abkhaz language, which belongs to the Northwest Caucasian language family. Nevertheless, for centuries, Abkhazian history and culture have been closely linked to Georgia in many ways. Ethnocultural interaction between Abkhazians and Georgians has been taking place as early as in the ancient times<sup>326</sup>. The majority of the population of Abkhazia belongs to Orthodox Christianity (60 per cent according to the 2003 census<sup>327</sup>). There is also a significant minority belonging to Islam (16 per cent). It is composed of the ethnic Abkhaz (51 per cent), Georgians (19 per cent), Armenians (17 per cent), and Russians (9 per cent)<sup>328</sup>.

The history of Abkhazia is closely connected with the history of Georgia. The Abkhaz Kingdom<sup>329</sup> was established in the 8<sup>th</sup> century with its capital in Anacopia (today's Novy Afon, in Russian: Новый Афон) by the first king, Leon II, after liberating itself from the Byzantine vassalage. In 806, King Leon II moved the capital to Kutaisi. The 9<sup>th</sup> and 10<sup>th</sup> centuries mark the most prosperous period of the Abkhaz Kingdom, which expanded to the east and concentrated the Abkhaz ethnic group between the city of Gagra

<sup>&</sup>lt;sup>324</sup> Гарданов, Б. А. и др. 1962. *Народы Кавказа. Том II*. Москва: Академия наук СССР. Р. 374.

<sup>&</sup>lt;sup>325</sup> Cf. Górecki, W. 1996. *Abchaskie elity wobec kwestii niepodległości*. Warszawa: Polski Instytut Spraw Międzynarodowych. ISSN 1231-2913.

Chervonnaya, S. 1994. *Conflict in the Caucasus. Georgia, Abkhazia and the Russian Shadow.* London: Butler & Tanner Ltd. ISBN 0-906362-30-X. P. 10.

<sup>&</sup>lt;sup>327</sup> Крылов, А. 2004. *Единая вера Абхазских "христиан" и "мусульман". Особенности религиозного сознания в современной Абхазии.* [online] [last retrieved 12-03-2019]. Available at: http://www.portal-credo.ru/site/print.php?act=fresh&id=188

<sup>&</sup>lt;sup>328</sup> Официальная статистика — 2016 — Национальный состав населения. [online] [last retrieved 12-02-2019]. Available at: http://ugsra.org/ofitsialnaya-statistika. php?ELEMENT\_ID=243)

<sup>&</sup>lt;sup>329</sup> The subject of historical disputes between Georgians and the Abkhaz nowadays is whether the Abkhaz Kingdom indeed represented a form of statehood of ethnic Abkhazians or whether it was a form of Georgian statehood.

and the Ingur(i) River<sup>330</sup>. During the "golden period" the Abkhaz art did not only follow Byzantine patterns, but also introduced its own elements, which spread throughout the whole Caucasus area. J. Rohoziński notes that as late as in the 19<sup>th</sup> century, Abkhazians were still referred to by Georgians as "the French of the Caucasus"<sup>331</sup>.

In 978, following the death of the childless King Teodosi, the dynasty of Abkhaz kings died out. In 1008 Bagrat III Bagrationi, whose mother was Abkhazian and father Georgian, inherited Kartli (Georgia) from his father, Gurgen. These two states, Abkhazia and Kartli, had been interconnected through a series of dynastic marriages. Inheriting Kartli by Bagrat III meant the unification of Abkhazia and Kartli into a common feudal state, referred to in literature as the "Kingdom of Abkhazians and Georgians"<sup>332</sup>.

In the 13<sup>th</sup> century, the common state was conquered by the Mongols, which led to its disintegration into several principalities, the Abkhazian Principality being one of them<sup>333</sup>. Nevertheless, the territory of Abkhazia remained relatively unharmed by the Mongol conquest from 1243 to 1245<sup>334</sup>. After the fall of Constantinople in 1453, the Ottoman influence started to spread in the Black Sea region. In the first half of the 17<sup>th</sup> century, the Ottomans conquered Sukhum(i) from the sea since they had not succeeded to seize the city from the shore. From 1639 to 1810, Abkhazia was under the rule of the Ottoman Empire. "The process of strengthening of political and economic ties to the Ottoman Empire in the 16<sup>th</sup>–17<sup>th</sup> century led to the gradual spread of Sunni Islam. Given that the traditional (pre-Christian) and Christian beliefs were preserved at the beginning of the 16<sup>th</sup> century, the process of their incorporation into the Islamic world began in the middle of the century"<sup>335</sup>.

<sup>&</sup>lt;sup>33°</sup> Бгажба, О. Х., Лакоба, С. З. 2007. *История Абхазии. С древнейших времен до наших дней*. Сухум: Алашарбага. Рр. 122–124.

<sup>331</sup> Rohoziński, J. 2018. Najpiękniejszy klejnot w carskiej koronie. Gruzja pod panowaniem rosyjskim 1801 – 1917. Warszawa: Wydawnictwo Akademickie Dialog. ISBN 978-83-8002-764-0. P. 213.

<sup>332</sup> Ibidem, p. 146.

<sup>333</sup> The principalities were Kartli, Kakheti, Imereti, Samtskhe-Saatabago, Mingrelia, Guria and Abkhazia. (Cf. Gamakharia, J. 2012. *Political History of Abkhazia/Georgia*. Tbilisi: The Supreme Council of the Autonomous Republic of Abkhazia. ISBN 978-994-1048-19-7. P. 57).

<sup>&</sup>lt;sup>334</sup> Ibidem, p. 153.

<sup>&</sup>lt;sup>335</sup> Бгажба, О. Х., Лакоба, С. З. 2007. *История Абхазии...*, р. 176.

In 1809, Safar Bey Sharvashidze, the Lord of Abkhazia, was received under Russian protection and confirmed in his principality<sup>336</sup>. In 1810, after Russia had captured Sukhum(i), Abkhazia became a protectorate of the Russian Empire. As anti-Russian activities were taking place, the Russian governor made an expedition to subdue the Abkhazians and the Circassians in 1835. Another aim of the expedition was to prevent the Turks from launching pirate raids on Russian vessels. During the Crimean War (1853–1856), the Turks stirred up the Abkhazians against Russia. Moreover, the ruling dynasty of the Sharvashidzes was divided—the Christian princes supported Russia, while Iskander Sharvashidze<sup>337</sup> aimed to support the Turks in return for a permission to annex the Mingrelian district of Samurzaquano<sup>338</sup>. Nevertheless, the Principality of Abkhazia managed to maintain its autonomy until 1864, when the Caucasian War ended. The Russians deposed the ruling prince, Michael Sharvashidze, and the principality was abolished. The imposition of direct Russian rule is seen in literature as the "annexation of Abkhazia". This resulted in a mass migration of Abkhazians to the Ottoman Empire<sup>339</sup>. According to Bgazhba and Lakoba, around 5,000 Abkhazians emigrated to the Ottoman Empire in 1810. Another mass wave of emigration, in which as many as 20,000 Abkhazians left, followed after the end of the Caucasian War<sup>340</sup>. In 1877–1878, a military conflict between Russia and the Ottoman Empire occurred, in which many Abkhazians joined the Ottoman side, which led to further repressions against the Abkhazians after the end of the war. "[T]he Abkhazians were prohibited from settling near the coast, from living in Sukhum(i) as well as in the abandoned townships of Gudauta and Ochamchira"341 and many Abkhazians who had participated in the uprising against Russians were deported to Siberia.

Marshall Lang, D., 1962. A Modern History of Soviet Georgia. New York: Grove Press. P. 52.

Prince Iskander Sharvashidze was a Muslim. He aimed at the recognition of his independence as the ruling prince and the inclusion of the Mingrelian district of Samurkazan into his territory. (Cf. Allen, W. E. D. and Muratoff, P. 2010. Caucasian Battlefields. A History of the Wars on the Turco-Caucasian Border. 1828–1921. New York: Cambridge University Press. ISBN 978-1-108-01335-2. P. 68)

<sup>&</sup>lt;sup>338</sup> Ibidem, p. 97.

<sup>&</sup>lt;sup>339</sup> The forced mass emigration of Muslim Abkhazians under the tsarist rule (the so-called Mahajir movement) resulted in an alteration of the ethnic composition in the territory of Abkhazia. (Chervonnaya, S. 1994. *Conflict...*, p. 14).

<sup>&</sup>lt;sup>340</sup> Бгажба, О. Х., Лакоба, С. З. 2007. *История Абхазии...*, pp. 204–220.

<sup>&</sup>lt;sup>341</sup> Ibidem, p. 238. Furier, A. 2000. *Droga Gruzji...*, p. 159.

The forced expulsion of Abkhazians, which took place after the Abkhaz uprising, caused the ethnic structure of Abkhazia to change significantly. Another reason was the so-called internal colonization and relocation of Georgian (Mingrelian), Russian, Bulgarian, Armenian and other ethnicities, which started to resettle the territories that had been abandoned by Abkhazians<sup>342</sup>. By 1886, the population of Abkhazia, in total 69 thousand, consisted of 85 per cent Abkhazians (58,963), 6 per cent Georgians (Mingrelians: 4,166), 2 per cent Greeks (2,149), 1 per cent Armenians (1,049) and 1 per cent Russians (971)<sup>343</sup>.

After the collapse of the Russian Empire, Soviet power was established in Abkhazia in April 1918. Due to internal weakness, it only lasted for 40 days. In May 1918, Abkhazia became part of the Mountainous Republic of the Northern Caucasus<sup>344</sup> for a short period of time prior to coming under the rule of Georgia. On 26 May 1918, Georgia unilaterally declared independence from Russia. At that time, however, Abkhazia was not yet part of the Democratic Republic of Georgia. On 11 June 1918, an Abkhaz delegation, fearing that Turkey would invade Abkhazia, signed a treaty with Georgia, which defined their mutual relations. Based on Article 6 of the Treaty<sup>345</sup>, Georgian troops, led by General Mazniev (in Georgian Mazniashvili), marched into Abkhazia on 18 June 1918. By a decree issued without consent of the Abkhaz National Council, Mazniev declared Abkhazia a governorate, himself the governor, and seized military and political power. In Abkhaz literature, it is often referred to as the beginning of Georgian occupation of Abkhazia<sup>346</sup>. Russian literature refers to these events as to a "military coup" and the "annexation of Abkhazia by Georgia"347.

<sup>&</sup>lt;sup>342</sup> Червонная, С. М. 1993. *Абхазия-1992: Посткоммунистическая вандея*. Москва: Мосгорпечать. ISBN 5-8468-0031-9. P. 39.

<sup>343</sup> Ibidem, p. 245.

<sup>&</sup>lt;sup>344</sup> The Mountainous Republic of the Northern Caucasus, which existed between 1917 and 1920, consisted of Dagestan, Chechnya, Ingushetia, Ossetia, Karachay-Balkaria, Kabardia, Abkhazia, and Adygea.

<sup>345 &</sup>quot;For the sake of speedy restoration of the revolutionary order and the organization of strong power, the Georgian Democratic Republic shall send troops of the Red Guard as a form of assistance to the Abkhaz Council, for the time needed."

<sup>&</sup>lt;sup>346</sup> Cf. Бгажба, О. Х., Лакоба, С. З. 2007. *История Абхазии...*, р. 284–288.

<sup>&</sup>lt;sup>347</sup> Захаров, В. А., Арешев, А. Г. 2008. *Признание независимости Южной Осетии и Абхазии. История, политика, право.* Москва: МГИМО. ISBN 978-5-9228-0436-3. P. 51.

Between 1918 and 1921, Abkhazia was part of the Democratic Republic of Georgia, being granted a degree of autonomy based on the "Law on autonomy of Abkhazia". The draft of the document was introduced in December 1918. In March 1919, the Abkhaz National Council adopted a decision that Abkhazia would be part of the Georgian Democratic Republic with autonomous rights<sup>348</sup>. The autonomy was later temporarily suspended, which was followed by several local uprisings. "As Russian-Georgian relations became increasingly tense, the Abkhazians received support first from Denikin's Volutneer Army (February 1919) and two years later by the Red Army"<sup>349</sup>.

In 1921, the USSR invaded the Caucasus and established its power there. According to W. Górecki, the establishment of Soviet power in Abkhazia was positively welcomed by Abkhazians for three reasons. Firstly, the Georgian government between 1918 and 1921 was negatively perceived by the Abkhazians. Secondly, the Abkhaz intelligentsia was rather pro-Russian. Thirdly, and perhaps most importantly, Abkhazia was promised to be granted the status of a constitutive republic within the USSR350. As T. Shanava notes, "in the period from March 1921 to February 1922, Abkhazia formally had a status that was legally similar to that of any other Union Republic, i.e. it was the independent Soviet Socialist Republic of Abkhazia, which was neither legally connected with the RSFSR nor with the Soviet Socialist Republic of Georgia, formed in February 1921"351. However, the status of Abkhazia as a constitutive unit of the USSR is often disputed by Georgian historians, mostly for two reasons. Firstly, Abkhazia was perceived as an autonomous part of Georgia in historical documents of that period<sup>352</sup> and, similarly, the Committee of the Abkhaz Communist Party was subordinated to the Central Committee of the Communist Party of Georgia<sup>353</sup>. Secondly, the actual competences of Abkhazia

<sup>&</sup>lt;sup>348</sup> Червонная, С. М. 1993. *Абхазия-1992...*, р. 44.

<sup>&</sup>lt;sup>349</sup> Hoch, T. and Souleimanov, A. 2020. Formation of de facto states in Abkhazia and South Ossetia. In *De facto States...*, p. 91.

<sup>&</sup>lt;sup>350</sup> Cf. Górecki, W. 1996. Abchaskie elity..., p. 9.

<sup>&</sup>lt;sup>351</sup> Шанава, Т. А. 2015. Конституции Абхазии. XX век. Сухум: Айэа. Р. 9.

<sup>352</sup> Папаскири, З. 2003. *О национально-государственном облике Абхазии/Грузия. С бревнейших времен до 1993 г.* Тбилиси: Издательство Универсал. ISBN 99928-0-694-X, Р. 60–61.

<sup>&</sup>lt;sup>353</sup> Папаскири, З. 2012. *Моя Абхазия. Воспоминания и размышления*. Тбилиси: Издательство Мерибиани. ISBN 978-9941-10-681-1. P. 350.

in that time did not correspond to those of other constitutive units of the USSR. Nevertheless, as it is often recalled by Abkhaz historians, it follows from the official documents that Abkhazia formally had a legal status, which was equal to that of Georgia.

On 16 December 1921, Abkhazia concluded a treaty with Georgia, which was the basis for creating a political union, often described as a federation<sup>354</sup>. Through the treaty, Abkhazia, as an entity within Georgia, joined the Transcaucasian Socialist Federative Soviet Republic, which had been formed by Georgia, Armenia and Azerbaijan. The treaty meant a *de facto* incorporation of Abkhazia into the Georgian SSR<sup>355</sup>. The status of Abkhazia as a constitutive republic of the USSR is often questioned due to terminological discrepancy in the constitutional documents—on the one hand, Abkhazia was referred to as a "constitutive republic", but on the other hand, Abkhazia was formally part of the Georgian SSR and therethrough of the Transcaucasian SFSR. The 1922 Constitution of the Georgian SSR stated that the Georgian SSR embraced the Adjarian Autonomous SSR, the Autonomous Oblast of South Ossetia as well as the Abkhaz SSR. The 1925 Constitution of the Abkhaz SSR, however, referred to Abkhazia as a sovereign state, inseparably linked to Georgia. Georgian historian Z. Papaskiri notes that the 1925 Constitution of Abkhazia included some mutually exclusive clauses. Firstly, it stated that, based on the Union Treaty with Georgia, Abkhazia became part of the Transcaucasian SFSR and, through the Transcaucasian SFSR, it became part of the USSR. Secondly, the Constitution preserved the right of Abkhazia to separate from the Transcaucasian SFSR and the USSR. Therefore, a new constitution had to be prepared<sup>356</sup>. Nevertheless, in the 1927 Constitution of the Abkhaz SSR, Abkhazia was treated only as an autonomous entity (republic) within Georgia.

The status of Abkhazia as an autonomous republic was formalized in February 1931 by constitutional amendments, and Abkhazia entered the Georgian SSR. A new Constitution of Abkhazia was approved in January 1935 and stated that the Abkhaz Autonomous Soviet Socialist Republic was

Hoch, T. and Souleimanov, E. A. 2020. Formation of de facto..., p. 91.

<sup>&</sup>lt;sup>355</sup> Червонная, С. М. 1993. *Абхазия-1992...*, р. 45.

<sup>&</sup>lt;sup>356</sup> Папаскири, 3. 2012. *Моя Абхазия...*, р. 353.

part of the Georgian SSR $^{357}$ . In 1936, the Transcaucasian SFSR was dissolved and its three constitutive republics became constitutive units of the USSR.

During Stalin's regime, the situation of Abkhazians aggravated. They faced strong oppression and discrimination, including forced Georgianization. Ethnic policies worsened in the 1930s, and the Abkhaz representation in the local administration was restricted, the Abkhaz language was prohibited, the Abkhaz schools were closed, the Abkhaz intelligentsia was persecuted and the policy of internal colonization of Abkhazia by ethnic Georgians was massively enforced<sup>358</sup>.

In 1937, a new Constitution of the Abkhaz ASSR was adopted, which formalized the status of Abkhazia as an autonomous republic within Georgia. In practice, this meant that any laws passed both on the federal level (USSR) and the state level (Georgian SSR) were binding in the territory of Abkhazia (Article 16). The Constitution could be amended by two-thirds of the votes of the Supreme Council of the Abkhaz ASSR with the approval of the Supreme Council of the Georgian SSR (Article 114)<sup>359</sup>.

Soon after Stalin's death, first rebellions occurred in Abkhazia. Their aim was to separate Abkhazia from the Georgian SSR. Later in the 1960s as well as in the late 1970s, the separatist efforts focused on the withdrawal of Abkhazia from the Georgian SSR and joining of the Russian SFSR. Nevertheless, the rebellions were suppressed by the Georgian Government<sup>360</sup>.

The 1977 Constitution of the USSR regulated the legal status of autonomous republics. Altogether, there were 20 autonomous republics in the Soviet Union: sixteen in the Russian SFSR, one in the Uzbek SSR, two in the Georgian SSR (Abkhazia and Adjaria), and one in the Azerbaijani SSR<sup>361</sup>. The territorial

<sup>&</sup>lt;sup>357</sup> Логинов А. В. 2018. Этапы развития судебной системы Республики Абхазии и суды и правосудие в период вхождения Абхазии в состав СССР (1917 – 1990 г.). [online] [last retrieved 12-02-2019]. Available at: https://cyberleninka.ru/article/n/etapy-razviti-ya-sudebnoy-sistemy-respubliki-abhaziya-i-sudy-i-pravosudie-v-period-vhozhdeniya-abhazii-v-sostav-sssr-1917-1990-gg

<sup>&</sup>lt;sup>358</sup> Cf. Accord. A question of sovereignty: The Georgia–Abkhazia peace process. 1999. Issue 7.

<sup>359</sup> Конституция (основной закон) Абхазской Автономной Советской Социалистической Республики 1937 года. In Шанава, Т. А. 2015. *Конституции Абхазии. XX век.* Рр. 93–112.

<sup>&</sup>lt;sup>360</sup> Папаскири, 3. 2003. *О национально-государственном облике*, р. 67–68.

<sup>361</sup> Конституция (основной закон) Союза Советских Социалистических Республик принята на внеочередной седьмой сессии Верховного Совета СССР девятого созыва

status of the autonomous republics was guaranteed by the Constitution and could not be changed without their consent. However, the Constitution did not grant the autonomous republics the right to separate from the Georgian SSR; such right was given only to the fifteen constitutive units of the USSR. The policy of creating small territorial units based on ethnicity within multiethnic states played a significant role in the USSR. R. Zenderowski and J. Pieńkowski noted that "an attempt of secession of a union republic would cause a secession of a territory claiming independence [...]. Ethnic minorities were often used to pressurize the government of a union republic"<sup>362</sup>.



Map 2: Administrative division of the Caucasus in the USSR (1957-1991)

(Source: Administrative map of the Caucasus 1957–1991. [online] [last retrieved 12-10-2020]. Available at: https://enacademic.com/pictures/enwiki/83/Soviet\_Caucasus\_map.svg)

<sup>7</sup> октября 1977 г., 1977. [online] [last retrieved 12-02-2019]. Available at: http://www.hist.msu.ru/ER/Etext/cnst1977.htm

Zenderowski, R. and Pieńkowski, J. 2015. Kwestie narodowościowe w Europie Środ-kowo-Wschodniej. Tom II. Od końca XVIII w. do Jesieni Narodów. Warszawa: Wydawnictwo UKSW. ISBN 978-83-65224-45-3. P. 25.

Following the adoption of the Constitution on the central Soviet level, new constitutions for the respective Soviet republics and their autonomous republics were drafted. In the project of the new Constitution of the Georgian SSR, the clause defining the Georgian language as the official language was removed. This led to mass demonstrations, which took place in Tbilisi on 14 April 1978 and made the authorities restore the clause on the Georgian language<sup>363</sup>. The draft of the new Constitution of the Abkhaz ASSR caused similar protests in Abkhazia, which were directed against the discrimination of Abkhazians. The new Constitution of the Abkhaz ASSR, which came into effect on 6 June 1978, did not include a clause on withdrawal from the Soviet Union. Prior to that, in December 1977, 130 Abkhaz intellectuals had signed a letter complaining about the Georgianization of Abkhazia, asking the Kremlin to permit the withdrawal of Abkhazia from the Georgian SSR<sup>364</sup>. Even though the request was rejected, certain concessions were granted, such as a larger representation of the Abkhazians in political institutions, adoption of the document "On Further Development of Economy and Culture of the Abkhaz ASSR" as well as the establishment of the Abkhaz State University in Sukhum(i)<sup>365</sup>.

Pursuant to Article 71 of the 1978 Constitution of the Georgian Soviet Socialist Republic, the Georgian SSR consisted of the Abkhaz Autonomous Soviet Socialist Republic, the Adjarian Autonomous Soviet Socialist Republic, and the South Ossetian Autonomous Oblast. An "autonomous republic" was defined in Article 79 of the 1978 Constitution as "a Soviet socialist state that is a part of the Georgian SSR"<sup>366</sup>. An autonomous republic had its own

<sup>&</sup>lt;sup>363</sup> Hanf, T. and Nodia, G. 2000. Georgia Lurching to Democracy. From agnostic tolerance to pious jacobinism: Societal change and people's reactions. Baden-Baden: Nomos Verlagsgesellschaft. ISBN 978-3789070105. P. 14.

<sup>&</sup>lt;sup>364</sup> Сf. Бгажба, O. X., Лакоба, C. 3. 2007. *История Абхазии...*, pp. 169; *«Письмо 130-и» и его последствия: как Сухумский пединститут преобразовывали в АГУ.* [online] [last retrieved: 25-10-2019]. Available at: https://sputnik-abkhazia.ru/Abkhazia/20190213/1026538903/Pismo-130-yego-posledstviya-kak-Sukhumski-pedinstitut-preobrazovyvali-AGU.html

<sup>&</sup>lt;sup>365</sup> The Abkhaz State University in Sukhum(i) was founded in 1979 after reorganization of Maxim Gorki Sukhum(i) State Pedagogical Institute founded in 1933 on the basis of the Agrarian and Pedagogical Institute, which was established in 1932. (Loc. cit.)

<sup>&</sup>lt;sup>366</sup> Конституция (основной закон) грузинской советской социалистической республики (15 апреля 1978 г.). 1978. [online] [last retrieved 12-02-2019]. Available at: http://nodussr.ru/konstituciya-gruzinskoj-ssr.

constitution, which had to be in accordance with the Constitution of the USSR and the Georgian SSR. Laws of the Georgian SSR were binding in the territory of the Autonomous Republic of Abkhazia; in case of any discrepancies between the laws, the laws of the Georgian SSR would apply.

The late 1980s were marked not only by a deepening decay of the Soviet Union, but also by rising nationalism and secessionist tendencies in the constitutive republics of the USSR, including the Georgian SSR. The policies of "glasnost" and "perestroika", pursued by Mikhail Gorbachev in the 1980s, fostered nationalist sentiments and independence claims. These phenomena often developed on the inner level, too. On the other hand, Georgian elites considered the political privileges granted to Abkhazians as excessive and insisted on democratic representation of all ethnic groups in the territory of Abkhazia in the legislative body<sup>367</sup>. This was, however, rejected by Abkhaz elites, who wanted to retain their political privileges through upgrading the constitutional status of Abkhazia from an autonomous republic to a union republic. In a mass meeting held in Lykhny in 1989, the demand to restore the constitutional status of Abkhazia as prior to 1931 was issued. The ethnic Abkhazians demanded to be placed under the direct rule of the Kremlin. Georgian authorities responded by organizing mass protests against the Abkhaz separatism. This led to further alienation between the Abkhazians and the Georgians. The situation aggravated due to an internal struggle for power between Gamsakhurdia and Shevardnadze. In July and August 1992, several severe provocations took place in Western Georgia and in the territory of Abkhazia, especially in Mingrelia, where the supporters of Gamsakhurdia were primarily located<sup>368</sup>, for instance, attacks on trains, bridges and the infrastructure. On 11 August 1992, during a meeting between the State Council representatives and the supporters of Zviad Gamsakhurdia, twelve Georgian officials were taken hostage in Zugdidi, including the Minister of Interior, Roman Gventsadze<sup>369</sup>. Therefore, the Georgian army decided to put an end to these actions.

<sup>&</sup>lt;sup>367</sup> Coppietters, B. 2004. Georgian – Abkhaz conflict. In *Europeanization and Conflict Resolution*. Gent: Academia Press. ISBN 978-90-38206-48-6. P. 196.

<sup>&</sup>lt;sup>368</sup> George, J. A. 2009. *The Politics of Ethnic Separatism in Russia and Georgia*. New York: Palgrave Macmillan. ISBN 978-0-230-61359-1. P. 107.

<sup>&</sup>lt;sup>369</sup> Червонная, С. М. 1993. Абхазия-1992..., р. 131.

The tensions had resulted in an armed conflict, which started on 14 August 1992, when troops of the Georgian National Guard entered Abkhazia, formally on the pretext of protecting a railway line against the troops supporting Gamsakhurdia. However, the paramilitaries soon entered Sukhum(i) and attempted to take over Abkhazia. The Abkhaz elites perceived this as an attempt to occupy Abkhazia<sup>370</sup> and withdrew to the city of Gudauta. In the initial phase of the conflict, Abkhaz forces were backed by volunteers from the North Caucasus. However, in 1993 the Abkhaz side was directly supported by the Russian military<sup>371</sup>. The war lasted almost fourteen months and ended on 30 September 1993, when Georgian troops were ousted from Abkhazia. It is estimated that as many as 9,000 persons died in the war and 18,000 were wounded<sup>372</sup>.

#### 3.2 Circumstances of secession

The first group of factors leading to secession to be analyzed are cultural and perceptual factors. Abkhazians are an indigenous people living on the Black Sea coast. At this point it needs to be mentioned that, even today, some Georgian historians deny the autochthonous character of Abkhazians. For instance, J. Gamakharia claims that "[f]rom ethno-cultural point of view until the late medieval centuries, the Abkhazians were Georgians, like the population of other provinces of Georgia (Kartalinians, Megrelians and Svans, etc.), and were active participants of the formation of the Georgian statehood and culture. In the late medieval centuries, as a result of the onset of mountaineers—invasions and purposeful migration to Abkhazia of the residents of the mountainous zone of the West Caucasus—radical ethnic changes had [taken—P.S.] place. As a result of the mixing of the alien mountaineers and local Georgian population, the modern Abkhaz

<sup>&</sup>lt;sup>370</sup> Ibidem, pp. 131–141.

<sup>371</sup> Cf. Zürcher, Ch. 2007. *The Post-Soviet Wars. Rebellion, Ethnic Conflict, and Nationhood in the Caucasus*. New York: New York University Press. ISBN 978-0-8147-9709-9. P. 131.

<sup>&</sup>lt;sup>372</sup> Janicki, K. 2012. *Źródła nienawiści. Konflikty etniczne w krajach postkomunistycznych.* Kraków-Warszawa: Instytut Wydawniczy Erica. ISBN 978-83-62329-99-1. P. 265.

ethnos (Apsua) was formed"<sup>373</sup>. In the opinion of the above-quoted historian, "historical 'Abkhazian' is the same as Georgian, but modern Apsua-Abkhazians is the population of the North Caucasian origin having come in the 16–17<sup>th</sup> centuries"<sup>374</sup>. It is often claimed by the historians denying the indigenous character of Abkhazians that today's Abkhazians are the descendants of the mountaineers who came from the North Caucasus and settled in Abkhazia in the 16<sup>th</sup> and 17<sup>th</sup> centuries. This view was put forward during the Stalinist times in the 1940s by Georgian philologist Pavle Ingorokva<sup>375</sup> and started to be widespread in the late 1980s and early 1990s by Georgian nationalists, who claimed that Abkhazians were only "guests on the Georgian territory". On the other hand, Abkhazian historiography mentions proto-Abkhazians living in the territory of today's Abkhazia as early as in the Bronze Age<sup>376</sup>, and this view is widely reflected in European literature<sup>377</sup>.

At the beginning of the 1990s, pro-Soviet sentiments grew in Abkhazia, especially among the Abkhaz elites. S. Chervonnaya noted that both the Abkhaz and the Russian press were strongly anti-Georgian due to the attempts of Georgia to regain its independence from the Soviet Union. Moreover, Shevardnadze was blamed in the media for the "deliberate destruction" of the Eastern Bloc<sup>378</sup>.

Apart from cultural claims, the point of concern of the Abkhaz people during the 1992–1993 war was the deliberate destruction of their material

<sup>373</sup> Gamakharia, J. et al. 2011. Essays from the History of Georgia. Abkhazia from the ancient times till the present days. Tbilisi: Institute of History of Iv. Javakhishvili. ISBN 978-9941-0-3928-7. P. 9.

<sup>&</sup>lt;sup>374</sup> Ibidem, p. 76.

<sup>375</sup> This theory is nowadays considered as pseudo-scientific by the majority of historians. Cf. Abkhazian Conflict: Nine Questions and answers – Andrew Andersen's assertions and George Hewitt's responses. [online] [last retrieved 20-04-2019]. Available at: https://abkhazworld.com/aw/conflict/743-nine-questions-and-answers; Smith, G. 1998. Nation-building in the Post-Soviet Borderlands. The Politics of National Identities. New York: Cambridge University Press. ISBN 521-59968-7. P. 54-56.

<sup>&</sup>lt;sup>376</sup> Сf. Бгажба, О. Х., Лакоба, С. З. 2007. *История Абхазии...*, р. 40–46.

<sup>377</sup> Cf. Nußberger, A. 2013. Abkhazia. In Max Planck Encyclopedia of International Law. [online] [last retrieved 10-01-2020]. Available at: https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2069

<sup>&</sup>lt;sup>378</sup> Сf. Червонная, С. М. 1993. *Абхазия-1992...*, р. 21.

historical heritage by Georgians with the intention to erase and marginalize their history. As N. Ascherson puts it, "[t]he National Museum was not burned, but it was looted and devastated. [...] But the Georgian soldiers took the coin collections and even replicas of gold and silver vessels whose originals were already in the museum at Tbilisi. The cases containing Abkhazian finery, inlaid muskets and jeweled daggers and decorated wedding-dresses, were broken and emptied"379. Another example of an attempt to erase the Abkhaz history was the arson in the Abkhaz National Archives, where the cultural heritage ended in ashes. "One day in the winter of 1992, a white Lada without number-plates, containing four men from the Georgian National Guard, drew up outside. The guardsmen shot the doors open and then flung incendiary grenades into the hall and stairwell. A vagrant boy, one of many children who by then were living rough on the streets, was rounded up and made to help spread the flames while a group of Sukhum(i) citizens was trying in vain to break through the cordon and enter the building to rescue burning books and papers. In those archives was the most scanty, precious written evidence of Abkhazia's past as well as the recent records of government and administration. The Ministry of Education, for example, lost all its files on school pupils. The archives also contained the entire documentation of the Greek community, including a library, a collection of historical research material from all the Greek villages of Abkhazia and complete files of the Greek-language newspapers going back to the first years after the Revolution"380. The enormous historical losses are visible even today. Buildings, which had not been devastated in the war, were often looted and plundered either by the local population or by mercenaries taking part in the hostilities. For instance, Iasochka (in Russian: Ясочка), the residence of the Voronov family, which had been turned into a museum in the 1980s, was plundered by the Svans during the Georgian-Abkhaz war<sup>381</sup>.

The collective memory of war in Abkhazia remains significantly strong. Whilst in Georgian curriculum the topic of the Georgian-Abkhaz war is

<sup>&</sup>lt;sup>379</sup> Ascherson, N. 1995. *Black Sea. The Birthplace of Civilization and Barbarism*. London: Jonathan Cape. ISBN 978-0-224-04102-7. P. 110.

<sup>&</sup>lt;sup>380</sup> Ibidem, p. 112.

<sup>&</sup>lt;sup>381</sup> Cf. Górecki, W. 2017. *Abchazja*. Wołowiec: Wydawnictwo Czarne. ISBN 978-83-8049-413-8.
Pp. 66–68.

covered rather superficially, with only few lessons dedicated to the topic, for Abkhazians the "Patriotic War of the Abkhaz People" remains an integral part of their collective identity. "Called the Patriotic War, it is a conflict [which] Abkhaz families present as fundamental to young people's identity as citizens of Abkhazia. Its events are recounted from the perspective of a people trying to defend their right to exist and who prevailed, despite the odds"<sup>382</sup>. J. George contends that Georgian narratives of the war stress "a Russian effort to mobilize ethnic dissatisfaction among the Abkhazians [...] and invoke terms like 'ethnic cleansing' to frame the flight of the Georgian population from the territory. A common postwar Abkhazian interpretation stresses the recklessness of the Georgian assault and the influx of ethnic Georgians during the Soviet era"<sup>383</sup>.

The memory of the war has been preserved differently in Georgia proper and in Abkhazia. In the former case, it is maintained through the narratives of ethnic Georgians expelled from the territory of Abkhazia during the war and living in half-abandoned sanatoriums located in different places around Georgia to this day, whereas in the latter case it is maintained by numerous war memorials, including abandoned houses and war-torn buildings (for instance, the building of the former Supreme Soviet in Sukhum(i), which serves as a grandstand for parades, even though it is dilapidated and in heavy decay due to the devastation it suffered during the war).

Abkhazia: How Storytelling Keeps War Memories Alive. [online] [last retrieved 14-04-2020]. Available at: https://chai-khana.org/en/story/724/abkhazia-how-storytelling-keeps-war-memories-alive; Balanchivadze, Z. 2018. The 1992–1993 Abkhaz War: For Young Georgians, Its History Has Begun to Fade. [online] [last retrieved 14-04-2020]. Available at: https://chai-khana.org/en/story/723/the-1992-1993-abkhaz-war-for-young-georgians-its-history-has-begun-to-fade

<sup>&</sup>lt;sup>383</sup> George, J. A. 2009. *The Politics of Ethnic Separatism...*, p. 117.



Picture 1: Liberty Square in Sukhum(i), the abandoned building of the Supreme Soviet covered with a banner reading "25 [years of] Victory"

(Source: Piotr Sieniawski, May 2019)

Another group of issues encouraging secession are economic discrepancies between the secessionist group and the parent state. In the Soviet times, Abkhazia was less developed and industrialized than the rest of Georgia<sup>384</sup>. The industry was concentrated mostly in the eastern part of Georgia, whereas Abkhazia was used mostly for recreational purposes (sometimes Abkhazia was referred to as the "Soviet Riviera"<sup>385</sup>) and agriculture (citrus fruits, hazelnuts, tobacco, wine production), with the coal mining industry based in Tkurachal (Tkvarcheli) in the south-eastern part of Abkhazia.

<sup>&</sup>lt;sup>384</sup> Kaufman, S. J. 2001. *Modern Hatreds. The Symbolic Politics of Ethnic War*. Ithaca: Cornell University Press. ISBN 978-0-8014-8736-1. P. 99.

<sup>&</sup>lt;sup>385</sup> 'Soviet riviera' struggles for autonomy in the face of Russian cash. [online] [last retrieved 20-04-2019]. Available at: https://www.theguardian.com/world/2016/jun/21/soviet-riviera-abkhazia-black-sea-independent-russian-cash

	1940	1965	1970	1975	1980
USSR	1	7.9	12	17	21
Georgia	1	5.5	8.4	12	16
Abkhazia	1	4.1	6.5	8.8	12

Table 11: Relative volume of industrial output

(Source: Ашуба, Б. Ш. и др., 1982. *Проблемы развития регионального хозяйственного комплекса Абхазской АССР*. Тбилиси: Издательство Мецниереба. Р. 31)

The overall industrial growth of Abkhazia has been less than that of the Georgian SSR despite the fact that in 1940 Abkhazia "had the 'advantages of backwardness' and was far less developed than the rest of the republic"386. Compared to 1940, the discrepancies between Abkhazia and Georgia as well as those between Abkhazia and the USSR grew significantly in the second half of the 20th century. By 1980, the relative volume of industrial output of Abkhazia was 75 per cent compared to Georgia and only about 57 per cent compared to the USSR, thereby falling within the category of a "backward" region. E. Mihalkanin noted that "Abkhazia in 1970 had a higher percentage of its population (50.7 per cent) in the peasant category than any other major group except the Moldavians. The state budget for Abkhazia was 40 per cent lower on a per capita basis than Georgia's; while the increase in capital investment in Georgia as a whole was 39.2 per cent, in Abkhazia it was 21 per cent"387. The uneven economic development and distribution of resources, as well as growing discrepancies in the living standard, led to the actual establishment of a "center-periphery" relationship, in which Abkhazia played the role of the periphery and this position became even more accentuated by ethnic self-identification388.

Slider, D. 1985. Crisis and Response in Soviet Nationality Policy: The Case of Abkhazia. In Central Asian Survey. Vol. 4, no. 4. ISSN 0263-4937. P. 57.

<sup>387</sup> Mihalkanin, E. 2004. The Abkhazians. A national minority in their own homeland. In De Facto States. A quest for sovereignty. Oxon: Routledge. ISBN 0-203-48576-9.

<sup>&</sup>lt;sup>388</sup> Cf. Zenderowski, R. and Pieńkowski, J. 2015. Kwestie narodowościowe w Europie Środ-kowo-Wschodniej..., p. 26.

	USSR			Georgian SSR			Abkhaz ASSR		
	1970	1975	1980	1970	1975	1980	1970	1975	1980
Industry	29.6	29.0	29.3	20.5	20.4	19.5	14.1	13.9	13.7
Agriculture	23.6	21.1	20.7	30.8	30.8	28.0	35.2	35.9	33.2
Forestry	0.4	0.4	0.4	0.6	0.6	0.6	0.5	0.5	0.5
Transport	7.5	7.8	8.0	7.2	7.2	7.6	6.8	7.5	7.9
Services	1.2	1.2	1.3	1.3	1.3	1.3	1.2	1.5	1.4
Construction	8.5	9.0	9.0	8.3	7.7	8.0	7.9	5.3	5.2
Others	29.2	31.4	31.3	31.4	33.0	35.0	34.3	35.4	38.0

Table 12: Average annual employment by sector

(Source: Ашуба, Б. Ш. и др., 1982. *Проблемы развития регионального хозяйственного комплекса Абхазской АССР*. Тбилиси: Издательство Мецниереба. Р. 55)

It follows from the above table that in the Soviet era the agricultural sector was dominant in Abkhazia in comparison to Georgia and the USSR as a whole (35.9 per cent in Abkhazia versus 30.8 per cent in Georgia versus 21.1 per cent in the USSR of the total employment in 1975), and industry was less prevalent (13.9 per cent in Abkhazia versus 20.4 per cent in Georgia and 29.0 per cent in the USSR). Consequently, in 1970 the Abkhazians had "greater percentage of their population in the collective farm peasant category than any other major Soviet ethnic group with the exception of the Moldavians" 389.

According to Horowitz's theory, Abkhazia corresponds to a "backward group in a backward region", which is characterized by the lack of interest in preserving the unity of the parent state and by early attempts to secede. Moreover, in the Soviet times, Abkhazia seemed to be "more closely interdependent with the Russian economic space than with the Georgian one—through the export of agricultural products, and through tourism, for instance" Therefore, one of the Abkhaz scenarios in the early 1990s was merger with the Russian Federation or an associated status with the CIS.

In the literature on secession, political circumstances leading to secession are usually analyzed. As I have shown in Chapter 2, they constitute just one

<sup>&</sup>lt;sup>389</sup> Ibidem, p. 58.

<sup>&</sup>lt;sup>390</sup> Coppieters, B. 2004. *The Georgian-Abkhaz Conflict...*, p. 195.

group of circumstances out of several that cause secession, and a pure analysis of political factors would be incomplete. They are often connected with the existence of a separatist socio-political movement. In the Abkhaz case, the socio-political movement, "the National Forum Aidgylara" (in English: Unity), representing the Abkhaz people, was established in 1988. It called for re-establishment of the constitutional status of Abkhazia prior to its legal incorporation into Georgia in 1931 and organized a mass meeting in Lykhny in 1989. However, Aidgylara was prevented from participation in the parliamentary election in October 1990 due to the law passed by the Supreme Soviet of Georgia, which debarred organizations confined to a specific area of the republic, such as Abkhazia<sup>391</sup>.

Interestingly, it follows from historical materials and interviews conducted by journalists in the early 1990s that the Abkhaz elites saw the federation with Georgia as the most feasible solution at that time. This, however, does not mean that they would exclude the idea of secession and creation of an independent Abkhaz state. Nevertheless, it needs to be pointed out that at that time and under those very circumstances, secession was perceived rather with skepticism among Abkhaz political elites<sup>392</sup>. S. Lakoba contended that in 1991, even Gamsakhurdia had begun to consider plans for confederation between Georgia and Abkhazia, which would be similar to that of Czechoslovakia<sup>393</sup>.

In 1989, Abkhazians constituted around 18 per cent of the entire population of Abkhazia and thus were a minority in the Abkhaz ASSR compared to Georgians with around 47 per cent. However, they were the indigenous people in the territory of Abkhazia as well as the "titular" group within the Autonomous Republic, which meant that their political rights were guaranteed by special quotas in the state bureaucracy. Those privileges, however, were threatened by majority democracy<sup>394</sup>. Thus, the aim of the Abkhazians was to upgrade the legal status of Abkhazia from an autonomous republic to a union republic. As B. Coppieters puts it, "[t]here was a consensus among

<sup>&</sup>lt;sup>391</sup> Cf. Janicki, K. 2012. *Źródła nienawiści...*, p. 178–180.

<sup>&</sup>lt;sup>392</sup> Cf. Górecki, W. 1996. *Abchaskie elity...*, pp. 14–24.

<sup>&</sup>lt;sup>393</sup> Лакоба, С. 2001. *Абхазия — де-факто или Грузия де-юре? (О политике России в Абхазии в постсоветский период.* 1991-2000 гг.). Sapporo: Slavic Research Center. ISBN 4-938637-23-5. P. 15.

<sup>&</sup>lt;sup>394</sup> Hanf, T. and Nodia, G. 2000. *Georgia Lurching to Democracy...*, op. cit.

the Georgian national movement that the political privileges accorded to the titular nation of Abkhazia during Soviet times were excessive, and did not correspond to the demographic balance"<sup>395</sup>.

In the case of Abkhazia, the political factors of secession are linked to the fear of being subordinated to the Georgian majority. If the autonomous status of Abkhazia had been abolished and the Abkhaz had lost their status of the "titular nation" in Abkhazia, it would have meant lesser representation of ethnic Abkhazians in the political structures of Abkhazia and, consequently, less control over their political fate and the use of resources. On the other hand, it may have seemed completely legitimate for ethnic Georgians, who constituted a majority in Abkhazia in the late 1980s, to demand an increase in their political representation.

On 25 August 1990, the Supreme Soviet of Abkhazia passed the "Declaration on State Sovereignty of Abkhazia", which stated that the "Abkhaz Soviet Socialist Republic is a sovereign socialist state, created on the basis of the exercise of the inalienable right of the Abkhaz people to self-determination and their right to freely determine their fate"<sup>396</sup>. The Declaration on State Sovereignty of Abkhazia was passed in the context of the legislation adopted by the Georgian Parliament, which declared "treaties concluded by the Supreme Soviet of the Georgian SSR, i.e. Treaty Concluded between the Georgian SSR and the Russian SFSR of 21 May 1922, Treaty on the Creation of the Trans-Caucasian SFSR of 12 March 1922, and Treaty on the Creation of the USSR of 30 December 1922, as void and illegal"<sup>397</sup>.

On 17 May 1991, a referendum on the future of the Soviet Union took place, in which citizens were asked whether they supported the preservation of the USSR as a federation of sovereign republics, in which individual as well as national rights and freedoms would be fully guaranteed. Despite the fact that Georgian authorities boycotted the referendum, it was still held in Abkhazia, where 52 per cent of the electorate voted in favor of joining the renewed Union.

On 26 May 1991, the first free presidential elections were held in Georgia. Zviad Gamsakhurdia, a former dissident, was elected to the office. Soon after

<sup>&</sup>lt;sup>395</sup> Coppieters, B. 2004. *The Georgian-Abkhaz Conflict...*, p. 196.

<sup>&</sup>lt;sup>396</sup> Захаров, В. А., Арешев, А. Г. 2008. *Признание независимости...*, р. 103.

<sup>&</sup>lt;sup>397</sup> Górecki, W. 1996. Abchaskie elity..., p. 15.

that he had to face secessionist claims in the breakaway regions. However, he failed to avoid ethnic confrontation based on ethnic grounds and even used issues of ethnicity in political discourse in order to gain leverage<sup>398</sup>. "Gamsakhurdia did not manage to emancipate from the Soviet colonial legacy demonstrated by his authoritarian attitude towards press, the parliament and the opposition. He justified repressions against internal and external enemies. The language he used against his opposition was dominated by words characterizing the USSR of the 1930s ('the enemy of the nation', 'the Kremlin spy', 'criminals'). With this respect Gamsakhurdia was a Soviet product—intolerant and much into conspiracy theories, which further fueled up fears of ethnic Georgians losing control in their own country"<sup>399</sup>.

In 1991, negotiations on the status of Abkhazia and on the reform of the Abkhaz legislative body were held. The Abkhaz part demanded a bi-chamber Parliament—the first chamber (Republican Council) based on the territorial division and the second chamber (National Council) on the ethnic division with a veto power for the Abkhazians. This proposal was rejected by President Gamsakhurdia, who pushed for a quota system in the Supreme Council of the Autonomous Soviet Socialist Republic of Abkhazia: 28 seats for ethnic Abkhazians, 26 seats for ethnic Georgians, and 11 seats for the remaining ethnic groups. In order to amend any legislation on the territorial status of Abkhazia, consent of the two thirds of the Supreme Council was necessary. This disproportional division of political power, giving the Abkhazians a major vote in the Parliament even though they constituted a minority, was seen as an injustice by ethnic Georgians. Although the above proposal was supported by both parties, it did not lead to any improvement in the relations between Sukhum(i) and Tbilisi<sup>400</sup>. Based on the adopted electoral law, elections were held in Abkhazia in October 1991. However, the situation after the elections resulted in a stalemate when two blocks were created and the Georgian deputies left the Parliament<sup>401</sup>.

<sup>&</sup>lt;sup>398</sup> Нодиа, Г. Конфликт в Абхазии: Национальные проекты и политические обстоятельства. [online] [last retrieved 27-11-2019]. Available at: http://poli.vub.ac.be/publi/Georgians/russian/pdf/o2\_Nodia.pdf. P. 20.)

<sup>&</sup>lt;sup>399</sup> Abramashvili, I. and Koiava, R. 2018. *25 years of Georgia's peace policy.* Tbilisi: Caucasian House. Pp. 57–58.

<sup>400</sup> Ibidem, pp. 58-59.

<sup>&</sup>lt;sup>401</sup> Accord. A question of..., op. cit.

As the nationalist and ethno-linguist sentiments grew towards the end of the 1980s, the discrepancies between the proportional representation in the Supreme Council of the Abkhaz ASSR started to cause more anxiety between the ethnic groups. In that situation, Abkhazians, who constituted less than 18 per cent of the population of Abkhazia, had the majority of deputies in the Parliament as well as the majority of ministers in the Government<sup>402</sup>, whilst ethnic Georgians had less seats in the Abkhaz Parliament despite the fact that they constituted more than 47 per cent of the population of the Abkhaz ASSR. Along with the democratization of decision-making processes, this would have necessarily led to disputes about the political representation of the respective ethnic groups in the future.

By the end of 1991, the USSR ceased to exist. According to the *uti possidetis* principle, the boundaries of the constitutive republics transformed into the boundaries of new states. In July 1992, the Supreme Soviet of Abkhazia restored the 1925 Constitution, according to which Abkhazia was a sovereign republic with treaty-based relations with Georgia. In the meantime, Georgian President Gamsakhurdia was deposed in a coup d'état, led by J. Joseliani, T. Kitovani and T. Sigua, and fled into exile. The triumvirate appointed E. Shevardnadze the speaker of the Georgian Parliament in March 1992<sup>403</sup>. Negotiations between Tbilisi and Sukhum(i) were interrupted by the fact that Georgian troops entered Abkhazia on 14 August 1992, on the very day when the Abkhaz Supreme Soviet was about to discuss the project on relations with Georgia, and by 18 August 1992 they captured Sukhum(i)<sup>404</sup>. This had started the Georgian-Abkhaz war, which lasted for almost fourteen months.

On 27 September 1993, Abkhaz forces managed to take over the building of the Supreme Soviet, the last stronghold of Georgian forces in Sukhum(i), and thereby liberated the capital. Three days later, on 30 September 1993, they managed to oust the Georgian troops out of Abkhazia behind the Ingur(i) River, which put an end to the armed conflict. After the war had ended, Abkhaz authorities put forward four models of resolving the status of Abkhazia<sup>405</sup>:

<sup>&</sup>lt;sup>402</sup> According to Ch. Zürcher, in 1990, almost two thirds of ministers in the Abkhaz Government were ethnic Abkhazians. (Zürcher, Ch. 2007. *The Post-Soviet Wars...*, p. 120).

<sup>&</sup>lt;sup>403</sup> Not until much later, by the end of 1993, did E. Shevardnadze manage to take over and strengthen his own position.

<sup>&</sup>lt;sup>404</sup> Захаров, В. А., Арешев, А. Г. 2008. *Признание независимости...*, pp. 73–74.

<sup>&</sup>lt;sup>405</sup> Górecki, W. 1996. Abchaskie elity..., p. 6.

- 1) Integration into the Russian Federation;
- 2) Integration into the Commonwealth of Independent States with a status of a full-fledged member;
- 3) Confederation with Georgia and South Ossetia;
- 4) Full independence.

According to historical materials, it seems that the scenario of an independent state was kept as the last-resort option, and both the integration into the Russian Federation and the confederation with Georgia were seen as the most feasible scenarios<sup>406</sup>. At the beginning of the 1990s, there was a tendency in Abkhaz historiography to create a myth of the role of Russia in protecting Abkhazia against foreign invaders<sup>407</sup>. Moreover, Russia was anxious not to see Abkhazia as an independent state in the 1990s, given that this would have meant a strict contradiction in the light of Russia's ethnic policies in the North Caucasus (e.g. combating separatism in Chechnya). On 26 November 1994, the Abkhazian Supreme Council (Parliament) approved a new constitution, which regarded Abkhazia as a sovereign state. The Constitution was formally approved by a referendum held on 3 October 1999.

It needs to be noted that demographic factors played a significant role in the secession of Abkhazia. Demographic changes in the population of Abkhazia started in the 19<sup>th</sup> century, after Abkhazia had been annexed by the Russian Empire. The period of the Russian rule was characterized by strict assimilation policies. This led to a decrease in the population of Abkhazia, which dropped down as a result of mass emigration to the Ottoman Empire in the 1860s and 1870s. Around that time, a premeditated process of internal colonization of the Abkhaz territory by ethnic Georgians had started<sup>408</sup>. Whilst in the 1880s the Abkhazians constituted a clear majority in their territory, the number of ethnic Georgians prevailed by 1929, when there were 55,918 Abkhazians and 67,494 Georgians in Abkhazia. The disproportionality had grown by 1959, when there were 61,193 (15.85 per cent) inhabitants belonging to ethnic Abkhazians and 158,221 (40.98 per cent) to ethnic Georgians.

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<sup>406</sup> Ibidem, pp. 20–24.
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<sup>&</sup>lt;sup>407</sup> Червонная, С. М. 1993. *Абхазия-1992...*, р. 35.

<sup>&</sup>lt;sup>408</sup> Gamakharia, J. et al. 2011. Essays from the History..., p. 489.

The period from the late 1930s until 1953 was marked by severe ethnic policies of the Georgian government towards the Abkhazians, pursuing the policy of ethnic alteration. This was supposed to be achieved by forcible assimilation of the Abkhaz population as well as by mass relocation of Georgian nationals to Abkhazia. Abkhazian historians claim that the policies of "Georgianization" were based on the works of some Georgian scholars who maintained that there was no Abkhaz nation as such and that the Abkhazians were one of the Kartvelian tribes<sup>409</sup>. Abkhazian historiography also points out that "[a]ll Abkhaz schools were closed, as were institutions preparing teachers of the Abkhaz language. [...] The Abkhaz script (originally based on the Cyrillic and then the Latin script) was altered, against the will of the Abkhaz people, to the one based on Georgian characters. [...] Abkhazians were forced to alter their surnames into Georgian ones, and in the Gal(i) district Abkhazians were given new passports in which their nationality was indicated as Georgian".

The above process of systematic relocation of an ethnic group is often referred to in literature as "internal colonization". "Under the Soviet rule, the Abkhazians had been displaced in several purges [...]. Tens of thousands of Georgians were relocated to Abkhazia with the aim of changing the ethnic structure of the region against the Abkhazians" This is often referred to by the Abkhazians as the "Georgianization of Abkhazia". Mostly ethnic Georgian peasant families were resettled in Abkhazia to cultivate the land. However, it should be noted that the resettlement process was forceful for ethnic Georgians too<sup>413</sup>. As a result, in the late 1980s, the Abkhazians, yet constituting a minority on the territory of Abkhazia, feared that the process of internal colonization would lead to a complete integration of Abkhazia into the framework of Georgia.

<sup>409</sup> State-Legal Relations Between Abkhazia and Georgia. [online] [last retrieved 01-04-2019].
Available at: https://unpo.org/content/view/715/236/

Loc. cit.; Анчабадзе, Ю. Д., Аргун, Ю. Г. 2007. Абхазы. Сухум: Абхазский институт гуманитарных исследований им. Д. И. Гуля. ISBN 978-5-02-035538-5. Рр. 91-94; Чирикба, В. Дискуссия о государственном языке в Абхазии в 20-х годах XX века в связи с современным положением абхазского языка In *Вестник Академии наук Абхазии*. № 9. Рр. 11-37. De Waal, T. 2019. *The Caucasus: An Introduction*. 2<sup>nd</sup> ed. New York: Oxford University Press. ISBN 978-0-1906-9309-2. Р. 153.

<sup>&</sup>lt;sup>411</sup> Boden, D. 2018. *Georgien. Ein Länderporträt*. Berlin: Christoph Links Verlag. ISBN 978-3-86153-994-0. P. 66.

<sup>&</sup>lt;sup>412</sup> Accord. A question of..., op. cit.

<sup>&</sup>lt;sup>413</sup> Анчабадзе, Ю. Д., Аргун, Ю. Г. 2007. *Абхазы*, pp. 91–92.

Table 13: Ethnic composition of Abkhazia

	Abkhazians	Georgians	Armenians	Russians	Greeks	Other
1886	59,000	4,000	1,300	1,000	2,000	1,500
	(85.8%)	(5.8%)	(1.9%)	(1.4%)	(3.0%)	(2.1%)
1897	58,700	25,700	6,500	6,000	5,400	3,900
	(55.3%)	(24.1%)	(6.1%)	(5.7%)	(5.1%)	(3.7%)
1926	55,900	67,500	30,000	20,500	27,100	11,000
	(26.4%)	(31.8%)	(14.2%)	(9.6%)	(12.8%)	(5.2%)
1939	56,200	92,000	49,700	60,200	34,600	19,200
	(18.0)	(29.5%)	(15.9%)	(19.2%)	(11.1%)	(6.2%)
1959	61,193	158,221	64,425	86,715	9,101	6,480
	(15.85%)	(40.98%)	(16.68%)	(22.46%)	(2.36%)	(1.68%)
1970	77,276	199,595	74,860	92,889	13,114	6,029
	(16.66%)	(43.04%)	(16.14%)	(20.03%)	(2.83%)	(1.30%)
1979	83,097	213,322	73,350	79,730	13,642	14,650
	(17.10%)	(43.89%)	(15.09%)	(16.40%)	(2.81%)	(3.01%)
1989	93,267	239,872	76,541	79,914	14,664	3,434
	(18.37%)	(47.25%)	(15.08%)	(15.74%)	(2.89%)	(0.68%)
2003	94,597	44,041	44,869	23,420	1,486	5,603
	(44.2%)	(20.6%)	(21.0%)	(10.9%)	(0.7%)	(2.6%)
2011	122,175	46,499	41,907	22,064	1,382	3,785
	(50.8%)	(19.3%)	(17.4%)	(9.2%)	(0.6%)	(1.57%)
2016	124,785	46,813	41,845	22,341	1,350	6,802
	(51.2%)	(19.2%)	(17.2%)	(9.2%)	(0.6%)	(2.8%)

(Author's own compilation based on Gamakharia, J. et al. 2011, Essays from the History..., p. 490; Ethnic composition of the population of Abkhazia (Abkhaz census 2003). [online] [last retrieved 12-02-2019]. Available at: http://smr.gov.ge/Uploads/2002\_\_6fc97faf.pdf; Haceление Абхазии. [online] [last retrieved 12-02-2019]. Available at: http://www.ethno-kavkaz.narod.ru/rnabkhazia.html; Официальная статистика — 2016 — Национальный состав населения. [online] [last retrieved 12-02-2019]. Available at: http://ugsra.org/ofitsialnaya-statistika.php?ELE-MENT\_ID=243; Шария, В. 1993. Абхазская трагедия. Сочи: Сочинское полиграфическое производственное предприятие департамента печати и массовой информации Краснодарского края.

At the beginning of the 1990s, the ethnic composition of Abkhazia changed again as a result of the Georgian-Abkhaz military conflict and the subsequent expulsion of ethnic Georgians from the territory of Abkhazia. It needs to be borne in mind that the following censuses relate only to the population that remained in Abkhazia, including those ethnic Georgians

(Mingrelians<sup>414</sup>) who returned to their homes in the Gal(i) and Tkuarchal (Tkvarcheli) regions. According to the 2003 census, there was a population of 214,000 in the territory of Abkhazia. Out of this figure, there were 96,000 Abkhazians, 44,800 Armenians, 23,500 Russians and 43,600 Georgians<sup>415</sup>. The most recent census dates from 2011 and was conducted by Abkhaz authorities alone. According to this census, there were 122,175 Abkhazians, making up 50.8 per cent of the population of Abkhazia, followed by 46,499 Georgians, making up 19.3 per cent of the inhabitants of Abkhazia. However, it is worth noting that the figures coming from the post-war period are often contested by either Georgia or Abkhazia and may vary depending on the source. Nevertheless, it seems rather peculiar that the number of ethnic Abkhazians has grown by 30 per cent since the last Soviet census in 1989 against the odds, especially taking into consideration the civil war in the 1990s. Therefore, it is often doubted by Georgian political scientists, who assume that the figures might have been intentionally altered.

With regard to ethnic policies in Abkhazia, more detailed figures concerning the development of ethnic composition of the Abkhaz Communist Party show the same tendency of "Georgianization". Whilst ethnic Georgians made up around 25 per cent of all the Party members in Abkhazia in the 1930s, they already became a majority in the 1950s, making up more than 50 per cent of the Party members, and remained in this position with relatively stable figures until the late 1980s. On the other hand, the proportion of ethnic Abkhazian members of the Party declined from 26 per cent in 1925 to 13.3 per cent in the 1950s and remained less than 20 per cent until the 1980s. It follows from the table below that the ethnic policies of the so-called internal colonization, implemented in the Soviet times, clearly crystallized in the ethnic composition of the Abkhaz Communist Party.

<sup>&</sup>lt;sup>414</sup> Mingrelians are an ethnic group living in western Georgia and eastern Abkhazia. They "consider themselves Georgians and since Mingrelian is not a literary language, they read and write in Georgian". (Kaufman, S. J. 2001. *Modern Hatreds...*, pp. 86–87)

<sup>&</sup>lt;sup>415</sup> Abkhazia: Deepening Dependence. Europe Report no. 202—26 February 2010. International Crisis Group. [online] [last retrieved 10-02-2019]. Available at: https://www.crisisgroup.org/europe-central-asia/caucasus/georgia/abkhazia-deepening-dependence. P. 8. Gamakharia, J. et al. 2011. Essays from the History of Georgia..., p. 490.

Table 14: Ethnic composition of the Abkhaz Communist Party

Year	Abkhaz	Georgians	Russians	Armenians
1925	266	349	260	70
	(26.0%)	(34.0%)	(25.4%)	(6.8%)
1931	286	391	568	141
	(18.5%)	(25.3%)	(36.8%)	(9.1%)
1935	471	670	943	305
	(17.6%)	(25.0%)	(35.2%)	(11.4%)
1940	1,009	2,580	1,007	917
	(16.7%)	(42.7%)	(16.7%)	(15.2%)
1945	1,064	3,252	1,280	911
	(14.8%)	(45.2%)	(17.8%)	(12.7%)
1950	1,857	7,145	2,176	1,963
	(13.3%)	(51.0%)	(15.5%)	(14.0%)
1955	1,987	8,184	2,041	1,934
	(13.3%)	(54.8%)	(13.7%)	(12.9%)
1960	2,678	9,564	2,916	2,323
	(14.4%)	(51.3%)	(15.6%)	(12.4%)
1965	3,390	11,030	3,303	2,707
	(15.5%)	(50.5%)	(15.1%)	(12.4%)
1970	4,106	12,359	3,356	2,910
	(16.8%)	(50.5%)	(14.4%)	(11.9%)
1975	4,587	13,089	3,781	2,931
	(17.6%)	(50.3%)	(14.5%)	(11.3%)
1980	5,312	14,681	3,959	2,959
	(18.5%)	(51.2%)	(13.8%)	(10.3%)

(Source: Абхазская областная организация компартии Грузии в цифрах (1921—1980 г.). Сборник статистических материалов. 1980. Сухуми: Издательство Алашара. Рр. 9—293)

The expulsion of the Georgian ethnic minority from the territory of Abkhazia, which occurred after the armed conflict in the early 1990s, also led to significant changes in the ethnic composition of Abkhazia. It follows from the above figures that the number of Georgians living in the territory of Abkhazia decreased by about 80 per cent in total compared to the situation in the late 1980s before the outbreak of the conflict. Not only did the proportion of ethnic Georgians decrease, but the same happened also with regard to some other ethnicities who fled Abkhazia, especially Armenians, Russians, and Greeks.

When talking about the ethnic composition of Abkhazia, the overall situation of Abkhazians within Georgia is worth noting. As a result of demographic changes, the percentage of Abkhazians has been gradually decreasing since the end of the 19<sup>th</sup> century. In the late 1970s, they constituted only a small ethnic minority making up less than 2 per cent of the whole population of Georgia.

Table 15: Ethnic composition of Georgia

	Year					
Nationality	1897416	1926417	1939418	1959419	1979420	1989421
Georgians	68.3%	1,788,186 (66.8%)	2,173,922 (61.4%)	2,600,588 (64.3%)	3,433,011 (68.6%)	3,787,393 (70.1%)
Armenians	9.2%	307,018 (11.5%)	415,013 (11.7%)	442,916 (11.0%)	448,000 (9.0%)	437,211 (8.1%)
Russians	5.3%	96,085 (3.6%)	308,684 (8.7%)	407,886 (10.1%)	371,608 (7.4%)	341,172 (6.3%)
Azeris	5.7%	139,200 (5.2%)	188,058 (5.3%)	153,600 (3.8%)	255,678 (5.1%)	307,566 (5.7%)
Ossetians	3.7%	113,298 (4.2%)	147,677 (4.2%)	141,178 (3.5%)	160,497 (3.2%)	164,055 (3.0%)
Abkhazians	3.1%	56,847 (2.1%)	57,805 (1.6%)	62,878 (1.5%)	85,285 (1.7%)	95,853 (1.8%)
Others	4.7%	174,000 (6.5%)	248,864 (7.1%)	234,999 (5.8%)	239,103 (5.0%)	267,591 (5.0%)

<sup>&</sup>lt;sup>416</sup> Baranowski, B. and Baranowski, K. 1987. Historia Gruzji. Wrocław: Zakład Narodowy im. Ossolińskich. P. 218.

<sup>417</sup> Всесоюзная перепись населения 1926 года. Национальный состав населения по регионам республик СССР. Грузинская ССР. [online] [last retrieved 16-02-2019]. Available at: http://www.demoscope.ru/weekly/ssp/sng\_nac\_26.php?req=2330.

<sup>418</sup> Всесоюзная перепись населения 1939 года. Национальный состав населения по регионам республик СССР. Грузинская ССР. [online] [last retrieved 16-02-2019]. Available at: http://www.demoscope.ru/weekly/ssp/sng\_nac\_39.php?req=4.

<sup>419</sup> Всесоюзная перепись населения 1959 года. Национальный состав населения по регионам республик СССР. Грузинская ССР. [online] [last retrieved 16-02-2019]. Available at: http://www.demoscope.ru/weekly/ssp/sng\_nac\_59.php?req=8.

<sup>420</sup> Всесоюзная перепись населения 1979 года. Национальный состав населения по регионам республик СССР. Грузинская ССР. [online] [last retrieved 16-02-2019]. Available at: http://www.demoscope.ru/weekly/ssp/sng\_nac\_79.php?req=6.

<sup>&</sup>lt;sup>421</sup> Всесоюзная перепись населения 1989 года. Национальный состав населения по регионам республик СССР. Грузинская ССР. [online] [last retrieved 16-02-2019]. Available at: http://www.demoscope.ru/weekly/ssp/sng\_nac\_89.php?reg=6.

Figure 1: Ethnic composition of Abkhazia in 1989

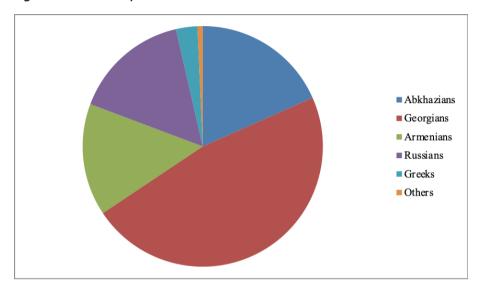
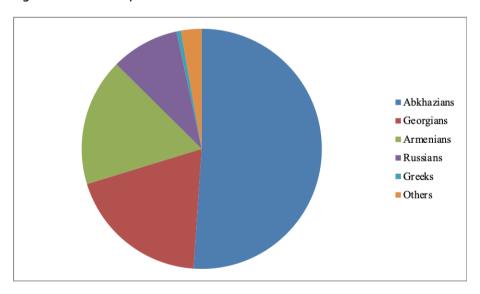


Figure 2: Ethnic composition of Abkhazia in 2016



Abkhazians also recall the right to self-determination of peoples as the normative basis for their quest for independence, given that they form a "people" in this respect. In the light of the so-called remedial secession, the Abkhaz side often points out the fact that they were victims of ethnic policies, political oppression and, last but not least, of a nationalistic war. The UNPO<sup>422</sup> Coordinated Human Rights Mission stated that "[t]here is convincing evidence that the troops under Georgian command committed gross violations of human rights and humanitarian law when they first entered Abkhazia in August 1992 and during the 14 months that followed"423. The siege of the city of Tkuarchal<sup>424</sup> (Tkvarcheli) and the shooting down of a Russian helicopter transporting displaced persons from the besieged city on 14 December 1992, which resulted in some 60 casualties<sup>425</sup>, mostly women and children, are often taken as examples of atrocities directed against ethnic Abkhazians. "Abkhaz residents of villages to the south found themselves in the middle of confused criss-crossing front lines. Some also fled north, while others sought safety to the east in Tkvarcheli. But as the war progressed, Georgians effected a blockade against that mountainous city, and local residents as well as the newly displaced sought in turn to flee from Tkvarcheli"426. The Georgian-Abkhaz war is perceived by Abkhazians as an attempt at ethnic cleansing. One of the Abkhaz experts stated in an interview that "they [Georgians—P.S.] were never condemned for that war. They never took responsibility for that war. Yes, a lot of people lost their lives, a lot of people lost their homes, but they

- <sup>422</sup> The Unrepresented Nations and Peoples Organization.
- <sup>423</sup> Report of a UNPO Coordinated Human Rights Mission to Abkhazia and Georgia. [online] [last retrieved 20-04-2019]. Available at: http://www.unpo.org/downloads/Abkhazia\_Georgia\_report\_1992.pdf. P. 12.
- <sup>424</sup> Tkuarchal (in Georgian: Tkvarcheli) is a town in the south-east of Abkhazia, which was under Georgian siege for 413 days during the Georgian-Abkhaz war. The population of the city dropped from approximately 21,700 in 1989 to 5,100 in 2018. It remains to a large extent abandoned today. (Cf. Черкезия, Л. 2003. *Ткуарчал: 413 дней блокады*. Сухум: Алашарбага)
- <sup>425</sup> The number of casualties of the incident varies depending on the source from 60 to 84. Its cause remains a matter of controversy. (*Report of the Secretary-General on the Situation in Abkhazia, Republic of Georgia. S/25188. 28 January 1993*. [online] [last retrieved 02-09-2019] Available at: https://digitallibrary.un.org/record/159149)
- <sup>426</sup> Dale, C. 1997. The Dynamics and Challenges of Ethnic Cleansing: The Georgia-Abkhazia Case. [online] [last retrieved 02-09-2019]. Available at: https://www.refworld.org/docid/3ae6a6c54.html

act like victims. Georgia is not a victim, but a perpetrator"<sup>427</sup>. In this respect, the Abkhazians claim they had the right to remedial secession from Georgia in order to avert extinction and protect the control over the use of resources.

Table 16: An overview of the factors and circumstances of the secession of Abkhazia

Factors and causes	Factors and causes Abkhazia		Russian Federation	
Cultural/Perceptual	• Fear of subordination by ethnic Georgians • Fear of cultural assimilation (language issues) • Historical grievance ("Georgianization")		Perceptions     of shared history     (Russian Empire,     USSR)	
Economic	<ul> <li>"Backward group" in a "backward region" —early secession</li> <li>Bonds with the Russian economic space</li> </ul>	Economic crisis in Georgia     Attempts to control the railway line through Abkhazia	• Economic crisis in the USSR in the late 1980s and early 1990s	
Political	<ul> <li>Disproportionality in political representation on the central level</li> <li>Existence of a separatist political movement</li> <li>Attempt to upgrade the legal status</li> <li>Fear of political subordination on ethnic grounds (quotas in the Supreme Soviet)</li> </ul>	Fear of secession of Abkhazia     Attempts to preserve territorial integrity	Erosion of regional stability in the North Caucasus     Tool of political influence on Georgia	
Demographic	Emigration of ethnic Abkhazians     Internal colonization by ethnic Georgians—Abkhazians became a minority in their territory	Ethnic Georgians as a majority in Abkhazia	Regional destabilization	
Normative  • The right to self-determination • The right to remedial secession • Secession within an internal armed conflict		The principle of territorial integrity	Acting as a regional peacekeeping power	

(Author's own compilation)

<sup>427</sup> Interview 17. Sukhum(i), 20 May 2019.

## 3.3 Attempts to resolve the conflict

In August 1993, the United Nations Observer Mission in Georgia (UNOMIG) was established by the UN Security Council Resolution 858 (1993). It outlined the mandate of the Mission as follows<sup>428</sup>:

- To verify compliance with the Cease-fire Agreement of 27 July 1993 with special attention to the situation in the city of Sukhum(i);
- To investigate reports of cease-fire violations and to attempt to resolve such incidents with the parties involved;
- To report to the Secretary-General on the implementation of its mandate including, in particular, violations of the Cease-fire Agreement.

UNOMIG was established for a period of six months, but the mandate was to be extended upon review by the Security Council, given that no substantive progress had been made towards implementing measures aimed at establishing a lasting peace.

After the end of direct hostilities in the Georgian-Abkhaz conflict, a dialogue process started. The Russian Federation acted as a facilitator in the attempt to preserve the territorial integrity of Georgia. This led to the adoption of the *Declaration on measures for political settlement of the Georgian-Abkhaz conflict*, signed in Moscow on 4 April 1994. Pursuant to the Agreement, Abkhazia was to have its own constitution, legislation, and appropriate state symbols (anthem, emblem, and flag). The parties reached a compromise regarding joint actions in the fields of foreign policy and foreign economic ties, border guard arrangements, customs, energy, transport and communications, ecology and elimination of consequences of natural disasters as well as human and civil rights and freedoms and the rights of national minorities. It also needs to be mentioned that the parties signed a quadripartite agreement providing for the return and repatriation of refugees and displaced persons in accordance with the existing international practice<sup>429</sup>. Nevertheless, this

<sup>&</sup>lt;sup>428</sup> UN SC Resolution 853 (1993). [online] [last retrieved 05-03-2019]. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N93/466/03/IMG/N9346603.pdf?OpenElement

<sup>429</sup> Declaration on measures for political settlement of the Georgian/Abkhaz conflict signed on 4 April 1994. [online] [last retrieved 18-10-2019]. Available at: https://peacemaker. un.org/sites/peacemaker.un.org/files/GE\_940404\_DeclarationOnMeasuresForPolitical-SettlementGeogianAbkhazConflict.pdf

agreement turned out to be problematic for both parties of the conflict—the Abkhaz side was delaying the process of repatriation<sup>430</sup>, while the Georgian side did not implement the provisions of the agreement concerning the distribution of powers<sup>431</sup>.

In 1998, a new peace process with confidence-building measures, based on common meetings, started under the auspices of the United Nations. The first meeting between the Abkhazian and Georgian sides was held in Athens in October 1998. It was followed by a meeting in Istanbul in June 1999. The discussions were mainly focused on the implementation of commitments and on the return of refugees and IDPs<sup>432</sup>. It did not, however, bring any concrete results.

In the same year, a new proposal on Georgian-Abkhaz relations by Ivlian Khaindrava appeared, according to which Abkhazia was supposed to be divided based on ethnic structure. The division line was to go to the north from Sukhum(i) up to the confluence of the rivers Eastern Gumista and Western Gumista, further it was to follow the Eastern Gumista River up to the Bzyp River and then along the Bzyp River to the administrative borders of the Gulripsh region. The territories on the eastern side of the division line were supposed to be Georgian and the territories on the western side were meant to be Abkhaz. Similarly, the city of Sukhum(i) was to be divided into two equal parts. According to the plan, the western territories were supposed to be granted the status of the Republic of Abkhazia within Georgia, whilst the eastern territories, including the Georgian part of Sukhum(i), were supposed to be transformed into the Abkhaz region as an integral part of Georgia<sup>433</sup>.

<sup>&</sup>lt;sup>430</sup> UNSC Resolution 1036. [online] [last retrieved 18-10-2019]. Available at: http://unscr.com/en/resolutions/doc/1036

<sup>&</sup>lt;sup>431</sup> Сf. Лакоба, С. 2000. Грузино-абхазские отношения в контексте российской политики на Кавказе. In *Аспекты грузино-абхазского конфликта*. Но 4. Материалы грузино-абхазской конференции: гражданское общество, беженцы, государственное устройство. Irvine: University of California.

<sup>&</sup>lt;sup>432</sup> Cf. Istanbul Statement of the Georgian and Abkhaz Sides on Confidence-Building Measures. [online] [last retrieved o8-o4-2019]. Available at: https://reparations.qub.ac.uk/assets/uploads/1999-Istanbul-Statement-of-the-Georgian-and-Abkhaz-Sides-on-Confidence-Building-Measures.pdf

<sup>433</sup> Сf. Хаиндрава, И. 1999. Конфликт в Абхазии и возможный путь его урегулирования. In *Практика федерализма. Поиски альтернатив для Грузии и Абхазии*. Москва: Весь Мир. ISBN 5-7777-0064-0. Pp. 356–359.

Even though the purpose of this proposal was to erase possible future tensions between Abkhazians and Georgians based on the ethnic division of Abkhazia, I remain skeptical about the effectiveness and durability of such project. Firstly, it was likely to aggravate the dissatisfaction of ethnic Georgians who had previously lived in the western territories and vice versa. Secondly, such ethnic division could have transformed into an actual division of Abkhazia between Russia and Georgia.

Map 3: Division of Abkhazia according to I. Khaindrava's plan



(Source: Хаиндрава, И. 1999. Конфликт в Абхазии и возможный путь его урегулирования. In *Практика федерализма. Поиски альтернатив для Грузии и Абхазии*. Москва: Весь Мир. ISBN 5-7777-0064-0. P. 358)

In 1999, a meeting between the Abkhazian and Georgian sides, chaired by UN Special Representative Dieter Boden, was held in Yalta, Ukraine. At the end of the meeting, *Programme of Action on Confidence-building between the Georgian and Abkhaz Sides* was approved. Apart from the commitment to implement previous agreements, the parties agreed to establish a mechanism

for reporting on their progress<sup>434</sup>. Additionally, they approved an annex to the Programme, which included a list of specific measures aimed at confidence-building between the parties.

In 2001, the document titled *The Principles of Distribution of Competences between Tbilisi and Sukhumi*, prepared by D. Boden, was introduced. The title of the document itself indicated avoidance of the terms "Georgia" and "Abkhazia", replacing them with the names of the capitals instead. The basic principles of the document were as follows<sup>435</sup>:

- Georgia is a sovereign state and its borders as approved on 21 December 1991 may not be subject to alteration unless it complies with the Constitution of Georgia;
- Abkhazia is a sovereign entity established within the Georgian state
  with a special status within the state, which is based on the Federal
  Agreement and determines common competences, thereby constituting
  the guarantees of rights and interests of the multinational population
  of Abkhazia;
- The distribution of competences between Tbilisi and Sukhum(i) is based on the Federal Agreement (constitutional law); Abkhazia and Georgia shall observe the provisions of the Federal Agreement. The Federal Agreement shall not be subject to any changes or amendments without mutual consent of both sides;
- The distribution of competences shall be determined, among others, on the basis of Declaration of measures on a political settlement of the Georgian-Abkhaz conflict of 4 April 1994. The rights and competences of Abkhazia will be recognized within a broader scope than they were in 1992;
- The Constitution of Georgia shall be changed in accordance with the distribution of competences determined in the Federal Agreement; to this end it will be possible to use the Declaration of measures on the

<sup>434</sup> Yalta Declaration of the Georgian and Abkhaz Sides. [online] [last retrieved o8-04-2019]. Available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/GE\_010316\_Yalta-DeclarationGeorgianAbkhazSides.pdf.

The Principles for Division of Competences between Tbilisi and Sukhumi. [online] [last retrieved o8-03-2019]. Available at: http://www.iccn.ge/files/boden\_\_document\_2002.pdf.

- political settlement of the Georgian-Abkhaz conflict of 4 April 1994, namely paragraph 7 concerning the "right to joint measures";
- The Constitution of Abkhazia, on the basis of which it is possible to lay the Constitution of Abkhazia of 26 November 1994, shall be changed in accordance with the agreement on the distribution of competences between Tbilisi and Sukhum(i) as determined in the Federal Agreement;
- Both the Constitution of Georgia and the Constitution of Abkhazia should consist of similar provisions with regard to the protection of everyone's fundamental rights and freedoms, eliminating the discrimination of national minorities. Both in the Constitution of Georgia and in the Constitution of Abkhazia, nothing shall violate the indisputable rights to safe return to their homes for all displaced people in conformity with international law;
- The Georgian state and Abkhazia should agree on the composition and activity of the Constitutional Court, which shall be guided by the Constitution of Georgia, the Constitution of Abkhazia, and the Federal Agreement on "Basic Principles of Division of Competences between Tbilisi and Sukhum(i)".

Even though the document attempted to appease both Georgia and Abkhazia, none of the parties was enthusiastic enough to implement the so-called Boden-document for a number of reasons. First of all, the framing of the position of Abkhazia as a "sovereign entity" was hardly acceptable to Georgia since it feared that granting "sovereignty" to Abkhazia would imply its statehood and independence. Secondly, as D. Boden noted himself, too much time had been wasted because "the Georgian political leadership avoided speaking out positively on the document for some time, adopting a position of 'wait and see' instead" Furthermore, the Russian Federation refused to put any pressure on the Abkhaz side and requested that "nothing should be imposed on the conflict sides" In the meantime, the Abkhazians, encouraged by Russia, stepped out of any commitment. At the UN Security Council's meeting in January 2006, Russia declared that the Boden-document

<sup>&</sup>lt;sup>436</sup> Boden, D. 2011. *10 years after the peace plan*. [online] [last retrieved 10-03-2019]. Available at: https://dfwatch.net/10-years-after-the-peace-plan-95247-894

<sup>437</sup> Loc. cit.

could no longer be considered a basis for negotiations on the future status of Abkhazia<sup>438</sup>.

In 2006, the Abkhaz side presented a draft for the peaceful settlement of the conflict, known as "Key to the Future". The document suggested that Georgia should acknowledge and apologize for its past mistakes, especially the internal colonization of Abkhazia by ethnic Georgians during Stalin's regime and the launch of the war in 1992, which remains an essential prerequisite from the Abkhaz side: "The political acts that were carried out by Georgia in the Communist period were of discriminatory nature, artificially underestimated the ethnic Abkhaz population, changed Abkhaz [geographical names—P.S.] and transformed Abkhaz statehood "439. Besides, the document called for renouncement of the blockade, including political and economic pressure on Abkhazia, which "deprives the Abkhaz people of a substantial part of their income"440 by preventing Abkhazia from establishing contacts with the outside world and from economic development. The document also suggested "practical steps to strengthen trust building measures", which were supposed to be reached mainly through demilitarization. The new phase in the peaceful process was to be demonstrated by high-level meetings of Georgian and Abkhaz representatives. The return of refugees, not limited only to the Gal(i) region, was supposed to be preceded by an assessment of its scope with the support of international organizations. With regard to the question of the future status of Abkhazia, Georgia was expected to initiate the recognition of Abkhazia's independence. After the recognition, mutual cooperation in the fields of economy, energy sector and security, as well as science and culture, could become the "key to the future" of friendly relations between the two independent countries. Finally, it stressed the fact that Abkhazia is a party to the conflict as well as the need for the presence of an Abkhaz representative at the sessions of the UN Security Council. It perhaps does not come as

<sup>&</sup>lt;sup>438</sup> Moscow kills Boden Paper, threatens to terminate UNOMIG in Georgia. [online] [last retrieved 10-03-2019]. Available at: https://jamestown.org/program/moscow-kills-boden-paper-threatens-to-terminate-unomig-in-georgia/

<sup>&</sup>lt;sup>439</sup> The proposal of the Abkhaz side on a comprehensive settlement of the Georgian-Abkhaz conflict. "Key to the Future". [online] [last retrieved 16-10-2019]. Available at: http://www.kapba.de/KeyToTheFuture.html

<sup>440</sup> Loc. cit.

a surprise that the Georgian side was not in favor of the aforementioned proposal, mostly because it still advocated its territorial integrity and was not ready to commit to perceiving Abkhazia as an independent state.

The relations between Sukhum(i) and Tbilisi deteriorated as the Georgian side launched a military operation in the Kodor(i) Valley in July 2006 in order to "reestablish order in the upper part of the valley"441. Georgian military groups had been stationed in the Kodor(i) Valley since 2001 in violation of the 1994 Moscow Agreement and had been a matter of dispute between the Abkhaz and Georgian sides. "A major stumbling block has been the continued presence of Georgian troops in the Kodori Valley in violation of the 1994 Moscow Agreement. [...] The Abkhaz side has stated that it is not willing to discuss any subject with the Georgian side as long as these forces have not been withdrawn"442. Moreover, in July 2006, Georgia relocated the Government of the Abkhaz Autonomous Republic to the Kodor(i) Valley (the so-called government in exile). Tbilisi continued arguing that the installment of the Government of the Abkhaz Autonomous Republic in the Kodor(i) Valley did not violate the Moscow Agreement and was aimed at forestalling the recognition of Abkhazia<sup>443</sup>. Consequently, the relations between Tbilisi and Sukhum(i) deteriorated and so did the relations between Tbilisi and Moscow as the Abkhaz Parliament suspended negotiations with the Georgian side until the withdrawal of Georgian forces from the Kodor(i) Valley, while Russia announced that it was no longer bound by the 1996 Decision of the CIS Council of Heads of States on measures to settle the conflict in Abkhazia, in which it imposed sanctions on Abkhazia and proposed that other countries do the same444.

In March 2008, President Saakashvili announced Georgia's proposal for the resolution of the conflict, which included: "unlimited autonomy and wide

<sup>&</sup>lt;sup>441</sup> Lewicki, Z. 2012. Konflikt gruzińsko-abchaski w świetle działań pokojowych ONZ (1992-2009). Warszawa: Wydawnictwo AON. ISBN 978-83-7523-206-6. P. 105.

<sup>&</sup>lt;sup>442</sup> Report of the Secretary-General concerning the situation in Abkhazia, Georgia. S/2002/88. [online] [last retrieved 20-04-2019]. Available at: https://undocs.org/S/2002/88

<sup>&</sup>lt;sup>443</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia. S/2007/15. [online] [last retrieved 21-04-2019]. Available at: https://undocs.org/S/2007/15

<sup>444</sup> Report of the Secretary-General on the situation in Abkhazia, Georgia. S/2008/219. [online] [last retrieved 21-04-2019]. Available at: https://www.securitycouncilreport.org/atf/cf/%7B-65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Georgia%20S2008%20219.pdf

federalism, supported by international guarantees; broad Abkhaz political representation in the official structures of Georgia, including a new post of Vice-President to be occupied by an Abkhaz; the right to veto legislation and decisions related to the constitutional status of Abkhazia, Georgia and to issues related to Abkhaz culture, language and ethnicity; the establishment of jointly controlled free economic zones in the Gal(i) and Ochamchira districts; and the gradual merger of law enforcement and customs services<sup>2445</sup>. However, the Abkhaz side rejected this proposal, stating that it was not acceptable and that the only option it was prepared to consider was building good neighborly relations with Georgia on an equal basis.

In July 2008, German Minister of Foreign Affairs, Frank-Walter Steinmeier, presented a plan for reconciliation between Abkhazia and Georgia, which consisted of three phases. The first phase envisaged a year of trust-building measures including the return of approximately 250,000 IDPs to Abkhazia. The second phase envisaged reconstruction work, and the last phase included a political solution of the conflict, i.e. either reintegration of Abkhazia into Georgia or granting independence to Abkhazia<sup>446</sup>. Despite the fact that the plan initially met with the approval from both Russia and the U.S., it was later disrupted by the outbreak of a military conflict between Georgia and Russia in August 2008.

Following the outbreak of hostilities in South Ossetia and shelling of Tskhinval(i) by Georgian artillery, Abkhazians joined the fighting on 8 August and bombed the Kodor(i) Valley, which had been under Georgian control. The Abkhaz side feared that it could become a likely target after South Ossetia and claimed to have found a number of heavy artillery pieces as well as facilities suitable for thousands of military personnel in the Kodor(i) Valley<sup>447</sup>. By 12 August, the Abkhazian forces, backed by Russian military, established control over the upper Kodor(i) Valley, which resulted in the

<sup>445</sup> Loc. cit.

<sup>&</sup>lt;sup>446</sup> Germany Proposes Peace Plan for Abkhazia. [online] [last retrieved 22-04-2019]. Available at: https://www.spiegel.de/international/europe/calming-the-caucasus-germany-proposes-peace-plan-for-abkhazia-a-564246.html

<sup>&</sup>lt;sup>447</sup> Report of the Secretary-General on the Situation in Abkhazia, Georgia. S/2008/631. [online] [last retrieved 26-04-2019]. Available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Georgia%20S2008%20631.pdf. Pp. 3–12.

displacement of approximately 3,000 ethnic Georgians<sup>448</sup>. The 2008 military conflict has severely disrupted the peace process and escalated mutual distrust. Recognition of Abkhazia by the Russian Federation and the subsequent adoption of the Law on Occupied Territories by Georgia have caused a clear shift of Abkhaz interests towards Russia and, consequently, a lack of political will on the Abkhaz side to demand anything less than recognition and "good neighborly relations".

In October 2008, a new peace platform, the Geneva International Discussions, was launched in order to address the consequences of the 2008 armed conflict. They are co-chaired by the OSCE, the EU, and the UN. This format brings together participants from Georgia, Abkhazia, South Ossetia, Russia and the United States. However, all participants have an individual status.

In 2010, the Government of Georgia approved the *State Strategy* on *Occupied Territories*. *Engagement through Cooperation* (hereinafter referred to as "Strategy"), in which it outlined the vision of cooperation with the *de facto* regimes, mostly relying on a soft-law approach, such as the development of a welfare system and its benefits for the inhabitants of Abkhazia and South Ossetia. The aim of the Strategy is to "achieve the full de-occupation of Abkhazia and the Tskhinvali region/South Ossetia, reverse the process of annexation of these territories by the Russian Federation as well as peacefully reintegrate these territories and their populations into Georgia's constitutional ambit"<sup>449</sup>. The following principles of the Strategy can be identified:

- 1. Respect for the territorial integrity of Georgia and the inviolability of its borders;
- 2. The future political status of Abkhazia and South Ossetia can be determined only within the state boundaries of Georgia;
- 3. The necessity of safe and voluntary return of internally displaced persons;

<sup>&</sup>lt;sup>448</sup> Russia vs Georgia: The Fallout. Europe Report no. 195—22 August 2008. [online] [last retrieved 26-04-2019]. Available at: https://d2071andvipowj.cloudfront.net/195-russia-vs-georgia-the-fallout.pdf P. 3.

<sup>449</sup> State Strategy on Occupied Territories. Engagement through Cooperation. 2010. [online] [last retrieved 06-03-2019]. Available at: http://gov.ge/files/225\_31228\_851158\_15.07.20 -StateStrategyonOccupiedTerritories-EngagementThroughCooperation(Final).pdf

- 4. The need for interaction with the population of Abkhazia and South Ossetia, based on people-to-people contacts;
- 5. The obligation to respect human rights of the populations in compliance with international law standards.

In my view, it is worth paying attention to the issue of language of the above document. The name of the Strategy refers to the territories of Abkhazia and South Ossetia as *occupied territories*, which are under the occupation of the Russian Federation. However, a different perception is present on the other side of the administrative border line, where the population does not perceive itself as being occupied and where Russian military forces are considered as "peacekeepers". Even though the term "occupied territories" is perfectly correct under international law, for the sake of reconciliation, it might be worth reconsidering its use and perhaps replacing it with the terms "*de facto* regimes" or "territories under *de facto* control of the Russian Federation". The Strategy also states explicitly that it has been developed "with the conviction that the remaining residents of Abkhazia and the Tskhinvali region/South Ossetia are an integral part of Georgia's society and future" and the sake of the

A. Cooley and L. A. Mitchell noted that "these territories [Abkhazia and South Ossetia—P.S.] almost certainly are lost to Georgia for the short and medium terms—possibly for a period of decades—and Russian influence has substantially increased in the regions" In my view, one could not agree more with this statement. Taking into consideration the whole geopolitical context of *de facto* regimes, it is hard to imagine that the Russian Federation would give up its influence over them.

Furthermore, A. Cooley and L. A. Mitchell propose the position that the West should adopt towards Abkhazia, which is often referred to as "engagement without recognition". This policy means that "Abkhazia would be given the opportunity to engage with the West on a number of political, economic, social, and cultural issues with the purpose of lessening Russia's influence. While undertaking this strategy, the West must make it clear that Abkhazia's status as an independent state will never be accepted [...]. By

<sup>450</sup> Loc. cit.

<sup>&</sup>lt;sup>451</sup> Cooley, A. and Mitchell, L. A. 2010. Engagement without Recognition: A New Strategy toward Abkhazia and Eurasia's Unrecognized States. In *The Washington Quarterly*, vol. 33, no. 4. P. 60.

separating the international legal dimensions of sovereignty (the question of non-recognition) from its governance aspects, the West can attempt to gain some needed strategic leverage over Abkhazia, which it currently lacks<sup>2452</sup>.

The problem of solving the frozen conflict is also connected with the issue of perception of the problem. In his book, D. Boden points out that Georgia is trying to make the impression that Russian soldiers are preventing Abkhazia and South Ossetia from their desire to join Georgia, which is a pure illusion. The wounds of the war have not yet healed, and the majority of the Abkhazian population simply does not wish to be part of Georgia<sup>453</sup>. The process of reconciliation does not seem easy and might take decades. There is, however, a growing risk that after some time contacts and personal ties between Georgians and Abkhazians might get weaker, and there will be even less that would connect Abkhazia with the rest of Georgia. Thus, in my opinion, it is inevitable to support projects based on interactions between people, the exchange of youth between Tbilisi and Sukhum(i) as well as common projects in the fields of education and culture.

As regards international organizations aiming to stabilize the situation, it is worth mentioning the European Union, which is undoubtedly one of the most important international actors contributing to international peace and stability in the South Caucasus region in several ways. First and foremost, the European Union established the European Union Monitoring Mission (hereinafter referred to as "EUMM") on 15 September 2008 with the following goals<sup>454</sup>:

- 1. Stabilization: This point includes monitoring of and reporting on the fulfillment of normative requirements by the conflict parties, such as compliance with international humanitarian law as well as with the so-called Six Point Agreement, withdrawal of armed forces, and freedom of movement.
- 2. Normalization: This group of tasks embraces monitoring of and reporting on the rule of law and public order as well as on infrastructure, security, and return of IDPs.

<sup>452</sup> Loc. cit.

<sup>453</sup> Boden, D. 2018. Georgien. Ein Länderporträt. Pp. 79–82.

<sup>454</sup> Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia. [online] [last retrieved 10-04-2019]. Available at: https:// eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:248:0026:0031:EN:PDF

3. Confidence building: The goals of the EUMM are to liaison and facilitate contacts between the conflict parties.

The main tool that has already been established is the so-called hotline, which allows the EUMM to directly contact the conflict parties. Nevertheless, it is important to point out that the *de facto* authorities in Abkhazia and South Ossetia have denied the EUMM access to these territories. The Abkhaz *de facto* authorities have been blaming the EUMM for being biased and attacking the Abkhaz side of the conflict.

Secondly, the European Union acts as a mediator in the conflict and participates in the Geneva International Discussions, which are meant to bring together Abkhazia, South Ossetia (the breakaway regions), Georgia, Russia, the United States, the EU, and the OSCE.

Thirdly, the European Union, as a regional international organization, supports the territorial integrity of Georgia and keeps condemning the ongoing presence of the Russian Federation in the territory of Abkhazia as a violation of international law. This view was expressed by the High Representative at the 10<sup>th</sup> anniversary of the armed conflict between Georgia and Russia, stating that "the European Union reiterates its firm support to the sovereignty and territorial integrity of Georgia within its internationally recognized borders" 4555.

# 3.4 Assessment of de facto statehood

Abkhazia has all symbolic attributes as well as elements of governance. The flag is one of the symbols of the *de facto* Republic of Abkhazia, along with the national emblem and national anthem, pursuant to Article 10 of the Constitution of the Republic of Abkhazia. The national holidays directly connected with the perception of statehood of Abkhazia are the Day of the Flag (23 July), the Day of Victory (30 September), and the Day of Constitution (26 November). The capital of Abkhazia is Sukhum(i), pursuant to Article 10 of the Constitution.

<sup>455</sup> Declaration by the High Representative on behalf of the EU on the 10-year anniversary of the conflict between Russia and Georgia. [online] [last retrieved 19-04-2019]. Available at: https://eeas.europa.eu/delegations/georgia/49171/node/49171\_me

Picture 2: National flag of the Republic of Abkhazia



(Source: Государственная символика. [online] [last retrieved 17-10-2018]. Available at: http://presidentofabkhazia.org/en/respublika\_abkhazia/gosudarstvennaya-simvolika-respubliki-abkhaziya/)

Picture 3: National emblem of the Republic of Abkhazia



(Source: Государственная символика. [online] [last retrieved 17-10-2018]. Available at: http://presidentofabkhazia.org/en/respublika\_abkhazia/gosudarstvennaya-simvolika-respubliki-abkhaziya/)

The legal basis of the political system is the Constitution of the Republic of Abkhazia, which was adopted on 26 November 1994 and approved by national voting on 3 October 1999. With regard to governance, the head of state is the president of the Republic of Abkhazia, who is elected directly for a term of five years. Pursuant to Article 49 of the Constitution, there is, however, a limitation on passive suffrage. Only a person "of Abkhaz nationality [italics—P.S.] who is a citizen of Abkhazia and who is not younger than 35 years and not older than 65 years and has the right to vote" is eligible to be elected. The notion of "Abkhaz nationality" seems problematic in this context since it indicates that only an ethnic Abkhaz with the citizenship of the Abkhaz Republic might be eligible to serve as president. The executive power is vested in the president of the Republic of Abkhazia, who directs the Cabinet of Ministers.

Pursuant to Article 140 of the Civil Code of the Republic of Abkhazia, the Russian ruble is the official currency in the country. Since Abkhazia does not have its own currency, zero points were attributed to this criterion, corresponding to "full dependence on an integrated monetary system" due to belonging to the Ruble zone.

The territorial integrity of Abkhazia is often disputed in favor of the territorial integrity of Georgia, whilst Abkhazia is perceived by the Western countries as a territory temporarily under Russian occupation. Nevertheless, Georgian authorities have not been exercising effective control over the territory of Abkhazia since the end of the armed conflict in September 1993. According to the methodology by E. Berg and E. Kuusk, Abkhazia "oversees dependencies with shared territoriality".

The population of Abkhazia is approximately 240,000; which makes up around half of the pre-war population. Although the Abkhaz citizenship was formally established by the Law on Citizenship of the Republic of Abkhazia passed on 10 December 1993 (replaced by the Law on Citizenship of 18 September 2013), with the exception of a few states it remains unrecognized by the international community. Another issue is the fact that the majority of Abkhazia's population has obtained Russian passports.

<sup>&</sup>lt;sup>456</sup> Конституция Республики Абхазия. [online] [last retrieved 09-10-2019]. Available at: http://presidentofabkhazia.org/en/doc/const/

In terms of actorness, Abkhazia is assessed as 1.0, meaning that "political entity has been granted some foreign policy functions; it is active but not internationally recognized". The foreign policy of Abkhazia is almost completely focused on the Russian Federation. In this respect, Abkhazia has been recognized by seven UN member states, out of which two later revoked their recognition. This corresponds to 0.5 points (diplomatic relations with 2–50 countries) for diplomatic relations and 0 points for international organizations. In total, the external sovereignty of Abkhazia is evaluated at 1.56 points and its sovereignty in total at 4.81 points.

Table 17: Assessment of the de facto sovereignty of Abkhazia

	Score
I. Symbolic attributes 1. Flag 2. National holidays 3. Capital city	2.0
II. Governance 4. Head of state 5. Autonomous government 6. Constitution	2.0
III. Monetary system	0
IV. Territorial integrity	1.5
V. Permanent population	1.0
VI. Actorness	1.0
VII. Security structures	1.0
VIII. Diplomatic relations	0.5
IX. Membership in international organizations	0
Total	4.8

Based on the aforementioned criteria of empirical assessment of sovereignty, I developed twenty parameters to approach the issue of stability and sustainability in a more detailed and complex way. The table below presents the parameters as assessed by different experts from both Georgia and Abkhazia, whose assessment was followed by in-depth semi-structured interviews.

#### I. Regime-resident relationship

Table 18: Assessment of criteria concerning the regime-resident relationship

	Average assessment
1. Level of identification of the residents as citizens of Abkhazia	6.9
2. Participation of the population in "national" elections	6.6
3. Participation of the population in "national" referenda	6.6
4. Participation of the population in local civic activities, community initiatives and communal elections	5.1
5. Activity of civil society institutions (NGOs) in Abkhazia	5.7
Overall assessment	6.2

#### 1. Level of identification of the residents as citizens of Abkhazia

With regard to the population of Abkhazia, it has to be noted that the decrease in the population of ethnic Georgians between the years 1989 and 2011 was around 193 thousand. The demographic changes in the population of ethnic Georgians were caused mostly by their expulsion in consequence of the armed conflict that took place in 1992–1993.

As regards the first point, i.e. the level of identification of the residents of Abkhazia as citizens of Abkhazia, the issue of citizenship is problematic due to the fact that residents of Abkhazia are granted Russian citizenship through naturalization. Pursuant to Article 6 of the Law on Citizenship of the Republic of Abkhazia (hereinafter referred to as "RA"), "a citizen of RA [...] without abandoning of the citizenship of RA, has a right to acquire only the citizenship of the Russian Federation. A citizen of RA, who has also a citizenship of a foreign country, is considered by RA only as a citizen of RA<sup>\*457</sup>. The above provision of the Law on Citizenship entitles the citizens of the Republic of Abkhazia to obtain exclusively the citizenship of the Russian Federation and does not permit them to hold Abkhaz and Georgian citizenships simultaneously.

<sup>457</sup> Law of the Republic of Abkhazia about citizenship of Republic of Abkhazia. [online] [last retrieved 14-03-2019]. Available at: http://presidentofabkhazia.org/en/vize\_president/dejatelnost/zacon.pdf

According to the Independent International Fact-Finding Mission (hereinafter referred to as "IIFFM") on the Conflict in Georgia, the policy of "passportization", i.e. conferring Russian passports on the residents of Abkhazia, started in 2002 and intensified after the military conflict in 2008. It is worth mentioning in this context that Russia introduced a visa regime for the citizens of Georgia in 2000. The policy of granting Russian passports thus seemed to be welcome in Abkhazia due to a number of reasons. First and foremost, it created an exemption for the residents of Abkhazia to enter the territory of the Russian Federation without applying for visa. Secondly, since Abkhazia has been recognized only by few states, the possession of a Russian passport makes it easier to travel outside of the Russian Federation (not to mention that Abkhazia had not been recognized by any UN member state prior to 2008). Otherwise the residents of Abkhazia could not travel abroad with documents issued by Abkhaz de facto authorities. Other advantages include receiving a Russian pension, possibilities for education and medical care, etc. On the other hand, the Georgian Government asserted that "in some cases, individuals were pressured into Russian nationality, for instance, by threats of 'punitive taxes' or expulsions" 458. Since Georgian legislation does not allow dual citizenship 459, those persons in the breakaway territory of Abkhazia who apply for the Russian citizenship consequently lose their Georgian citizenship pursuant to Article 21 of the Law on Georgian Citizenship (acquisition of foreign citizenship).

The IIFFM came to the conclusion that the process of granting Russian citizenship to the citizens of Georgia constitutes an interference into Georgia's internal affairs as well as an infringement of Georgia's territorial sovereignty and the principle of good neighborliness. Even though the process of conferring Russian citizenship on the residents of Abkhazia is officially conducted on an individual basis, in reality it has a large-scale scope, and its

<sup>&</sup>lt;sup>458</sup> Independent International Fact-Finding Mission on the Conflict in Georgia Report. Volume II. 2009. [online] [last retrieved 10-03-2019]. Available at: https://www.mpil.de/files/pdf4/ IIFFMCG\_Volume\_II1.pdf. P. 167.

<sup>&</sup>lt;sup>459</sup> Article 6 of the Law on Georgian Citizenship: "A Georgian citizen may not concurrently be a citizen of another country, except as provided in Article 17 of this Law". (*Organic Law of Georgia. Law on Georgian Citizenship*. [online] [last retrieved 15-03-2019]. Available at: http://migration.commission.ge/files/matsne-2343650.pdf)

purpose is to "destabilize an already fragile country"<sup>460</sup>. Thus, the process of "passportization" in the territory of Abkhazia is by and large considered to be in breach of international law.

Another problem connected with the Abkhaz citizenship is the situation of ethnic Georgians (Mingrelians) in the Gal(i) region in the south of Abkhazia. In 2005, a new amendment to the Law on Citizenship was adopted in Abkhazia, according to which ethnic Abkhazians retained their citizenship irrespectively of their place of residence, whereas the rest had to prove that they had continuously lived in Abkhazia for five years prior to 1999<sup>461</sup>. This provision excluded the majority of the residents of Gal(i) region, who fled Abkhazia during the tensions in 1998<sup>462</sup>, and is largely referred to as "a crucial factor in preventing Georgians in Gal[i] from holding Abkhazian citizenship and taking part in general elections"<sup>463</sup>.

In the interviews, the experts generally ranked self-identification of the residents as citizens of Abkhazia as relatively high with the only exception of ethnic Georgians in the Gal(i) region. They also noted that Russian passports are often seen as a way to overcome obstacles stemming from international isolation. With regard to the residents of the Gal(i) region, some of them might allegedly be willing to renounce their Georgian citizenship in exchange for the Abkhaz citizenship. However, "such insecure conditions make it particularly problematic to expect from Georgians in Abkhazia that they sever their formal affiliation with Georgia 'proper' Proper' Indisputably, the ongoing political situation, soaked with fear and distrust, creates insurmountable obstacles for the residents of the Gal(i) region.

<sup>460</sup> Independent International Fact-Finding Mission on the Conflict in Georgia Report. Volume II. 2009. P. 178.

<sup>461 &</sup>quot;Citizens of the RA are [...] people who had permanently lived in the territory of RA for no less than 5 years by the time of adoption of the Act of State Independence of the RA on 12 October 1999 and if they had not refused the citizenship in written form". (Law of the Republic of Abkhazia about citizenship..., op. cit.)

<sup>&</sup>lt;sup>462</sup> Tabachnik, M. 2019. Citizenship, Territoriality and Post-Soviet Nationhood. The Politics of Birthright Citizenship in Azerbaijan, Georgia and Moldova. Cham: Palgrave Macmillan. ISBN 978-3-030-12881-4. P. 253.

<sup>&</sup>lt;sup>463</sup> The Realm of the Possible. Finding ways forward in the Georgian-Abkhaz context: People in the Gal/i region. 2015. London: Conciliation Resources. P. 5.

<sup>&</sup>lt;sup>464</sup> Ibidem, p. 6.

### 2. Participation of the population in "national" elections

In March 2018, presidential elections were held with a turnout of around 40 per cent<sup>465</sup>. Every citizen of the Republic of Abkhazia who turns 18 by the polling date has the right to vote. The Parliament consists of 35 deputies; each deputy represents their respective constituency. An issue of concern is the situation of the Mingrelians, who were—according to Freedom House—excluded from the elections due to the lack of Abkhaz documents<sup>466</sup>.

The last presidential elections took place in March 2020 after *de facto* President Raul Khajimba had resigned following mass protests in Sukhum(i) and the decision of the Supreme Court, which declared the previous election in September 2019 void. The turnout in the first round, held on 25 August 2019, was 65.18 per cent. According to the Central Electoral Commission, as many as 126,950 Abkhaz citizens had the right to vote, out of whom 82,752 participated in the elections<sup>467</sup>. In the second round, held on 9 September 2019, as many as 127,232 Abkhaz citizens had the right to vote, out of whom 83,964 participated. Thus, the turnout in the second round was very similar to the first round, i.e. 65.99 per cent<sup>468</sup>. Pursuant to the Constitution of the Republic of Abkhazia, a presidential candidate has to be at least 35 years old, the maximum age for candidacy being 65 years. As I have previously noted, another constitutional requirement is that a candidate needs to have both Abkhaz nationality and Abkhaz citizenship. The term of office is five years.

In general, the participants of the survey concluded that the participation of Abkhaz citizens in "national" (*de facto*) elections is relatively high. Another thing that was often highlighted in the interviews was that the elections

- 465 ЦИК подвел предварительные итоги выборов депутатов Народного Собрания Парламента Абхазии. [online] [last retrieved 30-03-2019]. Available at: http://apsnypress.info/news/tsik-podvel-predvaritelnye-itogi-vyborov-deputatov-narodnogo-sobraniya-par-lamenta-abkhazii/
- <sup>466</sup> Freedom in the World 2018. Abkhazia. [online] [last retrieved 31-03-2019]. Available at: https://freedomhouse.org/report/freedom-world/2018/abkhazia
- <sup>467</sup> Итоги выборов Президента Республики Абхазия 25 августа 2019. [online] [last retrieved 09-10-2019]. Available at: https://cik-ra.org/news/itogi-vyborov-prezidenta-respubliki-abkhaziya-25-avgusta-2019/
- <sup>468</sup> Итоги выборов Президента Республики Абхазия 9 сентября 2019. [online] [last retrieved 09-10-2019]. Available at: https://cik-ra.org/news/itogi-vyborov-prezidenta-respubliki-abkhaziya-9-sentyabrya-2019/

in Abkhazia were free. For instance, in 2004, Moscow-backed presidential candidate Raul Khajimba lost to Sergei Bagapsh, who was at that time able to secure support among the Mingrelians living in the Gal(i) region. At first, Moscow demanded that he give in, but later forced the Abkhazians to reach an agreement, according to which Bagapsh remained president and Khajimba seized the office of vice president. Thus, one can fully agree with the conclusion that "Moscow's failure to ensure the victory of its candidate indicated the limits to its powers" Nevertheless, after being elected, Bagapsh's policies were perceived as rather pro-Russian despite his close ties to Georgia (Bagapsh studied in Tbilisi and married a Mingrelian). One of the experts noted that "it became clear to Georgians that it does not matter who the head of Abkhazia is, because the situation would not change to their benefit anyway" 470.

Despite the fact that elections in Abkhazia are free and involve competition of political forces, they are condemned by Tbilisi due to the changes in the ethnic structure of Abkhazia as a result of the armed conflict and are often labeled as "sham". This was often pointed out by Georgian experts, who argued that the elections in Abkhazia were illegal since they had not been sanctioned by Tbilisi and, furthermore, ethnic Georgians, who had been expelled, were deprived of the right to vote. What is more, the situation of the ethnic Georgians in the Gal(i) region, who have been stripped of their Abkhazian citizenship and thus are unable to participate in the elections, remains of high concern.

# 3. Participation of the population in "national" referenda

So far three referenda have been held in the territory of Abkhazia since the early 1990s: the Abkhazian New Union Treaty referendum (1991), the referendum on the Constitution of Abkhazia (1999), and the referendum on snap presidential elections (2016).

The first referendum, which took place on 17 March 1991, contained the following question: "Do you consider it necessary to preserve the Union of the

<sup>469</sup> Illarionov, A. 2009. The Russian Leadership's Preparation for War, 1998–2008. In The Guns of August 2008. Russia's War in Georgia. Oxon: Routledge. ISBN 978-0-7656-2507-6. P. 58.

<sup>&</sup>lt;sup>470</sup> Interview 1. Tbilisi, 15 November 2018.

Soviet Socialist Republics as a renewed federation of equal sovereign republics, where the rights and freedoms of all nationalities will be secured?" On the day of the referendum, there were 318,317 citizens eligible to vote. As many as 166,544 eligible voters participated in the voting (52.32 per cent) and out of those, 96.8 per cent voted "yes", while 0.95 per cent voted "no"<sup>471</sup>.

The second referendum on the Constitution of the Republic of Abkhazia was held on 3 October 1999. On that day, as many as 219,534 citizens of Abkhazia had the right to vote in the referendum, which made 69 per cent of the pre-war number of citizens eligible to vote. The turnout in the referendum was 87.6 per cent. Out of this figure, 97.7 per cent approved the Constitution<sup>472</sup>. These figures, in my opinion, demonstrate a relatively low legitimacy of the referendum since the number of eligible voters comprised approximately 69 per cent of the pre-war numbers. As I have noted, it is necessary to take into consideration the fact that a high number of citizens have been expelled from the territory in consequence of an armed conflict.

The last referendum on snap presidential elections was held in Abkhazia on 10 July 2016. The referendum contained one question, reading: "Do you consider it necessary to hold early elections for the presidency?" Out of 132,887 registered voters, only 1,628 participated in the referendum (1.23 per cent), and the referendum was declared invalid due to the low turnout<sup>473</sup>. Apart from the low interest in the referendum, these figures demonstrate that the concerns about ethnic Georgians, who are deprived of the right to vote, are justified. Between 1999 and 2016, the number of voters decreased from 219,534 to 132,887 (i.e. by 39.47 per cent). In general, the assessment of this criterion as well as the concerns raised were consistent with the previous one.

<sup>&</sup>lt;sup>471</sup> Information of the Central Commission of the Abkhaz ASSR on holding the referendum of the USSR and the information of the District Commission on election of the deputy of the USSR at the 669 Sukhumi territorial electoral district. [online] [last retrieved o1-04-2019]. Available at: http://www.rrc.ge/law/inf\_1991\_03\_22\_e.htm?lawid=279&lng\_3=en

<sup>&</sup>lt;sup>472</sup> 12 октября 1999 года принят Акт «О государственной независимости Республики Абхазия». [online] [last retrieved o1-o4-2019]. Available at: http://abkhazia-pmr.org/holidays.php?id=51&rz=1

<sup>&</sup>lt;sup>473</sup> Абхазия: референдум, на который не пришли, в государстве, которое не признали. [online] [last retrieved 01-04-2019]. Available at: izbircom.com/2016/08/03/абхазия-референдум-на-который-не-пришли/

# 4. Participation of the population in local civic activities, community initiatives and communal elections

Pursuant to Article 78 of the Constitution of the Republic of Abkhazia, "local government shall be exercised by citizens by way of direct expression of their will and through the elected institutions of local government"<sup>474</sup>. Bodies of the local government are elected for a four-year period. The right to vote in communal elections, as well as in a local referendum, is exercised by the citizens of the Republic of Abkhazia. Communal elections are valid on condition that at least 25 per cent of the electorate participates in the vote<sup>475</sup>. The heads of administration of regions and cities are appointed directly by the president of the Republic of Abkhazia from among the members of city councils. The head of regional administration directly appoints and dismisses the heads of village administration from among the members of respective village councils<sup>476</sup>.

The experts ranked the participation of the population in local civic activities, community initiatives and communal elections as moderate. Some of them pointed out that the interest in participating is relatively low due to the fact that the heads of local administration are appointed either directly by the president or by the head of administration of a respective district. Thus, the division line of power between the central government and the local government becomes blurred. What is more, the fact that the law confines the right to participate in communal elections only to the citizens of the Republic of Abkhazia instead of residents of villages and cities remains a matter of concern especially in the Gal(i) region, where the majority of residents are ethnic Georgians without the Abkhaz citizenship. For instance, communal elections were held in all regions of Abkhazia on 3 April 2016 except for the Gal(i) region<sup>477</sup>.

<sup>&</sup>lt;sup>474</sup> Конституция Республики Абхазия, ор. cit.

<sup>&</sup>lt;sup>475</sup> Закон Республики Абхазия о выборах в органы местного самоуправления. [online] [last retrieved 27-10-2019]. Available at: http://presidentofabkhazia.org/upload/iblock/428/ Закон\_о\_выборах\_в\_органы\_местного\_самоуправления\_2015\_03\_31\_18\_45\_28\_954.pdf

<sup>&</sup>lt;sup>476</sup> Закон Республики Абхазия об управлении в административно-территориальных единицах Республики Абхазия. [online] [last retrieved 27-10-2019]. Available at: http://presidentofabkhazia.org/upload/iblock/447/Закон\_об\_\_управлении\_в\_административно-территориальных\_единицах\_Республики\_Абхазия\_2015\_03\_31\_13\_14\_08\_048.pdf

<sup>&</sup>lt;sup>477</sup> Выборы в Абхазии состоялись во всех округах, кроме восьми. [online] [last retrieved: 27-10-2019]. Available at: https://sputnik-abkhazia.ru/Abkhazia/20160403/1017785727.html

#### 5. Activity of civil society institutions (NGOs) in Abkhazia

It has to be noted that there are several NGOs working in Abkhazia, some of which were established soon after the end of the Georgian-Abkhaz war in the early 1990s. The experts pointed out that the NGOs in Abkhazia are active in various fields, such as civic education, critical thinking, humanitarian work, and dialogue process. Their staff participate in different international programs. The experts in Tbilisi stressed that NGOs are relatively strong in Abkhazia, even in the Gal(i) region, despite an uneasy situation regarding the human rights of ethnic Georgians<sup>478</sup>. The most well-known Abkhaz NGOs are organizations such as the Centre for Humanitarian Programmes, the Association of Women of Abkhazia, the Fund of Civil Initiatives, the Sukhum(i) Youth House, and the Association of Invalids with Spinal Injuries. In addition, international NGOs are also active in Abkhazia, for instance Conciliation Resources, South Caucasus Bureau of Henrich Böll Foundation, Berghof Foundation, and International Alert.

L. Kvarchelia notes that the main goal of the NGOs in Abkhazia working in the field of Georgian-Abkhaz dialogue was to "create neutral space for interaction of representatives of conflict sides, which would lead to their greater understanding, to realization of impossibility to resolve the conflict by forceful means, to conveyance of the message for peaceful settlement to the relevant communities as well as the search for mutually acceptable solutions and their popularization in both communities" During my field research, I had the opportunity to visit several NGOs in Sukhum(i) working on the peace dialogue. In addition to that, some of them provide free legal aid, consult legal initiatives, collect materials on the Georgian-Abkhaz war, raise public awareness of environmental issues, combat fake news, etc. Since 2007, NGOs in Abkhazia have been able to participate in public discussions on legal initiatives and formulate recommendations on draft laws through an advisory body—the Public Chamber of Abkhazia, composed of 35 civil society representatives.

<sup>&</sup>lt;sup>478</sup> Interview 4. Tbilisi, 27 November 2018.

<sup>479</sup> Кварчелия, Л. 2010. Роль международных НПО в грузино-абхазском контексте. In *Опыт и перспективы международного присутствия в Абхазии*. Сухум.

In my opinion, there are some initiatives of the Abkhaz NGOs which need to be highlighted. The NGOs in Abkhazia have been successful in pushing for the Law on Freedom of Information and the Law on Gender Equality. Recently, some of them have been involved in raising awareness of the issue of domestic violence and advocating for amendments to the Law on Citizenship. Abkhaz experts often complained about obstacles stemming from international isolation of Abkhazia. For instance, in 2007, USAID announced a competition for financial grants, which was boycotted by the NGOs in Abkhazia "We had a case when we refused to participate in a project within USAID because there was an announcement claiming that they provided financial means in support of the territorial integrity of Georgia. So we refused. All NGOs in Abkhazia signed a letter that we refused to participate" "481.

It turns out from the interviews that I conducted that the NGOs in Abkhazia enjoy significantly high support from the society. The reason for this is that they often fill in the gap that is not covered by the state, especially when it comes to protection of people's rights (e.g. by providing legal aid, consulting on legislative proposals, representing interests of citizen groups) and civic education. Thus, NGOs are generally seen as an indispensable part of civil society in Abkhazia.

### II. Internal sphere

Table 19: Assessment of the criteria concerning the internal sphere

	Average assessment
6. Defense capability and border control (fighting of illegal trespassing and smuggling)	6.0
7. Internal security (protection of people's rights and freedoms, possessions, public order, fighting of organized crime, etc.)	3.1
8. Effectiveness of the judicial system	3.5

<sup>&</sup>lt;sup>480</sup> Гражданское общество Абхазии возмущено словами USAID о территориальной целостности Грузии. [online] [last retrieved 23-10-2019]. Available at: https://www.kavkaz-uzel.eu/articles/124787/

<sup>&</sup>lt;sup>481</sup> Interview 16. Sukhum(i), 20 May 2019.

	Average assessment
9. Governance (relation between the central and the local government; level of decentralization)	3.4
10. Economic situation (GDP per capita; average income; employment rate; inflation rate)	4.0
11. Level of development of the private economy sector (rate of economic activity)	4.6
12. Social welfare system (unemployment; pensions; family policy; social programs)	4.2
13. Healthcare system (accessibility; facilities; health insurance)	3.2
14. Education system (structure; accessibility; educational programs)	3.8
15. Transport and infrastructure (roads, railway system, air transport, pipelines, hydroelectric system, etc.)	4.1
Overall assessment	4.0

# 6. Defense capability and border control (fighting of illegal trespassing and smuggling)

Defense capability and border control are marked by close cooperation between Abkhazia and the Russian Federation. On 30 April 2009, Abkhazia and Russia signed the Agreement on Joint Efforts to Protect the Border of the Territory of Abkhazia<sup>482</sup>. Based on the above agreement, the Abkhazian border is protected together by the State Security Service of Abkhazia as well as by the Federal Security Service of the Russian Federation. In 2011, there were more than 1,300 border guards staffed by the Russian Federation and around 300 staffed by the Abkhaz side<sup>483</sup>. V. Kopeček noted that there were around 3,500 regular Russian troops and 1,500 armed members of the Federal Security Service in Abkhazia in 2013<sup>484</sup>. As of now, only two crossing points remain

<sup>&</sup>lt;sup>482</sup> Соглашение между Республикой Абхазия и Российской Федерацией о совместных усилиях в охране государственной границы Республики Абхазия. [online] [last retrieved 24-06-2019]. Available at: http://presidentofabkhazia.org/upload/iblock/8fa/z16.pdf

<sup>&</sup>lt;sup>483</sup> Гургулия М. 2011. Частичное признание государственной независимости Абхазии: Возможности и вызовы. In *Перспективы международного признания Абхазии*. Сухум. Р. 34.

<sup>&</sup>lt;sup>484</sup> Kopeček, V. 2020. *Factors of de facto states' sustainability...*, p. 159.

in use—Psou with the Russian Federation and Ingur(i) with Georgia. When passing through the Georgian-Abkhaz border, the first security checkpoint is operated by the State Security Service of the Republic of Abkhazia. The following one is operated by Russian military personnel.

The border protection agreement was followed by the 15 September 2009 agreement on military cooperation between the Republic of Abkhazia and the Russian Federation<sup>485</sup>, delegating responsibility for military safety in the region of Abkhazia and allowing for the use of Russian military equipment, including ships, aircraft, and building of military infrastructure in the territory of Abkhazia. What is worrying about the above agreement is that it was signed for a period of 49 years, allowing for automatic extension for a period of five years unless either of the parties has notified the other of its desire not to renew the agreement. On 17 February 2010, Abkhazia and Russia signed an agreement on joint Russian military base in the territory of the Republic of Abkhazia<sup>486</sup>. Following the provisions of the agreement, the Abkhazian party shall ensure free movement of Russian military vehicles, sea ships and aircraft in the territory of Abkhazia. Currently there are two main military bases run by Russian personnel in Abkhazia—a navalbase in Ochamchira and an airbase in Bobmora, near Gudauta.

Currently there are two border crossings in use—Psou with the Russian Federation and Ingur(i) with Georgia. Foreign nationals may enter Abkhazia through either of them; however, entering through the Russian Federation is considered illegal by Georgian authorities and entails legal responsibility pursuant to the Law on Occupied Territories. The Ingur(i) crossing point is not considered a border crossing by Georgian authorities since Abkhazia is legally perceived as part of Georgia. On my way to Abkhazia, I was first stopped by Georgian police officers claiming that I had to be registered. Only after four hours of waiting was my passport returned to me and I was allowed to cross the bridge over the Ingur(i) River on foot. After the bridge, there are two more checkpoints. The first one is operated by the State Security Service of the Republic

<sup>&</sup>lt;sup>485</sup> Cf. Соглашение между Республикой Абхазия и Российской Федерацией о сотрудничестве в военной области. [online] [last retrieved 24-07-2019]. Available at: http://presidento-fabkhazia.org/upload/iblock/c39/в военной области.pdf

<sup>&</sup>lt;sup>486</sup> Соглашение между Республикой Абхазия и Российской Федерацией об объединенной российской военной базе на территории Республики Абхазия. [online] [last retrieved 24-06-2019]. Available at: http://presidentofabkhazia.org/upload/iblock/1a4/z19.pdf

of Abkhazia border guards and the second one by Russian military personnel. Entry is possible upon showing a clearance letter from the *de facto* Ministry of Foreign Affairs. At both checkpoints, I was asked about the purpose of my journey to Abkhazia. I noticed that there were two Mingrelian women trying to cross the border, one of whom claimed she was supposed to attend her father's funeral in the Gal(i) region. They were both denied entry. In general, crossing the Ingur(i) checkpoint is rather complicated as it may take several hours (in my case it took about six). Usually, around 3,000 persons a day cross back and forth<sup>487</sup>.

The experts often justified their relatively low score by the fact that the Ingur(i) checkpoint is guarded by Russian military personnel. It often gets closed for various reasons, for instance, in January 2019 it was closed because of swine influenza in Georgia, later from July 2019 until September 2019 because of anti-Russian protests in Georgia, and in February 2020 the border crossing was closed due to the COVID-19 pandemic. The closures cause severe obstacles to the residents of the Gal(i) region. Moreover, many experts are beginning to fear that such closures might lead to further isolation of Abkhazia, which they refer to as "Ossetianization" (i.e. complete isolation)<sup>488</sup>.

Picture 4: Checkpoint on the Ingur(i) bridge on the way to Abkhazia from Zugdidi



(Source: Piotr Sieniawski, May 2019)

<sup>&</sup>lt;sup>487</sup> De Waal, T. 2019. *Abkhazia and the Danger of "Ossetianization"*. [online] [last retrieved 20-04-2020]. Available at: https://carnegieeurope.eu/2019/07/16/abkhazia-and-danger-of-ossetianization-pub-79527

<sup>488</sup> Loc. cit.

7. Internal security (protection of people's rights and freedoms, possessions, public order, fighting of organized crime, etc.)

The situation concerning human rights in Abkhazia was examined by T. Hammarberg and M. Grono in 2016. It follows from their report that the implementation of human rights is "uneven; especially the situation in the Gal[i] district is of a most serious concern and many of the Georgians there feel rejected and deeply frustrated"<sup>489</sup>. There is a whole institutional structure of human rights protection inscribed into the Abkhaz Constitution. The institution of ombudsperson was established in 2016. The current ombudswoman has recently taken a critical position towards discriminatory treatment of ethnic Georgians in the Gal(i) region. The major points of concern were closure of the Abkhaz-Georgian border by Abkhaz authorities as well as new Abkhaz passport regulations<sup>490</sup>. The positive impact of the institution of ombudsperson, especially as regards the situation of ethnic Georgians in the Gal(i) region, was highlighted by both Georgian and Abkhazian experts.

According to Freedom House, Abkhazia scored 17 points in political rights and 23 points in civil liberties, and was consequently labelled as "partially free" with 40 points in total<sup>491</sup>.

As for fighting of organized crime, the experts noted that the situation has stabilized compared to the 1990s or early 2000s, when political elites were connected to different clans operating in the territory of Abkhazia. S. Closson pointed out that "Ardzinba's<sup>492</sup> family was deeply involved in the economy and had a monopoly over most industries"<sup>493</sup>. The Georgian experts

- 489 Hammarberg, T. and Grono, M. 2017. Human Rights in Abkhazia Today. Report. [online] [last retrieved 29-03-2019]. Available at: https://www.palmecenter.se/wp-content/uploads /2017/07/Human-Rights-in-Abkhazia-Today-report-by-Thomas-Hammarberg-and-Magdalena-Grono.pdf. P. 7.
- <sup>490</sup> Abkhazian human rights commissioner condemns treatment of Gali Georgians. [online] [last retrieved 10-02-2019]. Available at: https://oc-media.org/abkhazian-human-rights-commissioner-condemns-treatment-of-gali-georgians/
- <sup>491</sup> *Countries and territories*. [online] [last retrieved 19-06-2020]. Available at: https://freedom-house.org/countries/freedom-world/scores
- <sup>492</sup> V. Ardzinba (1945–2010), the first *de facto* president of Abkhazia, in office 1994–2005.
- 493 Closson, S. R. 2007. State Weakness in Perspective: Trans-territorial Energy Networks in Georgia, 1993–2003 [Doctoral dissertation]. London: London School of Economics and Political Science. P. 167.

claimed that the situation with organized crime has persisted until today with allegedly strong ties to high-ranking Abkhaz officials. "The problem is that [former—P.S.] President Khajimba made an alliance with criminals to secure his position. He used to be a policeman and he was tough-on-crime. Some of the criminals had fled, others had gone underground, but when they saw that Khajimba was fighting Ankvab, they supported Khajimba against Ankvab and Khajimba came to power. Clearly, they wanted to be paid off and got enormous influence and substantial power in Abkhazia"<sup>494</sup>. In November 2019, security measures on the Georgian-Abkhaz border were intensified due to "clan wars" in Abkhazia, which resulted in a daylight shooting in the center of Sukhum(i), in which two alleged criminals were killed<sup>495</sup>. The Abkhaz media often report on organized crime with supposedly clan structures, which seems to be a serious issue in Abkhazia.

#### 8. Effectiveness of the judicial system

Pursuant to the Constitution of the Republic of Abkhazia, the judicial system consists of the Supreme Court, the Arbitration Court, the Military Court and local courts (city and regional courts). The Constitutional Court of the Republic of Abkhazia decides on the compatibility of laws, legal regulations and treaties with the Constitution, on jurisdiction disputes among central bodies of the state administration, and on constitutional complaints by citizens objecting to the violation of their basic rights, and provides interpretation of the Constitution upon request of the president, the Parliament, or the Council of Ministers<sup>496</sup>.

The Abkhazian experts identified corruption as the biggest issue regarding the judicial system. Apart from corruption, the Georgian experts pointed out political pressure and a low level of law enforcement. Moreover, they claimed

<sup>&</sup>lt;sup>494</sup> Interview 2. Tbilisi, 21 November 2018.

<sup>&</sup>lt;sup>495</sup> Воровские войны в Абхазии – 2. [online] [last retrieved 30-03-2020]. Available at: https://www.ekhokavkaza.com/a/30297371.html

<sup>&</sup>lt;sup>496</sup> Конституционный закон Республики Абхазия о судоустройстве. [online] [last retrieved 28-04-2020]. Available at: http://presidentofabkhazia.org/upload/iblock/328/ Конституционный\_закон\_о\_судоустройстве\_2015\_03\_31\_13\_14\_25\_017.pdf

that these problems would probably occur in the whole South Caucasus area although they believed that the situation in Georgia might be slightly better due to a higher level of international involvement. One of them noted that "[i]f this question was about Georgia, I could hardly give any more points"<sup>497</sup>.

The relatively low level of effectiveness of the judicial system in Abkhazia can be illustrated on the example of court claims of ethnic Georgians for property returns. Tens of thousands of refugees who had fled Abkhazia during the Georgian-Abkhaz conflict in 1992–1993 had left behind their houses and apartments, which in many cases were captured by ethnic Abkhazians as "war trophies". Nowadays, plenty of ethnic Georgians, often represented by Russian attorneys, have filed lawsuits to have they property rights reinstated. The main complaints concern the duration of trials and the obstacles often created by courts in order not to acknowledge the rights of ethnic Georgians. For this purpose, Abkhazia passed a law which prohibits people who fought against the independence of Abkhazia, as well as their children and grandchildren, from entering Abkhazia and claiming property rights<sup>498</sup>.

## 9. Governance (relation between the central and the local government; level of decentralization)

Pursuant to the Constitution of the Republic of Abkhazia, local self-government is established in regions, cities and other settlements. Its responsibilities include approval of local budgets as well as local taxes and fees, the use and management of municipal property, protection of public order, establishment of internal structures as well as social and other issues that are not excluded from their scope of competence or transferred to governmental bodies. The local self-government is exercised directly by citizens and through self-government bodies. However, heads of city administration as well as heads

<sup>&</sup>lt;sup>497</sup> Interview 3. Tbilisi, 22 November 2018.

<sup>&</sup>lt;sup>498</sup> Абхазия: квартиры как «военные трофеи» — вернут ли их владельцам. [online] [last retrieved 30-04-2020]. Available at: https://jam-news.net/ru/абхазия-квартиры-как-военные-трофеи/ Олег Панфилов: Дележ ворованного по-абхазски. [online] [last retrieved 30-04-2020]. Available at: https://ru.krymr.com/a/oleg-panfilov-delezh-vorovan-nogo-po-abhazski/30006016.html

of district administration are appointed from among the deputies by the president of the Republic of Abkhazia. Heads of settlement administration are appointed by regional heads of administration<sup>499</sup>.

Deputies are elected to local self-government bodies for the period of four years. The elections are announced by the president of the Republic two months prior to the end of the term. The reform of self-government in Abkhazia foresees that the heads of administration in regions, cities and settlements would be elected directly. Currently, the territory of Abkhazia consists of seven regions: Gagra, Gudauta, Sukhum(i), Gulripsh, Ochamchira, Tkuarchal, and Gal(i).

While the actual implementation of the legal provisions on self-government has been viewed positively, the experts in both Georgia and Abkhazia raised criticism about the appointment of heads of local and regional administration. Recently there has been a discussion in the Public Chamber of Abkhazia about a new proposal for direct election of the head of administration of Sukhum(i), but no consensus has been reached.

With regard to the criticism of the current system, not only does this vertical scheme of appointment interfere with the idea of self-government, but it also imposes a way of limiting the core idea of decentralization. The reluctance of the Government towards further decentralization is publicly justified by the idea that such process might lead to a lack of coordination with central authorities in the case of war since neither a peace agreement nor an agreement on the non-use of force with Georgia has been signed. What seems to be a more likely reason is, however, the control of the central government over the use of public resources, which is now secured through a person appointed by the president. Another reason seems to be related with the demographic situation and fears that other ethnicities might outnumber the ethnic Abkhazians and exercise local self-government to their disadvantage. It has to be kept in mind that only an ethnic Abkhaz can become the president of Abkhazia; therefore, the current system also secures control over the self-government in the hands of the Abkhaz ethnic group.

<sup>&</sup>lt;sup>499</sup> Конституция Республики Абхазия..., ор. cit. Articles 78–82.

10. The economic situation (GDP per capita; average income; employment rate; inflation rate)

The economic situation in Abkhazia demonstrates a strong dependence on budgetary subsidies from the Russian Federation. In 2009, direct subsidies from the Russian Federation amounted to 2.3 billion rubles<sup>500</sup>, which was approximately 65 per cent of the Abkhaz budget. V. Kopeček estimated the amount of direct budgetary support from the Russian Federation between 35 to 60 per cent<sup>501</sup>. According to A. Cooley and L. A. Mitchell, Russia directly subsidized more than 50 per cent of Abkhazia's central budget in 2010, providing 3.7 billion Russian rubles to Sukhum(i)<sup>502</sup>. The proportion of direct subsidiary assistance to Abkhazia increased to 71 per cent by 2012, reaching 6.8 billion rubles<sup>503</sup>. Nevertheless, after the 2014 annexation of Crimea and the imposition of sanctions on Russia, the ruble has lost almost half of its value. Thus, it has become much costlier for the Russian Federation to maintain the economic system of Abkhazia.

In 2016, the state budget of Abkhazia was 11.52 billion Russian rubles, out of which 7.77 billion rubles (approximately 67.44 per cent) were direct budgetary subsidies from the Russian Federation. These were divided into two parts. The first one was the assistance for socio-economic development, which was slightly more than 3 billion Russian rubles, and the second one was the assistance for the implementation of budgetary investments, which amounted to 4.77 billion rubles<sup>504</sup>.

A similar tendency was present in 2019, when the financial assistance provided by the Russian Federation amounted to 4.83 billion rubles (3.15 billion as the assistance for socio-economic development and 1.68 billion as the assistance for the implementation of budgetary investments). Considering

<sup>500 «</sup>Их нужно уничтожать. У нас есть такая возможность». [online] [last retrieved 17-03-2020]. Available at: https://www.gazeta.ru/politics/2009/09/07\_a\_3256524.shtml

<sup>&</sup>lt;sup>501</sup> Kopeček, V. 2020. Factors of de facto states' sustainability..., p. 162.

<sup>&</sup>lt;sup>502</sup> Cf. Cooley, A. and Mitchell, L. A. 2010. *Engagement without Recognition...*, pp. 59–73.

<sup>593</sup> Госбюджет абхазии: 1995 — 2015 гг. [online] [last retrieved 17-03-2020]. Available at: http://abkhazinform.com/item/2640-qosbyudzhet-abkhazii-1995-2015-qq

<sup>504</sup> Доходы республиканского бюджета на 2016 год. [online] [last retrieved 05-04-2019]. Available at: presidentofabkhazia.org/upload/iblock/fa3/Приложение\_1.pdf

that the state budget income was 8.11 billion rubles<sup>505</sup>, the Russian financial aid made up approximately 59.56 per cent of the whole budget. The above numbers illustrate the fact that approximately two thirds of the Abkhaz state budget are directly subsidized by the Russian Federation. Abkhazia is clearly dependent on Russian financial aid and it is very doubtful that it would be able to maintain its economy without any assistance from the Russian Federation.

14
12
10
8
6
4
2
0
2009
2012
2016
2019

Figure 3: Comparison of Abkhazia's budget between 2009 and 2019 (in billions of rubles)

(Author's own compilation)

Recent figures also prove less economic development in Abkhazia compared to Georgia. In 2016, GDP per capita was USD 1,900 in Abkhazia $^{506}$  and USD 4,084 in Georgia $^{507}$ . In 2018, GDP per capita in Abkhazia increased to approximately USD 2,000 $^{508}$ .

<sup>&</sup>lt;sup>505</sup> Справка о социально-экономическом состоянии Республики Абхазия. [online] [last retrieved 17-03-2020]. Available at: http://presidentofabkhazia.org/respublika\_abkhazia/economy/

<sup>506</sup> Минэкономики Абхазии о ВВП: вырос, но недостаточно. [online] [last retrieved: 02-03-2019]. Available at: https://sputnik-abkhazia.ru/Abkhazia/20161223/1020117351/minekonomiki-abxazii-o-vvp-vyros-no-nedostatochno.html

<sup>597</sup> Georgia. GDP per capita. [online] [last retrieved 02-03-2019]. Available at: https://trading-economics.com/georgia/gdp-per-capita

<sup>&</sup>lt;sup>508</sup> Справка о социально-экономическом состоянии..., ор. cit.

Georgia
Abkhazia
0 500 1000 1500 2000 2500 3000 3500 4000 4500

Figure 4: Comparison of GDP of Georgia and Abkhazia in 2016

(Author's own compilation)

With regard to unemployment in Abkhazia, it seems very difficult to establish the exact numbers as they are not published by the Office of State Statistics of the Republic of Abkhazia. According to the information provided by the Office of the President of the Republic of Abkhazia, there are 144,483 persons of productive age, out of which 31,787 work in the state sector and 10,056 in the private sector, meaning that the official unemployment would be around 71 per cent<sup>509</sup>. In the light of such high numbers, I tend to believe that illicit work is highly probable.

The Georgian respondents of the survey have noted that the Abkhaz economy remains under the strong influence of family clans with personal connections to the ruling political elite. The actual situation was much direr within the first decade after the Georgian-Abkhaz military conflict. "By 2001, the Abkhaz territory was split into zones of influence controlled by different business interests. Groups formed to move commodities in and out of Abkhazia and their alignment changed over time. The western Abkhazia group had control over the oil, food and tobacco shipments and cooperated with the Russians in transporting goods over the Psou River by motor and railway. The Gagra group (mainly the Armenian Diaspora) was involved in illegal drug production. The Gudauta group (Abkhazians) controlled the export of products to Georgia mostly through the Gal(i) region. The Chechens controlled the eastern part of the self-declared republic, the Sukhum(i) railway station and main transportation routes, and cargo movement along the

<sup>509</sup> Loc. cit.

northern half of the Georgia-Abkhazia border"<sup>510</sup>. Moreover, the economy was under the strong influence of the Ardzinba family, whose members controlled various sectors of economy, including tourism, petroleum industry, telephone service, etc. Although the situation has relatively improved, the respondents reported corruption and smuggling of products as a significant source of economy.

11. Level of development of the private economy sector (rate of economic activity)

Private economy in Abkhazia is based mostly on services (tourism) and on local agricultural production, especially of hazelnuts and tangerines. From January till October 2019, approximately 1.1 million tourists visited Abkhazia, the vast majority from the Russian Federation<sup>511</sup>.

Undoubtedly, Abkhazia has a great tourist potential thanks to its subtropical climate, palm-lined beaches, mountains almost reaching the Black Sea in Gagra, crystal clear turquoise sea and pleasant air with the scent of eucalyptus trees, which once had attracted the Soviet political elite and thanks to which Abkhazia became one of the most prestigious holiday resorts within the USSR. Following the 1992–1993 conflict, the number of tourists had dramatically declined. "Tourist arrivals peaked at two million in the 1980s but dropped to only a few tens of thousands after the 1992–1993 war"512. The period after the armed conflict was followed by international isolation of Abkhazia, which resulted in poor infrastructure, and once flourishing hotels, dating back to the Soviet period, became abandoned and dilapidated. Nowadays, there are attempts to reopen some of the well-known holiday spots as well as to renovate the infrastructure. Nevertheless, the majority of Russian tourists coming from Adler or Sochi prefer to spend only a short time in Abkhazia, opting for one-day excursions to Sukhum(i), Ritsa Lake, Novy Afon monastery, Gagra, or Pitsunda.

<sup>&</sup>lt;sup>510</sup> Closson, S. R. 2007. *State Weakness in Perspective...*, pp. 166–167.

<sup>&</sup>lt;sup>511</sup> Туристов в Абхазии по осени считают. [online] [last retrieved 09-12-2019]. Available at: https://www.ekhokavkaza.com/a/30232871.html

<sup>&</sup>lt;sup>512</sup> Abkhazia: Deepening Dependence..., p. 6.





(Source: Piotr Sieniawski, May 2019)

A major obstacle to Russian private investments in tourism in Abkhazia is the prohibition of private ownership of land regardless of nationality (land belongs to the state), and real estate can be acquired only by persons with the Abkhaz nationality. This stems from fear that the Abkhaz Black Sea coast would otherwise be "sold out" to the Russians, which might lead to further demographic and ethnic changes in the population of Abkhazia. Moreover, there is also fear that the Georgians who hold Russian passports would be able to buy property in Abkhazia. Nevertheless, there are schemes in which Russian citizens buy apartments although they are formally registered to Abkhaz citizens. "Many Abkhazians want to sell their apartments and make profit. In many cases Russians buy apartments through a mediator and they believe the apartment is theirs, but it is not and soon they end up losing it. However, many Russians still buy apartments through third parties since there is no legal way to buy them directly. When Ankvab was president, there was a proposal that Russians would build houses and sell them to Abkhaz citizens, but it was never translated into law"513.

<sup>&</sup>lt;sup>513</sup> Interview 21. Tbilisi, 28 May 2019.

Thanks to its subtropical climate, the agricultural production in Abkhazia focuses on citrus fruits (tangerines, pineapples), tea, tobacco, walnuts, and hazelnuts. In addition, people often grow corn, grapes, feijoa, and vegetables, which they later sell at local markets. In the coastal regions, fishing is also widespread (mostly anchovies and mackerels)<sup>514</sup>.



Picture 6: Sukhum(i) central market

(Source: Piotr Sieniawski, May 2019)

# 12. Social welfare system (unemployment; pensions; family policy; social programs)

When assessing the social welfare system in Abkhazia, many of the experts stressed the role of the Russian Federation in its sustainability given that the welfare system in Abkhazia consists of pensions paid by the Abkhaz Government as well as of pensions paid by the Russian Federation to its citizens. The basis for the provision of pensions by the Russian Federation is

<sup>514</sup> Справка о социально-экономическом состоянии...

the "Agreement between the Russian Federation and the Republic of Abkhazia on the pension provision for citizens of the Russian Federation permanently residing in the Republic of Abkhazia", concluded in 2015. As in 2018, oldage pension provided by the Abkhaz Government amounted to RUB 500 (approximately USD 7.60), which was labeled by the Abkhaz press as "unworthy". This type of pension was received by 36,000 residents in 2018.

The aforementioned agreement between Abkhazia and the Russian Federation established an average pension amount, which is to be compared with an average pension level of RUB 10,179.65 (approximately USD 152) in the Southern Federal District. In case that the pension of a Russian citizen is below the average, such citizen is entitled to an extra payment amounting to 62 per cent as of 1 April 2017<sup>515</sup>. Previously, from 1 January 2015 until 31 March 2016, the extra payment amounted to 20 per cent and from 1 April 2016 until 31 March 2017 to 40 per cent of the average pension. G. Comai estimated that currently there are around 32,000 Russian citizens residing in Abkhazia who receive Russian pensions. The number of residents of Abkhazia who receive Abkhaz pensions, but do not receive Russian pensions, is around 11,000–15,000<sup>516</sup>.

According to the official information provided by *de facto* authorities, the average salary in 2019 was 10,557 rubles (approximately 150 euros), whilst the living wage was 7042 rubles (approximately 100 euros)<sup>517</sup>.

For a person coming from the West, it may seem peculiar that some programs stemming from the Soviet era have been preserved in Abkhazia, such as the program to acquire an apartment. For instance, in 2019 as many as 2,500 persons in Sukhum(i) were on a waiting list to be granted an apartment (including those that have been declared by courts as "unowned", in many cases occupied by ethnic Georgians prior to the 1992-1993 conflict)<sup>518</sup>.

<sup>515</sup> Соглашение между Российской Федерацией и Республикой Абхазия о пенсионном обеспечении граждан Российской Федерации, постоянно проживающих в Республике Абхазия. [online] [last retrieved 19-10-2019]. Available at: http://docs.cntd.ru/document/420283270

Comai, G. 2016. Russia and pensions in post-Soviet de facto states. [online] [last retrieved 14-10-2019]. Available at: https://giorgiocomai.eu/2016/02/01/russian-pensions-in-post-soviet-de-facto-states/

<sup>&</sup>lt;sup>517</sup> Справка о социально-экономическом состоянии..., ор. cit.

<sup>518</sup> Олег Панфилов: Дележ ворованного..., ор. cit.

Abkhazia has a complex system of pensions provided by the *de facto* government although the sums are relatively low. As in October 2015, there were several categories of pensions, such as: old-age pension; pension for years of service; Honored Worker; Hero of Abkhazia; Cavalier of the Order of Leon; persons awarded the medal "For courage"; underground workers/miners; labor pensions; pensions for orphans; disabled in the World War II; disabled in the Patriotic War of the Abkhaz People; disabled in the Armed Forces of the Republic of Abkhazia; families of persons who lost their lives in the Patriotic War of the Abkhaz People; volunteers awarded the "Medal of Honor"; deputies of the National Assembly. Pension amounts ranged from 150 rubles (approximately USD 2.5) to 10,000 rubles (approximately USD 167)<sup>519</sup>.

#### 13. Healthcare system (accessibility; facilities; health insurance)

As for healthcare, T. Hammarberg and M. Grono stated in their report that "the sector suffers from a significant lack of material and, to a lesser degree, human resources" It also follows from the report that modern diagnostic equipment is scarce and facilities have limited capabilities, especially in rural areas. This is the driving factor for the inhabitants of Abkhazia who can afford to travel to seek medical treatment either in the Russian Federation (Sochi, Krasnodar or even Moscow) or in Georgia. This is consistent with the statements of both Abkhaz and Georgian experts, who were rather critical about the medical facilities in Abkhazia and ranked this criterion relatively low. Most patients from Abkhazia travel to Georgia in order to receive treatment for blood-borne infectious diseases, cancer, cardio-vascular diseases, diabetes, and HIV/AIDS.

It is worth mentioning that the Georgian Government introduced the so-called State Referral Program following the State Strategy for Occupied Territories in 2010. Within this program, residents of Abkhazia and South Ossetia are entitled to medical care in facilities located in the territory controlled by Georgia. The aim of the program is to reduce bureaucracy and administrative

<sup>&</sup>lt;sup>519</sup> Выплата пенсий и государственных пособий в Абхазии. [online] [last retrieved 30-04-2020]. Available at: http://abkhazinform.com/item/2591-vyplata-pensiji-gosudarstvennykh-posobij-v-abkhazii

<sup>&</sup>lt;sup>520</sup> Hammarberg, T. and Grono, M. 2017. *Human Rights...*, p. 43.

obstacles. In order to receive free medical treatment, the possession of an Abkhaz or a South Ossetian passport issued by *de facto* authorities is sufficient. Residents of the "occupied territories" formally apply to the State Minister of Reintegration, who initiates the application process with the Ministry of Labor, Health and Social Protection. For instance, from November 2012 to November 2013, as many as 692 Abkhazians benefitted from the program<sup>521</sup>. The number of Abkhazian residents seeking medical treatment in Georgia has been gradually increasing. In 2017, as many as 1,137 residents of Abkhazia received medical treatment in Georgia within the above program<sup>522</sup>.

#### 14. Education system (structure; accessibility; educational programs)

With regard to education system, many of the experts raised concerns not only about the quality of education and facilities, but also about the language of instruction. "Abkhaz language curricula only exist for first to fourth grade; when children go to secondary school they transfer to study in Russian and with Russian textbooks. Regardless of the curriculum, all schools also teach Abkhaz history (in tenth and eleven grades in Russian)<sup>523</sup>". Georgian schools officially shifted to the Russian language of instruction in 1994; however, up to 2015, there were eleven schools in the Gal(i) region in which the language of instruction was Georgian and pupils were educated according to the Georgian curriculum. In 2015, these schools, in accordance with the "Republican Standard Educational Programme", shifted to Russian. The Georgian language is still taught, but only as a foreign language<sup>524</sup>.

It should be noted that apart from a significant Georgian minority living mostly in the Gal(i) region there are several other minorities residing in Abkhazia, such as the Armenian and the Russian. In order to stimulate the integration process, it is important to keep the balance between ensuring conditions

<sup>521</sup> The Office of the State Minister of Georgia for Reconciliation and Civic Equality 2013 Report. [online] [last retrieved 06-03-2019]. Available at: http://smr.gov.ge/Uploads/ee1c88.pdf

<sup>&</sup>lt;sup>522</sup> 1644 Abkhaz, S. Ossetians Treated in Georgian Hospitals. [online] [last retrieved 30-03-2019]. Available at: https://old.civil.ge/eng/article.php?id=30851

<sup>523</sup> Hammarberg, T. and Grono, M. 2017. Human Rights..., p. 34.

<sup>&</sup>lt;sup>524</sup> Cf. Ibidem, pp. 35–38.

for the use of native languages of the minorities and the need for acquiring sufficient knowledge of the official languages in Abkhazia, Russian and Abkhaz.

According to available information, there are two higher educational institutions (in Russian: ВУЗ—высшее учебное заведение) in Abkhazia: Abkhaz State University and Sukhum(i) Open Institute. The Sukhum(i) State University (Georgian branch of Abkhaz State University) was relocated from Sukhum(i) to Tbilisi and has been functioning there ever since. The Russian Federation offers quotas on Russian universities based on academic merit. For instance, in 2011, the Russian Ministry of Education offered 72 vacancies for students at Russian universities in 47 specializations<sup>525</sup>. In accordance with the peace initiative "Step to Better Future", which was introduced by the Georgian Government, there is a simplified procedure of enrollment at higher educational institutions for ethnic minority students, including a quota system. Nevertheless, ethnic Abkhazians do not participate. A Georgian expert stated that the reason is that "whilst you can receive medical treatment in Georgia secretly, if you decide to come here to study, everyone will find out and you might become an outcast" 526.

15. Transport and infrastructure (roads, railway system, air transport, pipelines, hydroelectric system, etc.)

After the end of the military conflict in 1993, the infrastructure in Abkhazia was heavily disrupted. In the following years, marked by an embargo imposed by the CIS countries, the infrastructure was left to decay. After 2002, Russian investments in Abkhazia began. I have to state that the main road system in Abkhazia connecting the north and the south is well maintained, presumably for the purposes of quick transport of military equipment.

The Sukhum(i) airport, named after the first president of Abkhazia, Vladislav Ardzinba, was built in the 1960s in the vicinity of Sukhum(i). During the Georgian-Abkhaz war, the airport was damaged and all flights to and from

<sup>525</sup> Министерство образования РФ предоставило Абхазии 72 лимита на обучение в российских вузах. [online] [last retrieved 29-03-2019]. Available at: http://www.apsn-ypress.info/news/ministerstvo-obrazovaniya-rf-predostavilo-abkhazii-72-limita-na-obu-chenie-v-rossiyskikh-vuzakh/

<sup>&</sup>lt;sup>526</sup> Interview 15. Tbilisi, 8 April 2019.

Sukhum(i) were suspended by the Georgian Government in 1993. In 2006, the International Civil Aviation Organization cancelled the code of the Sukhum(i) airport and removed it from its official documents. Nevertheless, in July 2019, the Cabinet of Ministers of the Republic of Abkhazia announced its initiative to reopen the Sukhum(i) airport for flights to and from the Russian Federation. This initiative was met with fierce criticism by Georgian authorities stating that the Sukhum(i) airport "in Georgia's Russian-occupied Abkhazia region will not be used for international flights. [...] Carrying out international flights from the occupied Abkhazia region contradicts international law, Georgian law and the rules of the ICAO"527.

Passenger trains operate between Sukhum(i) and Sochi. Trains arrive in Sukhum(i) regularly from Moscow, St. Petersburg and Samara. The railway line between Ochamchira and Tkvarcheli was reported to be in use for freight transport. The connection to Georgia has been disrupted since the end of the Georgian-Abkhaz war.

The Sukhum(i) seaport has remained in use after the end of the Georgian-Abkhaz war in spite of protests by Georgian authorities, and Turkish and Russian merchant vessels call there regularly<sup>528</sup>, bringing building materials and grocery products. Abkhazia exports mainly raw materials to these countries via sea routes. No cruise vessels have been sailing to or from the Sukhum(i) seaport from 1993 until 2019. However, on 2 December 2019, Russian cruise liner "Prince Vladimir" arrived in the Sukhum(i) seaport<sup>529</sup> for the first time in 26 years. Whilst Abkhaz authorities hope for tourism expansion thanks to regular cruise connections, Georgian authorities claim that any maritime traffic in Abkhazia remains prohibited. There have also been cases of seizure of Turkish vessels by Georgian authorities due to unauthorized entry into Abkhazia<sup>530</sup>.

<sup>527</sup> Georgian MFA: airport in occupied Abkhazia won't be used for international flights. [online] [last retrieved 04-11-2019]. Available at: https://agenda.ge/en/news/2019/2052

Paths to Peace? A survey of public attitudes towards potential transformation of the Georgian-Abkhaz conflict. 2017. London: Conciliation Resources.

<sup>&</sup>lt;sup>529</sup> "Князь Владимир" пришвартовался в Сухумском порту. [online] [last retrieved 16-12-2019] Available at: https://sputnik-abkhazia.ru/Abkhazia/20191202/1028923149/Knyaz-Vladimirzashel-v-Sukhumskiy-port.html

<sup>&</sup>lt;sup>530</sup> *Georgia Detains Ship Captain Over Abkhazia*. [online] [last retrieved 16-12-2019]. Available at: https://old.civil.ge/eng/article.php?id=21389

In 2011, an agreement on a transport corridor for freight traffic through Abkhazia was reached between Russia and Georgia, in which "there was no acknowledgment by Russia that the two countries are supposedly independent"<sup>531</sup>. The question of a railway transport corridor through Abkhazia was revived after the end of the second Karabakh war, when Armenia and Azerbaijan agreed on reestablishment of a transport corridor from Russia to Turkey. However, reopening of the railway corridor through Abkhazia does not seem likely without resolution of political issues<sup>532</sup>. In my opinion, reopening of transport corridors through Abkhazia might prove beneficial for the reconciliation process. Since Abkhazia naturally connects two neighboring regions—the North Caucasus and the South Caucasus—the reopening might not only bring economic benefits, but also foster the establishment of people-to-people contacts.

Abkhazia is supplied with electricity from a hydro-electric power station located on the Ingur(i) River. Interestingly, this power station is operated jointly by Georgians and Abkhazians due to the fact that the reservoir is on the Georgian side, whilst the generators are on the Abkhaz side. According to a deal reached in 1996, 60 per cent of the generated electricity goes to the Georgian side and the remaining 40 per cent to the Abkhaz side<sup>533</sup>. However, since 2016 there have been major problems with electricity in Abkhazia because of cryptocurrency mining. This has become popular among the residents of Abkhazia thanks to low electricity tariffs<sup>534</sup>. As the demand for electricity grew, major problems such as blackouts occurred, and Abkhaz authorities were forced to introduce electricity rationing as well as a ban on cryptocurrency mining. The insufficiency of electricity has forced Abkhazia

De Waal, T. 2020. Abkhazia Today. In Beyond Frozen Conflict. Scenarios for the Separatist Disputes of Eastern Europe. London: Rowman & Littlefield International. ISBN 978-1-5381-4418-3. P. 169.

<sup>&</sup>lt;sup>532</sup> Астамур Логуа: «Абхазский железнодорожный транзит надо возрождать». [online] [last retrieved 11-02-2021]. Available at: https://www.ekhokavkaza.com/a/31094336.html

<sup>&</sup>lt;sup>533</sup> De Waal, T. 2020. *Abkhazia Today...*, pp. 176–177.

<sup>534</sup> According to OC Media, the price of one kilowatt-hour of electricity as in 2021 is \$0.005 in Abkhazia, \$0.08 in Armenia and Georgia, and \$0.06 in Azerbaijan. (Abkhazia moves to shut down cryptomining as blackouts escalate. [online][last retrieved 10-02-2021]. Available at: https://oc-media.org/features/abkhazia-moves-to-shut-down-cryptomining-as-blackouts-escalate/).

to seek electricity supplies from the Russian Federation<sup>535</sup>, which will probably lead to an even greater dependence on Russia.

Picture 7: Sukhum(i) train station



(Source: Piotr Sieniawski, May 2019)

## III. External sphere

Table 20: Assessment of the criteria concerning the external sphere

	Average assessment
16. Cooperation with international organizations and UN Member States	3.3
17. Abidance by international standards for human rights	3.5
18. Foreign trade and foreign investment	3.3
19. International civic, cultural, sport and educational cooperation	3.7
20. Future aspirations to become a fully recognized state	6.6
Overall assessment	4.1

<sup>&</sup>lt;sup>535</sup> Абхазия начала получать электроэнергию из России для покрытия энергодефицита. [online] [last retrieved 10-02-2021]. Available at: https://tass.ru/ekonomika/10238557

16. Cooperation with international organizations and UN Member States

Despite the fact that Abkhazia has so far been recognized by five UN Member States, an actual cooperation exists almost exclusively with the Russian Federation. The majority of experts described the recognition granted by Nauru, Nicaragua, Syria, and Venezuela as a formal act which only serves to please the Russian Federation. With regard to the actual cooperation and benefits stemming from such recognition for Abkhazia, one of the experts pointed out that "it is just a recognition that gives them [Abkhazia and South Ossetia—P.S.] nothing"536. Back in 2008, Abkhazians expected that the recognition by Russia would be followed by other members of the international community. This expectation proved to be incorrect. Furthermore, it has had a negative effect on the Georgian-Abkhaz dialogue process and led to further isolation of Abkhazia. As one of the Abkhaz experts stated, "we do not feel that it has given something to us. It did not have any influence on our internal capacity, nor on our economy. We just do not feel it. In general, we have felt more isolated in the last five years than ever before, especially after the UN Mission [UNOMIG-P.S.] and other international organizations left us. Prior to that, the international community had been present here and we could feel more stability; it felt like we could balance in-between. Now we are officially recognized by Russia, but it has not brought any positive changes"537.

Some of the experts have pointed out that, in addition to the UN Member States, Abkhazia has been attempting to establish relations both with other *de facto* entities and with the federative units of the Russian Federation<sup>538</sup>. For instance, the inauguration ceremony of President Raul Khajimba on 9 October 2019 was attended by representatives of the federative units on the presidential level. Specifically, representatives of the Republic of Chechnya, the Republic of Adygea, the Republic of North Ossetia-Alania,

<sup>&</sup>lt;sup>536</sup> Interview 1. Tbilisi, 15 November 2019.

<sup>&</sup>lt;sup>537</sup> Interview 16. Sukhum(i), 20 May 2019.

<sup>&</sup>lt;sup>538</sup> Interview 1. Tbilisi, 15 November 2019.

the Kabardino-Balkar Republic, and the Karachay-Cherkess Republic were present.

The strategic significance of relations with the Russian Federation has been pointed out in the document "Foreign Policy Concept of the Republic of Abkhazia", which was issued in December 2020. The document highlights the development of mutually beneficial relations between Abkhazia and the Russian Federation, including the subjects of the Russian Federation, specifically the republics in the North Caucasus<sup>539</sup>. The Russian Federation is perceived as a guarantor of stability, socio-economic development and security of Abkhazia; therefore, priority is given to further development of the strategic partnership. Despite the fact that opportunities for the establishment of relations with other states, including the members of the EU, have been outlined, this remains highly unlikely due to the legal position of the vast majority of the international community.

#### 17. Abidance by international standards for human rights

This parameter was ranked differently by the experts from Tbilisi and Sukhum(i). Even among the Georgian experts, some claimed that the human rights standards are non-existent in Abkhazia, while others stressed a relatively strong position of the civil society and its ability to defend rights and freedoms. Moreover, the Georgian experts pointed out issues regarding the return of the ethnic Georgians expelled during the Georgian-Abkhaz war to their homes in Abkhazia, as well as the situation of the ethnic Georgians in the Gal(i) region concerning human rights, especially their status of "second-class citizens". In this respect, some of the Georgian experts even referred to the Abkhaz political system as to "ethnocracy" due to the fact that some rights, such as the right to acquire property, are confined only

<sup>539</sup> Концепция внешней политики Республики Абхазия. [online] [last retrieved 03-01-2021]. Available at: http://presidentofabkhazia.org/upload/iblock/e3b/KONTSEPTSIYA-Vneshey-politiki.pdf

<sup>540</sup> Interview 21. Tbilisi, 28 May 2019.

to Abkhaz citizens. Nevertheless, as a recent survey shows, it is "inexpedient to put the issue [the return of IDPs—P.S.] on the agenda at the current stage, because it is one of the most sensitive issues for both sides. [...] It must be clear from the outset that at the present stage such a move would only fuel the tensions between Sukhum[i] and Tbilisi"<sup>541</sup>.

#### 18. Foreign trade and foreign investment

Foreign trade and foreign investment rely heavily on the Russian Federation as the essential economic partner of the Republic of Abkhazia. The experts also identified Turkey as a trade partner, mostly due to the Abkhaz diaspora living in Turkey. According to statistical information, Abkhazia had a negative trade balance of 13.38 bn. rubles in 2018, consisting of imports (18,543 bn. rubles) and exports (5,161.8 bn. rubles)<sup>542</sup>. In the first half of 2019, there was a negative trade balance of 5,311 bn. rubles, consisting of imports (8,500 bn. rubles) and exports (3,189 bn. rubles). The most important import partners were the Russian Federation (66 per cent), Moldova (5 per cent), Turkey (3 per cent), Italy (3 per cent), and Brazil (2 per cent)<sup>543</sup>. Among the goods exported from Abkhazia are mostly agricultural products and raw materials, such as citrus fruits (28 per cent), wine products (27.9 per cent), walnuts (17.4 per cent), coal (11.9 per cent), and fish (2.5 per cent)<sup>544</sup>.

<sup>&</sup>lt;sup>541</sup> Paths to Peace? A survey... 2017. P. 24.

<sup>&</sup>lt;sup>542</sup> Справка о социально-экономическом состоянии..., ор. cit.

<sup>543</sup> Внешнеторговый оборот абхазии за первое полугодие 2019 года составил 11 млрд 689 млн рублей. [online] [last retrieved 27-10-2019]. Available at: http://abkhazinform.com/item/9139-vneshnetorgovyj-oborot-abkhazii-za-pervoe-polugodie-2019-goda-sostavil-11-mlrd-689-mln-rublej

<sup>&</sup>lt;sup>544</sup> Внешнеэкономическая деятельность. [online] [last retrieved 27-10-2019]. Available at: economy.gov.ru > minec > resources > abkhazia

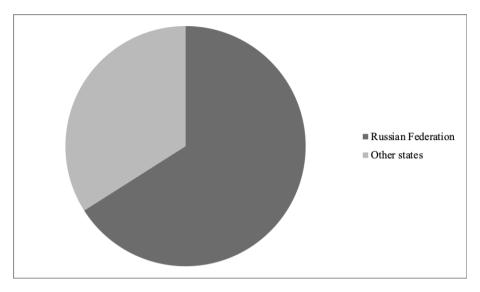


Figure 5: Import partners of Abkhazia

(Source: Author's own compilation)

With regard to foreign investment, it is almost exclusively the Russian Federation that makes investments in Abkhazia. Noteworthy is the "Investment Program Promoting Social-Economic Development", which is the basis for Russian state investments in Abkhazia. This includes segments such as road development, power engineering, reconstruction of apartment houses and land improvement, water supply, drainage and sewerage, education, administrative buildings and structures, healthcare system, waste management system, and land and real estate registries<sup>545</sup>. In years 2017–2019, Russian state investments of as much as 8,448.81 bn. rubles were planned for the above sectors in Abkhazia. In the previous years, the investments amounted to 3,289.8 bn. rubles in the period 2013–2015 and 9.884.88 bn. rubles in the period 2015–2017<sup>546</sup>.

546 Cf. Инвестиционная программа содействия социально-экономическому развитию Республики Абхазия на 2013 — 2015 годы; Инвестиционная программа содействия

<sup>545</sup> Инвестиционная программа содействия социально-экономическому развитию Республики Абхазия на 2017-2019 годы. [online] [last retrieved: 27-10-2019]. Available at: http://mineconom-ra.org/upload/iblock/f3b/f3be4aoafa7e8d166aoe8ecf195af367.pdf

The above data reflect a high level of dependence on the Russian Federation. Nevertheless, this is quite understandable as, according to the Georgian Law on Occupied Territories, any economic activity (entrepreneurial or non-entrepreneurial) shall be prohibited in the occupied territories in the absence of an appropriate license or permit, authorization or registration<sup>547</sup>. Correspondingly, trade with Georgia proper is not allowed by Abkhaz *de facto* authorities, the only exception being hazelnuts<sup>548</sup>. However, since the entering into force of the Association Agreement between Georgia and the EU, which has introduced the Deep and Comprehensive Free Trade Area, the product "can no longer be exported to the European markets or used as an ingredient for EU-bound, export-oriented products"<sup>549</sup> without a Georgian certificate of origin.

#### 19. International civic, cultural, sport and educational cooperation

Abkhazia makes the effort to gain various international contacts, including in the civic, cultural, sport and educational fields, which was highlighted by most of the experts. However, the experts in Abkhazia often complained about international isolation, which prevents Abkhazia from further engagement on the international level. This causes serious concerns, for instance in the field of environmental protection due to a malfunctioning sewage system and unmonitored ammunition dumps, which remain without international funding<sup>550</sup>. Other problems connected with the environment include waste

социально-экономическому развитию Республики Абхазия на 2015-2017 годы. [online] [last retrieved 27-10-2019]. Available at: http://mineconom-ra.org/ru/doc/investitsion-naya-programma-sodeystviya-sotsialno-ekonomicheskomu-razvitiyu-respubliki-abk-haziya/

- 547 Law of Georgia on Occupied Territories. [online] [last retrieved 04-03-2019]. Available at: https://matsne.gov.ge/en/document/download/19132/5/en/pdf
- <sup>548</sup> Blakkisrud, H. et al. 2020. Navigating de facto statehood: trade, trust, and agency in Abkhazia's external economic relations. In *Eurasian Geography and Economics*. Vol. 61. ISSN 1938-2863. P. 10.
- Dobrescu, M. and Schumacher, T. 2020. The Politics of Flexibility: Exploring the Contested Statehood-EU Actorness Nexus in Georgia. In *Geopolitics*. Vol. 25, issue 2. ISSN 1557-3028. P. 14.
- 550 Cf. Abkhazia: Stable Isolation. [online] [last retrieved 28-11-2019]. Available at: https://carnegieeurope.eu/2018/12/03/abkhazia-stable-isolation-pub-77842. Pryde, P. 2019.

management and fighting of agricultural pests (for example, the "brown marmorated stink bug" attacking harvests in Abkhazia, and palm weevil destroying the palms). Nowadays, there are a number of NGOs in Abkhazia that are active in different spheres and maintain contacts with partner organizations outside of Abkhazia.

In 2013, Abkhaz children were invited to participate on behalf of "the Republic of Abkhazia" in the International Children's Festival in Turkey. In response to the objections raised by the Georgian Government, the name of the delegation was changed to "Abkhazia Autonomous Republic—Georgia". As a result, Abkhazia refused to participate in the event<sup>551</sup>.

With regard to cooperation in sports, it is worth mentioning that the Football Federation of Abkhazia, established in 2007, actively participates in the events within the Confederation of Independent Football Associations (hereinafter referred to as "CONIFA"). In 2016, Abkhazia hosted the World Football Club and won the championship. Apart from that, Abkhazia played friendly matches with Nagorno-Karabakh in 2012, the Lugansk People's Republic in 2015, and with the Donetsk People's Republic in 2015<sup>552</sup>.

All the Abkhaz experts as well as the vast majority of the Georgian experts acknowledged the importance of academic exchange of students from Abkhazia and the Western countries. However, the issue of educational cooperation is closely related to the isolation of Abkhazia. "Because of the problems connected with freedom of movement, in particular the passport problem, young people from Abkhazia experience serious difficulties in enrolling at Western universities"<sup>553</sup>. In my opinion, it is inevitable to provide easier access to education abroad for the Abkhaz youth. This could not only be a way to decrease the Russian influence over Abkhazia, but education could also

*Environmental Resources and Constraints In The Former Soviet Republics.* Oxon: Routledge. ISBN 978-0-367-00748-5.

<sup>551</sup> Abkhazian children are victims of the 23rd April. [online] [last retrieved 23-10-2019] Available at: https://abkhazworld.com/aw/diaspora/133-abkhazian-children-are-victims-of-the-23rd-april

<sup>552</sup> CONIFA. [online] [last retrieved 29-11-2019]. Available at: http://www.conifa.org/en/members/abkhazia/. Grzywaczewski, T. 2018. Granice marzeń o państwach nieuznanych. Wołowiec: Wydawnictwo Czarne. ISBN 978-83-8049-623-1. Pp. 144–161.

<sup>&</sup>lt;sup>553</sup> Paths to Peace? A survey of public attitudes..., p. 20.

have a positive impact on confidence building, dialogue and the reconciliation process in the long-term perspective.

#### 20. Future aspirations to become a fully recognized state

With regard to future aspirations of Abkhazia to become a fully recognized state, this parameter ranked relatively high. Many experts, both in Georgia and in Abkhazia, have expressed their opinion that Abkhazia aspires to become an independent state. It follows from the conducted interviews that the Abkhazians perceive their dependence on Russia quite critically, are rather upset about the standpoint of the international community, and see non-recognition as an injustice towards them. On several occasions, they expressed their opinion that the isolation of Abkhazia is caused, above all, by the geopolitical conflict between Russia and the West. As one of the experts stated, "[a]fter the war [...] we preferred to be poor, but free. We are not free now, because of this geopolitical situation. Unfortunately, there is a conflict between Russia and the West, and Abkhazia is like a border between these two worlds. And it does not help us"554.

After the recognition by the Russian Federation, Abkhaz officials expressed hopes that a dialogue on recognition of Abkhazia on the official level might take place within the following decade. "Sergei Shamba announced that Abkhazia cannot turn its back on Europe despite the fact that the European states refuse to recognize its independence"<sup>555</sup>. After the annexation of Crimea, it became apparent that the West, consistently expressing its support for the territorial integrity of Georgia, would not consider changing its policies towards Abkhazia in the near future.

Although the Georgian experts did not consider it very probable for Abkhazia to become an independent state and expressed their viewpoint that Abkhazia might return to Georgia, this hypothetical option was strongly rejected by all the experts in Abkhazia. Even though they were rather critical

<sup>&</sup>lt;sup>554</sup> Interview 20. Sukhum(i), 21 May 2019.

<sup>555</sup> Венедиктова, Н. 2011. Политика непризнания независимости Абхазии западным сообществом: последствия и перспективы. In *Перспективы международного признания Абхазии*. Сухум. Р. 19.

about the strong dependence on Russia, they would not consider Georgia as an alternative to Russia. "The sooner Georgia recognizes us, the better for both Georgia and Abkhazia and for our relations in the future. I think the way to reconcile and to solve this conflict would lie in the good neighborly relations of two independent states. I do not see how Abkhazia could go back to Georgia"<sup>556</sup>.

After the recognition by the Russian Federation in 2008, the Abkhazians do not see any point in discussing any proposals on a common state with Georgia. "Abkhazia wants to have contacts with the international community, to be able to open its seaports and airport and communicate with Turkey and other countries. But not at the expense of its independence"557. "It is very difficult for any Georgian political elite to take this uneasy decision to recognize Abkhazia. Thus, the international community should help Georgia recognize Abkhazia gradually. The first phase could be de-isolation. [...] Gradually, we would trade more officially with Georgia. If we had the opportunity to trade with Turkey and the European Union, why not with Georgia? Georgia is our neighbor. However, it should not be exclusively with Georgia, nor through Georgia. [...] And then, gradually, at one point, when we have new generations, it would not matter for them that Abkhazia is independent. I understand why it cannot happen now, but in the future it can"558.

Another point of concern for Abkhazians are travel restraints since Abkhaz passports are not recognized by the vast majority of the international community, which subsequently leads to the adoption of Russian passports. Apart from that, the Abkhaz society is well aware of the fact that "there are undeveloped democratic institutions and backward economy in Russia, and thus Russia cannot provide Abkhazia with such institutional support as the West could"559. In order to improve the chances of future recognition by the Western countries (or at least a dialogue), the experts in Abkhazia highlighted the need for the development of democratic standards, governmental institutions, intra-societal dialogue as well as diversification of their economy. "A positive inner political development of Abkhazia, strengthening of its democratic

<sup>&</sup>lt;sup>556</sup> Interview 17. Sukhum(i), 20 May 2019.

<sup>557</sup> Ibidem.

<sup>558</sup> Ibidem.

<sup>&</sup>lt;sup>559</sup> Венедиктова, Н. 2011. *Политика непризнания...*, р. 20.

institutions, could also constitute one of the factors in favor of recognizing the right of Abkhazia to independence"<sup>560</sup>. The process of democratization may, in my opinion, bring on problems that are not a particularly popular topic for discussion in Abkhazia, such as the issues of compensation for property, rights of the ethnic Georgians in the Gal(i) region and, finally, the repatriation of ethnic Georgians expelled during the war.

### 3.5 Legal status

Following the referendum, which took place on 3 October 1999, the National Assembly of Abkhazia passed the Declaration of State Independence on 12 October 1999, which highlighted the fact that Georgia had not been exercising any effective control over the territory since 1993. Nevertheless, such declaration had no legal effect from the viewpoint of international law, and Abkhazia remained without any external recognition until 2008.

The UN Security Council, in its Resolution 876 (1993) adopted on 19 October 1993, affirmed the sovereignty and territorial integrity of the Republic of Georgia and strongly condemned "the grave violation by the Abkhaz side of the cease-fire agreement of 27 July 1993 between the Republic of Georgia and forces in Abkhazia, and subsequent actions in violation of international humanitarian law". Besides, the Resolution also called upon "all States to prevent the provision from their territories or by persons under their jurisdiction of all assistance, other than humanitarian assistance, to the Abkhaz side and in particular to prevent the supply of any weapons and munitions"<sup>561</sup>. After the military conflict, Russia tried to compel Abkhazia to reach an agreement on a common state with Georgia. At that time, the Russian position was hostile towards Abkhazia, which was not only manifested by the Russian vote in favor of the above Resolution, but also by the fact that even before the end of the conflict, on 21 September 1993, the Russian Federation closed down the Russian-Abkhaz border.

<sup>560</sup> Инал-Ипа, А., Шакрыл, А. 2011. Перспективы междугнародного признания Абхазии. Значение позиции Грузии. Іп Перспективы международного признания Абхазии. Сухум. Р. 58.

<sup>&</sup>lt;sup>561</sup> UN Security Council Resolution 876 (1993). [online] [last retrieved 02-03-2019]. Available at: http://unscr.com/en/resolutions/doc/876

3.5 Legal status 207

On 4 April 1994, the Declaration on Measures for a Political Settlement of the Georgian-Abkhaz Conflict was signed in Moscow, which was followed by the Agreement on a Cease-Fire and Separation of Forces, signed in Moscow on 14 May 1994. Pursuant to the Agreement, peace-keeping forces of the Commonwealth of Independent States and military observers were to be deployed in the security zone in order to monitor compliance with the Agreement. In addition, military troops of the Republic of Georgia were to be withdrawn from the territory of Abkhazia<sup>562</sup>. In the meantime, an armed conflict had broken out in Chechnya<sup>563</sup> in December 1994. This was taken advantage of by Georgia, claiming that Chechens fighting in the ongoing armed conflict had been trained in Abkhazia. Therefore, restrictions on the Russian-Abkhaz border remained in force.

On 19 January 1996, the Council of Heads of States of the CIS adopted a decision that imposed sanctions on Abkhazia. At that time, the countries participating in the sanctions included Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Ukraine and Uzbekistan (Belarus did not participate in the sanctions). The CIS states condemned "destructive position of the Abkhaz side, setting obstacles to achieving mutually acceptable agreements on political settlement of the conflict, secure [and] dignified return of the refugees and IDPs to places of their permanent residence"<sup>564</sup>.

The restrictive measures imposed by the CIS member states applied first and foremost to the financial sphere, trade, transport and military relations with Abkhazia and included in particular:

Preventing sales or supplies in the zone of conflict by the citizens
of the CIS member states, or from their territories or through the use
of vessels or airplanes flying [under] their flag, of the arms, relevant

<sup>&</sup>lt;sup>562</sup> Agreement on a Cease-Fire and Separation of Forces, signed in Moscow on 14 May 1994. [online] [last retrieved 02-03-2019]. Available at: https://reliefweb.int/report/georgia/agreement-cease-fire-and-separation-forces-signed-moscow-14-may-1994

<sup>&</sup>lt;sup>563</sup> The so-called First War in Chechnya, an internal armed conflict between the Russian Federation and the Chechen Republic of Ichkeria, from 1994 to 1996.

<sup>&</sup>lt;sup>564</sup> FullText: 1996 CISTreaty on Abkhaz Sanctions. [online] [last retrieved 02-03-2019]. Available at: https://old.civil.ge/eng/article.php?id=17293.

technical devices of all types and spare parts, ammunition, military transports and equipment;

- Prohibition of offering to the Abkhaz side by the legal and physical persons resident in their territories of any technical consultations, assistance or services in preparing the military cadre;
- Prohibition of involving or employing persons permanently residing in the territory controlled by the Abkhaz side in the military service of the CIS member states;
- Preventing recruitment of the citizens of the CIS member states and their deployment in the zone of conflict for participation in any military entities existing there;
- Ensuring the return of the citizens of the CIS member states currently serving in the military entities of Abkhazia;
- Recalling the officials, representatives or citizens of the CIS member states currently in the territory controlled by the Abkhaz authorities who assist these authorities in military matters.

The CIS member states also agreed not to carry out any business and economic, financial, transport or other operations with Abkhaz authorities, and not to enter into any official contacts with Abkhaz representatives, officials or official structures existing in the territory of Abkhazia, or any military units created therein. The member states reaffirmed that Abkhazia "is an inalienable part of Georgia" and called upon "immediate, unconditional and dignified return of all refugees and IDPs to places of their permanent residence" 565.

As a result of the sanctions imposed by the CIS, air transport was closed for international flights and the railway functioned only within Abkhazia. "The seaports were closed for passenger boats, and Abkhaz boats could not leave ports to bring goods from Turkey. Special regulations were introduced on the Abkhaz-Russian border that heavily restricted the cross-border movement of Abkhaz citizens as well as transport, goods and medicine. With many dependent on petty trade across the border, this cut the population off from their main source of economic survival" The above package of sanctions

<sup>565</sup> Loc. cit.

Kvarchelia, L. 2008. Sanctions and the path away from peace. In Accord. An international review of peace initiatives. Issue 19. P. 71.

3.5 Legal status 209

imposed by the CIS countries is in literature often referred to as "blockade of Abkhazia"<sup>567</sup>.

On 31 January 1996, E. Shevardnadze, president of the Republic of Georgia, issued a decree according to which "the seaport of Sukhum[i], port sites and the marine area and the sector of the state border between Georgia and the Russian Federation within the territory of Abkhazia, Georgia, shall be closed to all forms of international shipments, with the exception of consignments of humanitarian aid shipped in accordance with this Decree"<sup>568</sup>.

In March 1998, the United Nations Needs Assessment Mission to Abkhazia, Georgia, recommended lifting the trade restrictions with Abkhazia, mainly for humanitarian reasons. It concluded that "[t]he trade restrictions have, however, a far-reaching impact in psychological terms and in creating a sense of isolation which tends to solidify political positions and opposition to compromise and economic integration. An easing of the restrictions would, in the Mission's view, help promote reconciliation and create a more conducive climate for the negotiation process" The severity of the situation was expressed by the fact that, in the view of the UN Needs Assessment Mission, "expenditure for public services is minimal and [economic activity and the tax base for public revenue—P.S.] have produced a situation where health care and educational services can only survive thanks to the provision

- 567 In international law, the term "blockade" refers to "a belligerent operation to prevent vessels and/or aircrafts of all nations, enemy and neutral, from entering or exiting specified ports, airports, or coastal areas belonging to, occupied by, or under the control of an enemy nation. The purpose of the blockade is to deny the enemy the use of enemy and neutral vessels or aircraft to transport personnel and goods to or from enemy territory". (von Heinegg, W. H. 2012. Blockade. In *The Max Planck Encyclopedia of Public International Law. Vol. I.* New York: Oxford University Press. ISBN 978-0-19-929168-7. Pp. 960–961) Since Russia and Abkhazia were not in the state of conflict in the 1990s, the notion "blockade" does not apply to this situation. Thus, in my view, the term "sanctions" seems more appropriate in this context.
- Decree issued on 31 January 1996 by the president of Georgia concerning border and customs control in the section of the state border between the Russian Federation and Georgia within the territory of Abkhazia, Georgia, and in the port of Sukhum(i), port sites and the marine area. In *International Organizations and the Law of the Sea: Documentary Yearbook* 1996. 1998. ISBN 978-90-41-11004-6. Pp. 164–165.
- <sup>569</sup> United Nations Needs Assessment Mission to Abkhazia, Georgia. 1998. [online] [last retrieved 03-03-2019]. Available at: https://unpo.org/article/712.

of medical supplies by humanitarian organizations and to the payment of fees for services to beneficiaries" 570.

On 21 August 2008, the Abkhaz Parliament asked the Russian Federation to recognize the independence of Abkhazia. On 26 August 2008, the president of the Russian Federation, Dmitry Medvedev, officially signed a decree on recognition of the independence of Abkhazia. The reasoning behind the recognition was the alleged threat of "genocide" to be conducted by Georgia in Abkhazia. He stressed in his speech that "[i]n 1991, President Gamsakhurdia of Georgia, having proclaimed the motto 'Georgia for Georgians'<sup>571</sup> [...] ordered attacks on the cities of Sukhum[i] and Tskhinval[i]. The result then was thousands of killed people, dozens of thousands of refugees and devastated villages. And it was Russia who at that time put an end to the eradication of the Abkhaz and Ossetian peoples"<sup>572</sup>. He further stated that the Russian Federation was acting in accordance with the UN Charter, the 1970 Friendly Relations Declaration as well as the 1975 Helsinki Final Act. In his words, recognition was "the only possibility to save human lives"<sup>573</sup>.

In my opinion, it has to be noted in the above context that argumentation based on the so-called remedial secession is not applicable in the case of Abkhazia. First of all, there was no genocide going on in 2008 in Abkhazia, nor was there a military attack from Georgia against this territory. Secondly, even though the Abkhazians can be considered as "peoples", they were only a minority group in the territory of Abkhazia before the outbreak of hostilities. The demographic changes that caused the Abkhazians to become the majority had been the result of either illegal expulsion of a different ethnic group from the Abkhaz territory or various obstacles to the return of IDPs.

<sup>570</sup> Loc. cit.

<sup>571</sup> In a later television interview, Gamsakhurdia denied having said this and claimed his program was "Georgia is a state of Georgians, at the same time all nationalities have equal rights". (Первое интервью президента Грузии Звиада Гамсахурдия после избрания в Москве 1991. [online] [last retrieved 23-11-2019]. Available at: https://www.youtube.com/watch?v=2nl\_teJV1-0). There is no clear evidence proving that Gamsakhurdia has ever expressed the idea of "Georgia for Georgians" although it became often attributed to him. (Сf. Нодиа, Г. Конфликт в Абхазии..., р. 20.)

<sup>572</sup> Statement by President of Russia Dmitry Medvedev. [online] [last retrieved 05-03-2019]. Available at: https://web.archive.org/web/20080902001442/http://www.kremlin.ru/eng/speeches/2008/08/26/1543\_type82912\_205752.shtml

<sup>573</sup> Loc. cit.

The recognition of Abkhazia by the Russian Federation was met with strong disapproval from the Parliamentary Assembly of the Council of Europe. In its Resolution 1647 (2009), the Assembly condemned "the recognition by Russia of the independence of South Ossetia and Abkhazia and considers it to be a violation of international law and Council of Europe's statutory principles. The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia and reiterates its call on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and to fully respect the sovereignty and territorial integrity of Georgia, as well as the inviolability of its borders"<sup>574</sup>.

The granting of recognition by the Russian Federation was followed by some other states, as shown in the table below. As in February 2021, Abkhazia has been recognized only by five UN Member States, all of which maintain close political or economic ties with Russia. The vast majority of the international community remains consistent in the policy of non-recognition towards Abkhazia and supports the territorial integrity of Georgia within its internationally recognized borders.

Table 21: UN Member states that recognize Abkhazia as an independent country

State	Date of recognition
Russian Federation	26 August 2008
Nicaragua	5 September 2008
Venezuela	15 December 2009
Nauru	10 September 2009
Vanuatu	23 May 2011 (revoked recognition on 12 July 2013)
Tuvalu	18 September 2011 (revoked recognition on 31 March 2014)
Syria	29 May 2018

(Source: Author's own compilation)

<sup>&</sup>lt;sup>574</sup> Resolution 1747 (2009). Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia. [online] [last retrieved 07-03-2019]. Available at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17708

In October 2008, the Georgian Parliament passed the Law on Occupied Territories (hereinafter referred to as "Law"), which regards Abkhazia together with the adjacent maritime zone explicitly as a territory that "ha[s] been occupied as a result of military aggression by the Russian Federation" <sup>575</sup>. The Law established a special legal regime that applies in the territory of Abkhazia, including a number of legal restrictions on free movement and economic activities, as well as other regulations. However, this attitude has been constantly criticized by the Russian Federation, claiming that Abkhazia proclaimed independence and has been recognized as an independent state; hence, the Russian Federation cannot be the "occupying power".

In general, foreign citizens and stateless persons are allowed to enter the territory of Abkhazia only from the Zugdidi municipality region, i.e. from the south. Entering from the Russian Federation (from the north) is regarded as a violation of the law and may be punishable under the Criminal Code of Georgia.

The second group of restrictions applies to real property in the territory of Abkhazia. Pursuant to Article 5 of the Law, "[a]ny transaction regarding real property that is concluded within the occupied territories in violation of the legislation of Georgia shall be deemed void from the time of its conclusion and shall have no legal implications" 576.

Another group of restrictions aims at economic activities in the territory of Abkhazia. The Law prohibits any economic activity without authorization by Georgia, international air and maritime traffic, railway and international overland traffic, and money transfers unless a special permission is granted by the Government of Georgia.

As I have noted before, the current ethnic composition of Abkhazia is the result of the expulsion of ethnic Georgians from this territory. It is therefore important to keep in mind that granting recognition to Abkhazia without insisting on free return of internally displaced persons would mean legitimizing forceful ethnic changes.

With regard to the current legal status of Abkhazia, it is perceived by different international actors in three different ways:

<sup>575</sup> Law of Georgia on Occupied Territories..., op. cit.

<sup>576</sup> Loc. cit.

3.5 Legal status 213

a) Abkhazia is an integral part of Georgia. Georgia upholds that Abkhazia is its integral part despite the fact that it does not exercise effective control over the territory of Abkhazia. It also claims that Abkhazia is a territory under temporary military occupation of the Russian Federation. The Abkhazian government in exile, funded through the Georgian state budget<sup>577</sup>, is viewed by Tbilisi as the only legitimate representation of Abkhazia even though its actual competences are limited to education, health care and support for Georgian IDPs.

- b) Abkhazia is an independent state. This view gained significance after the Russian Federation granted recognition to Abkhazia and a few other states followed. Nevertheless, this viewpoint is so far shared only among countries that maintain close political or economic ties with Russia and has not gained any significant support within the international community. Moreover, it is strongly opposed by Georgia, which unilaterally broke off diplomatic relations with Russia after Russia recognized Abkhazia and South Ossetia as independent countries. According to the official position of the Georgian Government, mutual diplomatic relations will not be restored as long as Russia has its embassies in Tskhinvali and Sukhum(i)<sup>578</sup>. Additionally, the current president of Georgia, Salome Zourabichvili, stated that "unless there is a clear message from the Russian Federation that Moscow is ready to move the occupation line [...] it makes no sense to pursue any dialogue with Russia"579. Recognition of Abkhazia as such is a red line for Georgia, irrespective of political views of the Government.
- c) Abkhazia is a *de facto* regime in the territory of Georgia. This is the viewpoint adopted by most of the third states, by which they acknowledge the actual situation, i.e. that Georgia no longer exercises effective control over Abkhazia, but, on the other hand, they formally

<sup>&</sup>lt;sup>577</sup> The Realm of the Possible. Finding ways forward..., op. cit.

<sup>578</sup> New FM: ,No Diplomatic Ties with Moscow as Long as it Has Embassies in Tskhinvali, Sokhumi¹. [online] [last retrieved 21-04-2019]. Available at: https://old.civil.ge/eng/article. php?id=25392

<sup>379</sup> Зурабишвили: «Диалог с Россией недопустим, пока часть Грузии оккупирована». [online] [last retrieved 21-04-2019]. Available at: https://eadaily.com/ru/news/2019/01/29/zurabishvili-dialog-s-rossiey-nedopustim-poka-chast-gruzii-okkupirovana

uphold the territorial integrity of Georgia within its internationally recognized borders. Some states, for instance Poland, explicitly use the notion "occupation" with regard to the *de facto* regime in Abkhazia<sup>580</sup>. This position has also been adopted by the European Court of Human Rights in 2021 in the case Georgia v. Russia (see Chapter 5). On the other hand, the Abkhaz experts stated that labelling Abkhazia as an "occupied territory" and Russia as the "occupying power" does not help foster the reconciliation process.

A similar situation occurs regarding the issue of boundary between Abkhazia and Georgia. There are three different perceptions by different actors:

- "Occupation line": this is a term adopted by Georgia and applied to the boundary separating the "temporarily occupied territories" from the rest of the state:
- 2) State border: for Abkhazia as well as for the countries which have granted recognition to Abkhazia, it is perceived as a border between two independent countries;
- 3) Administrative boundary line: the term used by the European Union as well as third countries that do not openly speak about territories under Russian occupation. For instance, German Chancellor Merkel used the term "demarcation line" during her visit to Tbilisi in August 2018 and avoided the use of "occupied territories", which caused major disappointment<sup>581</sup>.

The use of different notions by different actors in order to describe the same phenomenon creates an obstacle for future reconciliation.

<sup>580</sup> Cf. Opinia Doradczego Komitetu Prawnego przy Ministrze Spraw Zagranicznych RP w sprawie przyłączenia Półwyspu Krymskiego do Federacji Rosyjskiej w świetle prawa międzynarodowego. [online] [last retrieved 22-04-2019]. Available at: https://web.archive.org/web/20190330173237/https://www.msz.gov.pl/resource/382f0629-a114-442a-9cf4-6456ca7b8oc1:JCR

<sup>&</sup>lt;sup>581</sup> Merkel's visit to Tbilisi leaves Georgians disappointed. [online] [last retrieved 22-04-2019]. Available at: https://eurasianet.org/merkels-visit-to-tbilisi-leaves-georgians-disappointed

## 4 Case study: South Ossetia

#### 4.1 Historical development

South Ossetia is a *de facto* state located in the northern part of Georgia, often referred to as the "Tskhinvali region". It borders with the Russian Federation in the north and with Georgia in the south. Ossetians are an Iranian ethnolinguistic group living in the Caucasus region. The reason for their Iranian-speaking nature is probably their descent from mountain-dwellers who switched to the Iranian language<sup>582</sup>. Ossetians were referred to as the "Osa people" by the Georgians, and, consequently, their land was referred to as "Ovseti", while Arabs, Armenians, Greeks, and Persians called them "Alans". However, the Ossetians call themselves "Iron", and their country is called "Iriston"<sup>583</sup>. They belonged to the Scythian-Sarmatian peoples, occupying the southern territories of today's Russia<sup>584</sup>. Based on dialect, the Ossetian

<sup>&</sup>lt;sup>582</sup> Бубенок, О. 2007. Осетины на Южном Кавказе: Аборигены или пришельцы? In *Кавказ* и глобализация. Vol. 1, no. 4. ISSN 1817-7100. P. 148.

<sup>&</sup>lt;sup>583</sup> Чибиров, Л. А. и др. 1990. *История южных осетин. Учебное пособие*. Цхинвали: Издательство "Ирыстон". Р. 27.

<sup>584</sup> Очерки истории Юго-Осетинской автономной области І. История Южных Осетин до образования ЮОАО. 1985. Тбилиси: Академия наук Грузинской ССР. Юго-Осетинский научно-исследовательский институт. Р 56.

people are divided into three sub-ethnic groups: the Irons, the Digors, and the Tualags. The last term refers to the Ossetians, living in the southern slopes of the Caucasus Mountains, who intermingled with the ethnic group of Dvals in the Middle Ages.

There is no clear consensus among scholars as to when the Ossetian people settled down in the territory that is nowadays referred to as South Ossetia. Some Ossetian authors date it back to the 3<sup>rd</sup> century B.C., whilst others assume this process could have happened around the 3<sup>rd</sup> century A.D. and assumed a mass character only after a Mongol invasion in the 13th century<sup>585</sup>. Similarly, Soviet historiography claimed that the Alans started to settle in the territories of the South Caucasus as a result of Mongol invasions in the 13th century and the expulsion of the Alans from their territories<sup>586</sup>. Certainly, there must have been some interaction between the peoples living on the different sides of the Caucasus Mountains and individual groups of Alans, who had populated the South Caucasus at an earlier time. However, "this could not be the beginning of the compact colonization of present-day South Ossetia"587. By the 9th century, the Alanic tribes had formed a centralized kingdom – Alania – in the northern part of the Caucasus mountain range. "Though Alania was small, the Caucasus Mountains offered many natural defenses, and though no longer nomadic, the Alans remained formidable horsemen. They survived as a buffer state between the empires of the Khazars, Byzantines, and Arabs for several centuries, mainly by allying with one empire against another"588.

In the 12<sup>th</sup> and the 13<sup>th</sup> century, the history of Georgia (Kartli) and the Ossetians became interconnected through dynastic marriages. For instance, Georgian Queen Tamar the Great was a daughter of King Giorgi III and Alan Princess Burdukhan, who was a daughter of Alanian King Khuddan. Tamar

<sup>585</sup> Маргиев, В. И. 1990. *Правовой статус Юго-Осетинской автономной области*. Цхинвали: Издательство Ирыстон. Р. 7.

<sup>&</sup>lt;sup>586</sup> Косвен, М. О. и др. (ред.). 1960. *Народы Кавказа. Том I*. Москва: Издательство Академии наук СССР. Р. 300.

<sup>&</sup>lt;sup>587</sup> Бубенок, О. 2007. Осетины на Южном Кавказе..., р. 149. Furier, А. 2000. *Droga Gruzji...*, р. 158.

South Ossetia. [online] [last retrieved 10-05-2019]. Available at: https://geohistory.today/south-ossetia/

later married David Soslan, an Alan prince, with whom she had two sons (Giorgi and Rusudan), who later succeeded to the throne<sup>589</sup>.

It is generally assumed that the migration of Ossetians in the southern direction started in the 13<sup>th</sup> century as a result of the Mongolian expansion into the region. Prior to that, the Caucasus mountain range had been a natural boundary dividing the Georgian Kingdom from the Ossetians living in the Northern Caucasus. The Mongolian migration caused a large emigration of Ossetians to Crimea, the Balkans, Eastern Europe, and Georgia<sup>590</sup>. In the mid-13<sup>th</sup> century, according to Ossetian historiography, there was already a significant group of Ossetians settled in the territory of Georgia. Nevertheless, Georgian historiography claims that the Ossetians stayed in Georgia (Kartli) only for 30 years. By 1346, Georgia was supposedly cleared of Mongols and the Ossetians were also driven out by King Giorgi the Glorious<sup>591</sup>.

Another migration wave of Ossetians to Georgia, along with their plundering attacks, took place in the period from the 16<sup>th</sup> to the 18<sup>th</sup> century<sup>592</sup>. Georgian historians claim though that the migration of Ossetians to the region of Northern Caucasus finished by the beginning of the 15<sup>th</sup> century and the migration of Ossetians to *Shida Kartli*<sup>593</sup> started as late as in the second half of the 18<sup>th</sup> century<sup>594</sup>. The reason for this migration were difficult living conditions in the mountains, where Ossetians had moved to escape from Mongol and Tatar raids. After their lowlands had been occupied by the Kabardinians, they sought new lands in the southern part of the Caucasus ridge and came down to Kartli. "[F]or improving the living conditions, they gradually moved to the lowlands and settled on the lands of the Georgian feudal as migrants"<sup>595</sup>.

<sup>&</sup>lt;sup>589</sup> Вачнадзе, М. и др. 1993. *История Грузии (с древнейших времен до наших дней)*. *Тбилиси*: Тбилисский государственный университет. Рр. 57–59.

<sup>590</sup> Очерки истории Юго-Осетинской автономной области..., pp. 67–91.

<sup>&</sup>lt;sup>591</sup> Lortkipanidze, V. and Totadze, A. 2010. *The Population of the Caucasus*. New York: Nova Science Publishers, Inc. ISBN 978-1-62324-041-0. P. 89.

<sup>&</sup>lt;sup>592</sup> Сf. Захаров, В. А. и др. 2010. *Абхазия и Южная Осетия после признания. Исторический и современный контекст*. Москва: Русская панорама. ISBN 978-5-93165-264-1. Pp. 116–117.

<sup>&</sup>lt;sup>593</sup> The Mtkvari River divides the territory of Kartli into three subdivisions: Zemo (Upper), Shida (Inner), and Kvemo (Lower).

<sup>&</sup>lt;sup>594</sup> Топчишвили, Р. 2009. *Осетины в Грузии: миф и реальность*. Тбилиси: Издательство Универсал. Р. 8.

<sup>595</sup> Lordkipanidze, V. and Totadze, A. 2010. The Population of the Caucasus, p. 90.

In 1802 General Karl F. Knorring, in his letter to the Emperor of Russia, mentions Ossetians living on the southern slopes of the Caucasus mountain range. "Ossetian peoples in the gorges of the Caucasus Mountains along the rivers Patsi and Greater Liakhvi [italics—P.S.] have been living for ages in the Georgian subordination under the rule of Georgian princes of Machabeli, in the last days of life of King Giorgi, committed acts of disobedience and a murder, in which one of the princes was killed [...]. Ending the expedition to the Ossetians living along the rivers Patsi and Greater Liakhvi [italics—P.S.], Lieutenant Colonel Simonovich turned his regiment to the Ossetians living in the highlands of the Aragvi and the Little Liakhvi River [italics—P.S.], who were consistently raiding Georgian villages and participated in the atrocities of the abovementioned fellow men"596. In Knorring's report, the Ossetians are mentioned in connection with the geographical territories that they inhabited; however, neither the term "Ossetia" nor "South Ossetia" appears.

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Map 4: Map of South Ossetia

(Source: *Ненужная Осетия*. [online] [last retrieved 26-04-2020]. Available at: https://www.kommersant.ru/doc/638616)

<sup>596</sup> Всеподданнейший рапорт ген.-л. Кнорринга от 26 марта 1802 г. 1866. In *Акты, собранные Кавказской Археографической Комиссией. Том I.* Тифлис. Рр. 585–587.

An order dated 24 May 1830 from Marshal Paskevich to Governor Strekalov mentions the notions "the upper part of Ossetia" and "the lower part of Ossetia". The latter is used interchangeably with the notion "South Ossetia". First, Paskevich mentions that "[i]n the upper part of Ossetia, the mountains are rocky, and closer to the main ridge covered with eternal snow, in the lower part [italics—P.S.] there are quite dense forests [...]"597. Later in the same document, Paskevich refers to "South Ossetians" and "South Ossetia", noting that "[t]he main villages of the South Ossetians are located along the gorges of the Greater Liakhvi and the Little Liakhvi River [...]. In South Ossetia [italics—P.S.], houses in the villages are scattered and surrounded by small orchards, and in the upper—they are stuck like birds' nests to rocks and slopes"598. It follows from the document that Paskevich uses the notion "South Ossetia" to distinguish between two geographical regions inhabited by Ossetians, using also the term "the lower part of Ossetia", by which he clearly refers to the same area.

The viewpoint that Ossetians moved to the South Caucasus in search for more fertile lands seems to have relevant proof in historical sources. In 1871, N. F. Dubrovin<sup>599</sup> stated that "the lack of land was the reason why part of the Ossetians moved to the southern slope of the main range and voluntarily surrendered to the bondage of Georgian landowners. Having occupied the gorges of Kudarovskoye, Greater Liakhvi, Little Liakhvi, Rehula, and Ksani with its tributaries, the Ossetians became the serves of the princes of Eristov and Machabeli. These migrants make up the settlements of the *so-called South-Ossetians* [italics—P.S.] and, in turn, are also divided into many small societies, named after the gorges they inhabit. Thus, they are divided into Ksansky, Kudarsky, Liahkvsky, Gudoshaursky, Magladoletsky, Jamursky, and others"<sup>600</sup>. It is noteworthy that in Dubrovin's work the notion "so-called South Ossetians" appears, which is probably meant only to distinguish the

<sup>&</sup>lt;sup>597</sup> Цховребов, И. Н. 1960. *История Юго-Осетии в документах и материалах. Том II:* (1800-1864 гг.). Сталинири: Госиздат Юго-Осетии. Р. 308.

<sup>&</sup>lt;sup>598</sup> Ibidem, p. 309.

<sup>&</sup>lt;sup>599</sup> Nikolay Fyodorovich Dubrovin (1837–1904) was a Russian war historian.

<sup>600</sup> Дубровин, Н.Ф. 1871. История войны и владычества русских на Кавказе. Том І. Книга І. Очерк Кавказа и народов его населяющих. Санкт-Петербург: Тип. Департамента уделов. Р. 287.

geographical scopes inhabited by the Ossetians in the North and the South Caucasus. Such an explanation would seem consistent with Dubrovin's observation that "the nature itself divided the Ossetians into two parts: the northern with a population of 46,802 persons and the southern with a population of 19,324 persons. The former group belongs to the Vladikavkaz District, and the latter is part of the Transcaucasian provinces" Interestingly, Russian historian M. Bliev claims that the part of Ossetia stretching south from the Caucasus Mountains received its name "South Ossetia" from Russian cartographers in the 16<sup>th</sup> century<sup>602</sup>, although as I have noted, this term most probably appeared as late as in the 19<sup>th</sup> century.

According to the South Ossetian historiography, from 1768 until 1774, the Ossetians, together with Georgians, fought in the Russian-Ottoman war on the Russian side. They also note that in 1774, based on the provisions of the Treaty of Kuchuk-Kainarji, "Ossetia, not divided into Southern and Northern, became part of the Russian Empire"603. However, it needs to be noted that it was Ossetia (i.e. today's North Ossetia) that joined the Russian Empire in 1774, and by no means was it South Ossetia in today's understanding. Moreover, Georgian historians claim that in 1774 there was no such entity as "South Ossetia" in the territory of today's Georgia, and it was as late as in 1801 that the eastern part of Georgia, together with the territory of South Ossetia, was annexed by Russia. In 1990 L. A. Chibirov, the future de facto president of South Ossetia, claimed that "[i]n 1801, Eastern Georgia joined Russia. Time showed that accession was a progressive phenomenon in the history of South Ossetians because it contributed to the socio-economic and cultural development of the region. South Ossetians associated with Russia [their] hopes of getting rid of the yoke of feudal lords. However, these hopes did not materialize, because the tsarist government retained the arbitrariness of the landlords, aggravating the situation of the people by the introduction of the colonial regime"<sup>604</sup>.

<sup>&</sup>lt;sup>601</sup> Ibidem, p. 283.

<sup>602</sup> Блиев, М. 2006. Южная Осетия в коллизиях российско-грузинских отношений. Москва: Издательство Европа. ISBN 978-5-906226-46-4. Р. б.

<sup>&</sup>lt;sup>603</sup> Хасанов, А. А. 2018. Международно-правовые аспекты признания Южной Осетии. In *Журнал зарубежного законодательства и сравнительного правоведения*. No. 1. ISSN 2587-9995. P. 141.

<sup>&</sup>lt;sup>604</sup> Чибиров, Л. А. и др. 1990. *История южных осетин...*, р. 77.

The territory of South Ossetia was artificially split into two counties, Gori and Tusheti. As V. I. Margiev puts it, the Russian rule did not allow the South Ossetians to participate in the exercise of political power<sup>605</sup>. In 1843, the Ossetian District was established in the southern part of Ossetia as part of the Tbilisi Governorate<sup>606</sup>.

After the creation of the Georgian Democratic Republic in 1918, the South Ossetian political leadership came up with three possible scenarios for South Ossetia: (a) integration into Soviet Russia; (b) granting of separate administrative-territorial status; (c) autonomous development<sup>607</sup>. Out of these scenarios, the first option, i.e. the integration into Soviet Russia and unification with North Ossetia, was most widely supported among the South Ossetians. This scenario was backed up by Soviet Russia, which provided logistical and financial support to the South Ossetian Revolutionary Committee. Therefore, the Bolsheviks in South Ossetia demanded independence and were able to organize a rebellion against the Democratic Republic of Georgia. In May 1920, the leaders of the rebellion declared their aims in a memorandum addressed to Lenin, in which they made the following claims: "(1) South Ossetia is an integral part of Soviet Russia; (2) South Ossetia joins Soviet Russia directly; (3) The integration of South Ossetia into Soviet Russia through Georgia or any other republic is not allowed; (4) The South Ossetian organization remains under the flag of the Russian Communist Party and will not join the Georgian or any other communist party"608. In this context, I would like to point out the fact that South Ossetian communists considered the territory an integral part of Soviet Russia in pursuit of unification with North Ossetia. Thus, from the very beginning of the 20th century, the Georgian-Ossetian conflict had an irredentist character.

It should be noted that on 7 May 1920 the Democratic Republic of Georgia and Soviet Russia signed a treaty, in which Soviet Russia recognized the independence of Georgia and made a commitment not to interfere with Georgian domestic affairs in return for the legalization of communist

<sup>&</sup>lt;sup>605</sup> Маргиев, В. И. 1990. *Правовой статус...*, р. 10.

<sup>&</sup>lt;sup>606</sup> Хасанов, А. А. 2018. *Международно-правовые аспекты...*, op. cit.

<sup>&</sup>lt;sup>607</sup> Маргиев, В. И., 1990. *Правовой статус...*, р. 12.

<sup>&</sup>lt;sup>608</sup> Чугаенко Ю. А. 2013. *Грузия-Южная Осетия: Исторические первопричины противостояния*. Киев: Национальная академия управления. ISBN 978-966-8406-79-9. Р. 22.

organizations in Georgia. On 8 June 1920, South Ossetia declared its independence as a Soviet republic. In response to that, Georgia sent its army to crush the rebellion and restore its territorial integrity<sup>609</sup>. In consequence of the clashes, about 5,000 Ossetians were killed and another 13,000 died from hunger and epidemics. This is perceived by the South Ossetians as the first genocide committed by the Georgians<sup>610</sup>.

In February 1921 the Democratic Republic of Georgia was attacked by the Red Army. In March of the same year, an agreement on cessation of hostilities was signed in Kutaisi. The Democratic Republic of Georgia was defeated and annexed by Soviet Russia. In September 1921 the South Ossetian communists adopted a resolution in which they demanded that South Ossetia be granted the status of a constitutive Soviet socialist republic with Tskhinval(i) as its capital. In this respect, the South Ossetian Soviet Socialist Republic would voluntarily enter into a federal union with Georgia<sup>611</sup>. However, the demands met with reluctance of the Soviet political bodies in Moscow. Instead, they decided upon the creation of the Autonomous Oblast of South Ossetia, which legally came into being on 20 April 1922 based on the 1922 Constitution of the Georgian SSR, the capital being Tskhinval(i)<sup>612</sup>.

Article 25 of the 1936 Constitution of the USSR formally stated that the Georgian USSR consisted of two autonomous republics (Abkhazia and Adjaria) as well as of the South Ossetian Autonomous Oblast<sup>613</sup>, and this status was confirmed in the 1937 Constitution of the Georgian SSR. Moreover, the Constitution granted some rights concerning the use of certain languages in the autonomous oblast, such as the publication of regulatory acts in Georgian and Russian and the right to conduct justice and publish laws in the native language of the autonomy. By contrast, the vertical political relations between the autonomous oblast and the center were constructed

<sup>&</sup>lt;sup>609</sup> Ментешашвили, А. 1994. Осетинский сепаратизм в 1918-1920 годах. In *Осетинский вопрос*. Тбилиси: Издательство "Кера XXI". Pp. 125–129.

<sup>610</sup> Sammut, D. and Cvetkovski, N. 1996. Confidence-Building Matters. The Georgia-South Ossetia Conflict. London: Vertic. ISBN 1-899548-06-8. Pp. 8-9.

<sup>&</sup>lt;sup>611</sup> Вачнадзе, М. и др. 1993. *История Грузии...*, р. 200.

<sup>&</sup>lt;sup>612</sup> Хасанов, А. А. 2018. *Международно-правовые аспекты...*, р. 12.

<sup>&</sup>lt;sup>613</sup> Конституция (основной закон) Союза Советских Социалистических Республикутверждена Чрезвычайным VIII съездом Советов Союза ССР5 декабря 1936 года. [online] [last retrieved 10-06-2019]. Available at: http://www.hist.msu.ru/ER/Etext/cnst1936.htm#6.

in a way that central authorities of the Georgian SSR were authorized to suspend decisions of the autonomous oblast in case they did not comply with the normatively higher-ranking laws.

The 1978 Constitution of the Georgian SSR confirmed the status of South Ossetia as an autonomous oblast (Articles 71; 83–84); however, a detailed regulation on its legal status was supposed to be included in a law passed by the Supreme Soviet of the Georgian SSR after being introduced by the Soviet of National Deputies of the South Ossetian Autonomous Oblast<sup>614</sup>. Nevertheless, the South Ossetian AO did not have its own constitution.

The legal status of South Ossetia within the Georgian SSR was to become the central issue of the upcoming conflict. Following the process of glasnost and perestroika in the 1980's, nationalist movements emerged in South Ossetia, demanding that the status of an autonomous oblast be upgraded to that of an autonomous republic. On 10 November 1989, the Oblast Council of South Ossetia requested the Supreme Soviet of the Georgian SSR to grant South Ossetia the status of an autonomous republic, which encountered the disapproval of central Georgian authorities.

On 23 November 1989, Georgians organized a mass march in Tskhinval(i), which was attended by some 12,000 to 15,000 people (the numbers vary depending on the source)<sup>615</sup>. The aim of this march was to discuss national problems of Georgia, the issue of normalization of international relations and the protection of national interests of the autochthonous people living in the Samachablo Region. This was perceived by the South Ossetians as an attempt to invade the city of Tskhinval(i), and hostages were taken by both Georgians and South Ossetians<sup>616</sup>.

Pursuant to Article 3 of the law of the USSR on the procedure of separation of a union republic from the USSR, in a union republic that included

<sup>&</sup>lt;sup>614</sup> Конституция (Основной закон) Грузинской Советской Социалистической Республики (15 апреля). [online] [last retrieved 10-05-2019]. Available at: http://nodussr.ru/konstituciya-gruzinskoj-ssr

<sup>&</sup>lt;sup>615</sup> The Russian sources claim that the meeting was attended by some 30,000 Georgians, while the South Ossetian sources claim it was as many as 40,000. (*Bloodshed in the Caucasus. Violations of Humanitarian law and Human Rights in the Georgia-South Ossetia Conflict.* 1992. Helsinki: Human Rights Watch. P. 7. Блиев, М., 2006. Южная Осетия в коллизиях..., р. 395)

<sup>&</sup>lt;sup>616</sup> Bloodshed in the Caucasus. Violations of Humanitarian law..., p. 7.

autonomous republics or autonomous districts, a referendum was to be held separately in each autonomous entity. The peoples of the autonomous entities retained the right to independently decide whether to remain in the USSR or in the emerging union republic, as well as to raise the question of legal status of their state<sup>617</sup>. In other words, if a union republic resolved to separate from the USSR, this would confer the right to decide on its own status on each autonomous entity. Theoretically, autonomous entities had three options based on this law: (1) to separate from the USSR together with the union republic the part of which they formed, (2) to remain in the USSR, or (3) to raise the question of their state and legal status on their own. On the other hand, autonomous entities were not constitutive parts of the USSR and hence could remain within the USSR only through their constitutive republic unless their status was upgraded by a new Constitution of the USSR. This might have led to problems regarding the question of remaining within the USSR in case that the respective constitutive republic decided to separate from the Union. Such a case had clearly not been foreseen by the legislation and could have caused serious disputes about the legal status of autonomous entities.

On 9 March 1990, the Supreme Council of the Georgian SSR passed the Resolution on Protection of State Sovereignty of Georgia, in which it recognized "the entry of Soviet Russia into Georgia in February 1921 and the occupation of its entire territory from a legal point of view as military intervention and occupation with the aim of overthrowing the existing political system, and from a political point of view—a de facto annexation"<sup>618</sup>. The document further called for starting negotiations on the restoration of an independent Georgian state since "the Treaty on the Formation of the Union of Soviet Socialist Republics of 30 December 1992 is illegal in relation to Georgia"<sup>619</sup>.

<sup>&</sup>lt;sup>617</sup> Закон СССР от 03.04.1990 № 1409-I о порядке решения вопросов, связанных с выходом союзной республики из СССР. [online] [last retrieved 03-06-2019]. Available at: https://ru.wikisource.org/wiki/Закон\_СССР\_от\_03.04.1990\_№\_1409-I

<sup>&</sup>lt;sup>618</sup> Постановление Верховного совета Грузинской ССР о гарантиях защиты государственного суверенитета Грузии. [online] [last retrieved 03-02-2020]. Available at: https://refdb.ru/look/2733423-p3.html

<sup>619</sup> Loc. cit.

On 20 September 1990, the Oblast Council of South Ossetia passed the Declaration of Sovereignty and declared the South Ossetian Soviet Democratic Republic. This day is celebrated as the Independence Day now. Consequently, the Oblast Council addressed a request to the Supreme Soviet of the USSR to grant it the legal status of a subject of the USSR. On 28 November 1990, the name of the South Ossetian Soviet Democratic Republic was changed to the South Ossetian Soviet Republic. On 9 November 1990, elections into the Supreme Soviet were held. In reaction to that, the Supreme Soviet of the Georgian SSR passed the Law on Abolition of the South Ossetian Autonomous Oblast on 11 December 1990. A state of emergency was declared in the Tskhinval(i) Region<sup>620</sup> the day after.

The aforementioned Law on Abolition of the South Ossetian Autonomous Oblast stated that the "separatist forces in the South Ossetian Autonomous Oblast are aiming through the formation of the so-called 'South Ossetian Soviet Republic' to usurp state power, encroach on the territorial integrity of the Republic of Georgia and tear away from Georgia its historical, inalienable part"<sup>621</sup>. The official reasoning for the abolishment of the autonomous status of South Ossetia was that the oblast was created in 1922 "against the will of the indigenous Georgian population living in this region and to the detriment of interests of the entire Georgia"<sup>622</sup>. It further stated that the Ossetian nation had its own statehood in its historical territory in North Ossetia. Not only did the law abolish the South Ossetian Autonomous Oblast as such, but it also abolished the administrative and executive bodies that existed in South Ossetia, thus completely disrupting its structures.

As mentioned earlier, Georgia boycotted the referendum on the preservation of the Soviet Union<sup>623</sup>. Nevertheless, the South Ossetian Autonomous Oblast did participate in this referendum, which took place on 17 March 1991, with a turnout of 96.3 per cent, of which 99.9 per cent voted in favor of the

<sup>&</sup>lt;sup>620</sup> Захаров, В. А. и др. *Абхазия и Южная Осетия...*, р. 172.

<sup>&</sup>lt;sup>621</sup> Закон Республики Грузия об упразднении Юго-осетинской автономной области. [online] [last retrieved 03-02-2020]. Available at: https://ru.wikisource.org/wiki/Закон\_ Республики\_Грузия\_от\_11.12.1990\_об\_упразднении\_Юго-Осетинской\_автономной\_области

<sup>622</sup> Loc. cit.

<sup>&</sup>lt;sup>623</sup> The Georgian Parliament passed a resolution on 26 February 1991, based on which Georgia later boycotted the referendum.

preservation of the USSR (only 4 people out of 40,000 voted against)<sup>624</sup>. However, on 31 March 1991, a referendum on the independence of Georgia took place, which was boycotted by the South Ossetian population with the exception of ethnic Georgians, who voted in favor of the independence.

In September 1991 the situation escalated into an armed conflict between the Georgian National Guard and the South Ossetian militias. Another wave of violent clashes broke out in June 1992. A ceasefire was signed in June 1992 due to political pressure by the Russian Federation<sup>625</sup>.

On 21 December 1991, the Supreme Soviet of the Republic of South Ossetia declared independence. This position was later supported in the referendum on the independence of the Republic of South Ossetia and its unification with the Russian Federation, which was held on 19 January 1992. The turnout was 98.2 per cent (villages with a Georgian majority boycotted the referendum), of which 99 per cent voted in favor of the independence<sup>626</sup>. Consequently, on 29 May 1992, the Supreme Soviet of the Republic of South Ossetia passed the Declaration of Independence of the Republic of South Ossetia.

After a period of stalemate and failed political attempts to resolve the conflict, the tensions between Georgia and South Ossetia escalated on 7 August 2008, when Georgian armed forces attacked South Ossetian positions and started bombing Tskhinval(i). On the following morning, the Georgian army took over the heights around Tskhinval(i) and started entering the city<sup>627</sup>. Georgian President Saakashvili's objectives were the "takeover of the territory of South Ossetia, blockade of the Roki Tunnel within 15 hours, disarmament of the South Ossetian militia, disarmament of Russian 'peacekeepers', and presenting Russia with a *fait accompli*, i.e. that Georgian authorities have taken over the South Ossetian autonomy"<sup>628</sup>. Nevertheless, on the same day, the Russian military entered South Ossetia through the Roki

<sup>&</sup>lt;sup>624</sup> Salenko, A. 2015. Legal Aspects of the Dissolution of the Soviet Union in 1991 and Its Implications for the Reunification of Crimea in 2014. In Zeitschrift für ausländisches öffentliches Recht und Völkerrecht. Vol. 75 (2015). ISSN 0044-2348. P. 150.

<sup>&</sup>lt;sup>625</sup> Zürcher, C. 2007. *The Post-Soviet Wars...*, pp. 125–126.

<sup>&</sup>lt;sup>626</sup> Bloodshed in the Caucasus. Violations of Humanitarian law..., p. 11.; Блиев, М., 2006. Южная Осетия..., p. 442.

<sup>&</sup>lt;sup>627</sup> Cf. Conclusion of Parliamentary Temporary Commission on Investigation of the Military Aggression and Other Acts of Russia Against the Territorial Integrity of Georgia. 2009. Pp. 31–32.

<sup>&</sup>lt;sup>628</sup> Materski, W. 2009. *Gruzjα*. Warszawa: Wydawnictwo Trio. ISBN 978-83-7436-219-1. P. 368.

Tunnel and reached Tskhinval(i) within a few hours. On 9 August, Georgians were driven out of Tskhinval(i) by the Russian forces. A ceasefire was agreed on 12 August (the Six Point Agreement). On 26 August 2008, the Russian Federation recognized the independence of South Ossetia, thus putting an end to the hopes for resolution of the conflict in the foreseeable future.

### 4.2 Circumstances of secession

The first group of factors contributing to secession, which is going to be analyzed, are cultural and perceptual factors. The late 1980s, marked by the policies of glasnost and perestroika, coincided with the rise of ethnic tensions among some of the nationalities in the Soviet Union. The cultural and perceptual circumstances of secession can be illustrated by a program draft, published in Georgia in November 1988, according to which all educational institutions were to adopt Georgian as the official language instead of Russian. This would have had negative consequences for South Ossetians in terms of their professional careers as the majority of them used Russian and had a limited knowledge of Georgian. Moreover, the South Ossetians feared cultural assimilation due to their historical experience of cultural oppression during the Stalinist times<sup>629</sup>. As regards language policies, in 1939 the Ossetian alphabet, based on Latin script, was translated into the Georgian alphabet in Georgia and into Cyrillic in North Ossetia. In consequence, there were two alphabets for the same Ossetian language<sup>630</sup>. This situation lasted until 1954, when Cyrillic was adopted in South Ossetia. Moreover, after 1944, the official languages of instruction in Ossetian schools were Russian and Georgian, whilst Ossetian was taught only as a subject<sup>631</sup>.

In the late 1980s, democratization came along with cultural awareness and with new socio-political movements. The South Ossetian Pedagogical Institute hosted regular meetings of the South Ossetian intelligentsia, which

<sup>&</sup>lt;sup>629</sup> Cf. Alborova, D. 2016. Institutional costs of the Georgian-South Ossetian conflict: The transformation of political institutions in South Ossetia. In Costs of Conflict: Core Dimensions of the Georgian-South Ossetian Context. [s.l.]: George Mason University. P. 8.

<sup>&</sup>lt;sup>630</sup> Чугаенко Ю. А. 2013. *Грузия-Южная Осетия...*, р. 59.

<sup>631</sup> Loc. cit.

took place in the student club "Nykhaz". The regular meetings evolved into the formation of the socio-political movement "Adamon Nykhas", which publicly protested against the proposed law on languages in Georgia. In the elections held on 9 December 1993, "Adamon Nykhas" won the majority of seats in the Supreme Council of South Ossetia and became the major political force<sup>632</sup>.

At the beginning of the 1990s, tensions between Georgia and South Ossetia aggravated. President Gamsakhurdia, representing the nationalistic movement in Georgian politics, labeled Ossetians as a national minority that deserved nothing more than cultural autonomy, and, consequently, political autonomy was to be abolished. In November 1991, he stated that "the Tskhinvali Region had always been called Inner Kartli until 1922. In 1922, the Bolsheviks introduced a new name, 'South Ossetia'. South Ossetia is not a geographical term though. This term was invented by the Bolsheviks, who annexed and occupied Georgia. And in order to break away this territory with Ossetian population from Georgia, where also other nationalities live, they deliberately called it South Ossetia. This is the same as if, for example, we now called the Krasnodar Krai 'Northern Georgia' with the aim of seizing it and breaking it away from Russia. [...] There is no South Ossetia; it has never existed. There is no such geographical term"<sup>633</sup>. In a similar tone, Georgian historians denounced the existence of South Ossetia as a geographical unit. "South Ossetia as an integral geographical unit does not exist. There are only certain areas inhabited by Ossetians. These areas are not connected geographically or economically "634. Georgian historiography insists on the fact that what is today referred to as South Ossetia is an artificial construct spreading in some parts of the historical regions of Georgia, namely Shida Kartli, Mtskheta-Mtianeti, Imereti, Racha-Lechkhumi, and Kvemo Svaneti.

<sup>&</sup>lt;sup>632</sup> Alborova, D. 2016. *Institutional Costs...*, p. 8; Поблекшая слава «Адамон ныхас». [online] [last retrieved 17-03-2020]. Available at: https://www.ekhokavkaza.com/a/29579675.html.

<sup>&</sup>lt;sup>633</sup> *Звиад Гамсахурдия. Телемост «Москва-Тбилиси» 10.11.1991.* [online] [last retrieved 25-10-2019]. Available at: https://www.youtube.com/watch?v=OoLdOaNeRKQ.

<sup>&</sup>lt;sup>634</sup> Тоидзе, Л. 1994. Образование осетинской автономии в Грузии. In *Осетинский вопрос*. Тбилиси: Издательство "Кера XXI". Р. 156.

When discussing perceptual factors leading to secession, it should be noted that South Ossetian experts often expressed their negative perceptions of relations with Georgia. Firstly, back in 1990 there was still a generation that remembered the events of 1920, which they referred to as "genocide of South Ossetians". Secondly, their negative perception of a common state with Georgia stemmed from despair and material destruction of South Ossetia after the end of hostilities in the 1990s. Thirdly, the memories of the 2008 war are still alive, even for the young generation. One of the South Ossetian experts expressed this reflection in the following way: "When we were turning towards them, when we were talking to them, they had their eyes closed and said that it was not important. And now they are making claims. What claims? If it did not work out with them, it certainly did with others. Thus, the scope of responsibility lays on several political factors in this process"635. Similar to the attitudes of Abkhazians towards Georgia, for South Ossetians, Georgia remains to be seen as hostile, and a vision of a common future is out of question.

A crucial element in the discourse on Georgian-South Ossetian relations was the issue of the future political status of South Ossetia. Whilst South Ossetian political elites were struggling for it to be upgraded from an autonomous oblast to a union republic, the Georgian leadership insisted on the abolishment of the autonomous oblast, claiming that South Ossetia was merely a "bolshevist construct" Another political move, which brought further upheaval to the debate, was the passing of an election law by the Supreme Council of Georgia, which debarred the participation of political parties whose activities were confined to a specific area of the republic 637. This meant that South Ossetian political parties were prevented from running in the elections and thereby deprived of any political influence. The political discourse was exacerbated by Gamsakhurdia's statements, which were meant

<sup>635</sup> Interview 24. Warsaw, Tskhinval(i), 22 March 2020.

<sup>&</sup>lt;sup>636</sup> S. J. Kaufman notes that "the creation of the South Ossetian Autonomous region was a part of the Bolshevik 'divide and rule strategy' aimed at controlling Georgia, thus the autonomous region was not a legitimate structure in Georgian eyes". (Kaufman, S. J. 2001. *Modern Hatreds...*, p. 93).

<sup>&</sup>lt;sup>637</sup> Birch, J. 1999. Ossetiya – land of uncertain frontiers and manipulative elites. In *Central Asian Survey*. Vol. 18, no. 4. ISSN 0263-4937. P. 504.

to justify the annulment of South Ossetian autonomy. "They [Ossetians] have no right to a state here in Georgia. They are a national minority. Their homeland is North Ossetia... Here they are newcomers"638.

Apart from the pursuit of withdrawal from Georgia, there was a strong element of irredentism in South Ossetia. In other words, there was a strong desire to join the Russian Federation and to pursue the unification of South Ossetia with North Ossetia. This was also stressed by high-ranking political leaders of South Ossetia. "From an Ossetian perspective, their drive for separation from Tbilisi and unification with North Ossetia was as legitimate as Georgia's drive for national independence"639. In 2004, the Constitutional Court of the Russian Federation was asked to deliver an advisory opinion on legal aspects of the unification of South Ossetia with the Russian Federation. The Court stated that "the law allows for an incorporation of a new subject into the Russian Federation in the case of a foreign state or its part; however, the treaty shall be concluded directly with the foreign state instead of a part thereof" 640. It follows from the above advisory opinion that the Court considered South Ossetia a part of Georgia rather than an independent state, so the issue of incorporation of South Ossetia into the Russian Federation would have to be agreed upon with Georgia.

The situation was exacerbated by the positions taken by some high-ranking officials in the Russian Federation. S. Cornell refers to them as "hardliners", who defined South Ossetians as Russian citizens, "thereby implicitly recognizing South Ossetia's accession to Russia"<sup>641</sup>.

Another reason leading to secession was the armed conflict that started in 1991, in which the South Ossetian population faced numerous atrocities. Various sources mention, for instance, the so-called Zar tragedy, named after the village of Zar, which took place on 20 May 1992 when Georgian

<sup>638</sup> Kaufman, S. J. 2001. *Modern Hatreds...*, p. 111.

<sup>&</sup>lt;sup>639</sup> Cheterian, V. 2011. *War and Peace in the Caucasus. Russia's Troubled Frontier*. London: Hurst & Company. 978-1-85065-929-7. P. 172.

<sup>640</sup> Ответ КС России на запрос о возможности присоединения Южной Осетии к РФ. [online] [last retrieved 04-06-2019]. Available at: https://regnum.ru/news/polit/304005.

<sup>&</sup>lt;sup>641</sup> Cf. Cornell, S. E. 2001. *Small Nations and Great Powers. A study of ethnopolitical conflict in the Caucasus*. London: Taylor & Francis. ISBN 0-7007-1162-7. P. 157.

armed groups shot 33 persons fleeing South Ossetia for North Ossetia<sup>642</sup>. According to T. de Waal, 36 civilians, "mostly women, children and old people, were killed"<sup>643</sup>. The political leadership of South Ossetia, pressurized by the ongoing hostilities, reacted in those circumstances by proclaiming independence.

With regard to demographic factors of secession, the ethnic composition of South Ossetia was relatively stable until the early 1990s, with ethnic South Ossetians making up approximately two thirds of the population and ethnic Georgians one third. Although there was a constant growth in the number of ethnic Georgians between 1939 and 1989, this could hardly be seen as an internal colonization, in contrast to the case of Abkhazia. It follows from the figures that there has been a decrease in the number of ethnic Ossetians residing in South Ossetia by approximately 26 per cent since 1989, whilst the number of ethnic Georgians has decreased by approximately 86 per cent. From the point of view of the third state, in this case the Russian Federation, there were concerns about refugees fleeing South Ossetia and seeking refuge in the Russian Federation after the outbreak of hostilities in the early 1990s. According to M. Bliev, more than 100,000 persons from South Ossetia sought refuge in North Ossetia and as many as 150,000 Ossetians within the whole Russian Federation<sup>644</sup>. Similarly, T. Hoch and E. A. Souleimanov claim that "100,000 Ossetian refugees fled to Russia" 645 as a result of the armed conflict. This, in my opinion, seems to reflect a common misinterpretation of figures relating to Ossetian refugees, which was obvious already at the beginning of the 1990s, when Z. Gamsakhurdia stated on Russian television that if there were 100,000 South Ossetian refugees in North Ossetia, then there would be nobody left in South Ossetia<sup>646</sup>. According to the 1989 census, there were

<sup>&</sup>lt;sup>642</sup> Сf. Чугаенко Ю. А. 2013. *Грузия-Южная Осетия...*, р. 120. 19 лет Зарской трагедии. Съемки 1992 года. [online] [last retrieved 28-10-2019]. Available at: http://cominf.org/node/1166479943

<sup>643</sup> De Waal, T. 2019. The Caucasus..., p. 145.

<sup>&</sup>lt;sup>644</sup> Блиев, М. 2006. *Южная Осетия в коллизиях...*, р. 213.

<sup>&</sup>lt;sup>645</sup> Hoch, T. and Souleimanov, E. A. 2020. Formation of de facto states in Abkhazia and South Ossetia..., p. 96.

<sup>&</sup>lt;sup>646</sup> Звиад Гамсахурдия. Телемост..., ор. cit.

164,055 Ossetians in the Georgian SSR<sup>647</sup>, including 65,232 Ossetians living in South Ossetia.

Speaking of demographic causes of secession in connection with historical grievances, there seems to be one more interesting thing to look at. V. Lordkipanidze and A. Totadze note that the number of Ossetian migrants into the Kartli highlands and lowlands was increasing almost exponentially in the 19<sup>th</sup> century. While in 1833 the number of Ossetians in Georgia was approximately 14,000 and in 1860 it was 19,324, it increased to 51,988 by 1880<sup>648</sup>. In 1926, the number of Ossetians living in Georgia was 113,298 (with 60,351 residing in South Ossetia). From the point of view of Georgia as the parent state, it may thus seem that there was an internal colonization of the Lower Kartli Region by the Ossetians in the times of the tsarist regime, which is perceived as a historical injustice. This is the reason why it is often claimed nowadays that there had been no such term as South Ossetia prior to 1922.

There are claims in the scholarship on South Ossetia that ethnic Georgians were relocated to South Ossetia in order to marginalize the ethnic distinctiveness<sup>649</sup>. However, the population figures do not indicate any attempts at internal colonization of South Ossetia by ethnic Georgians. I. Chugaenko notes that in the period that preceded the collapse of the USSR the personal relations between Georgians and South Ossetians were to a great extent positive. "Ossetians and Georgians were highly integrated groups (high percentage of Ossetian-Georgian and Georgian-Ossetian marriages; low sociocultural distance between the groups; high level of mutual dispersal, i.e. the presence of minorities representing one group in the settlements with numerical predominance of the other group)"<sup>650</sup>.

<sup>&</sup>lt;sup>647</sup> Всесоюзная перепись населения 1989 года..., ор. cit.

<sup>&</sup>lt;sup>648</sup> Lordkipanidze, V. and Totadze, A. 2010. The Population of the Caucasus, p. 91.

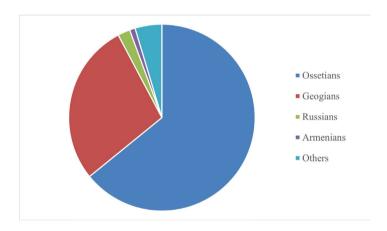
<sup>&</sup>lt;sup>649</sup> Furier, A. 2000. *Droga Gruzji...*, p. 155.

<sup>&</sup>lt;sup>650</sup> Чугаенко Ю. А. 2013. *Грузия-Южная Осетия...*, р. 28.

<b>Table 22:</b>	Ethnic c	omposition	of South	Ossetia
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Year	1926651	1939652	1959653	1970654	1979655	1989656	2016657
Ossetians	60,351	72,266	63,698	66,073	65,077	65,232	48,146
	(69.1%)	(68.1%)	(65.7%)	(66.4%)	(66.4%)	(66.2%)	(89.9%)
Georgians	23,538	27,525	26,584	28,125	28,187	28,544	3,966
	(26.9%)	(25.9%)	(27.5%)	(28.3%)	(28.7%)	(29.0%)	(7.4%)
Russians	157	2,111	2,380	1,574	2,043	2,128	610
	(0.2%)	(2.0%)	(2.5%)	(1.6%)	(2.1%)	(2.2%)	(1.1%)
Armenians	1,374	1,537	1,555	1,254	953	984	378
	(1.6%)	(1.5%)	(1.6%)	(1.3%)	(1.0%)	(1.0%)	(0.7%)
Other	1,955	2,293	2,590	2,395	1,725	4,751	432
	(2.2%)	(2.2%)	(2.7%)	(2.4%)	(1.8%)	(4.8%)	(0.8%)

Figure 6: Ethnic composition of South Ossetia in 1989



<sup>&</sup>lt;sup>651</sup> Всесоюзная перепись населения 1926 года..., ор. cit.

<sup>&</sup>lt;sup>652</sup> Всесоюзная перепись населения 1939 года..., ор. cit.

<sup>653</sup> Южная Осетия в период строительства социализма (К 60- летию установления советской власти. 1981. Тбилиси: Мецниереба. Р. 195.

<sup>654</sup> Loc. cit.

<sup>655</sup> Loc. cit.

<sup>656</sup> Население Южной Осетии. Юго-осетинская АО (1989 г.). [online] [last retrieved 12-06-2019]. Available at: http://www.ethno-kavkaz.narod.ru/rnsossetia.html

<sup>657</sup> Южная Осетия в цифрах и фактах. [online] [last retrieved 12-06-2019]. Available at: http://respublikarso.org/elections/1498-yuzhnaya-osetiya-v-cifrah-i-faktah-vy-shel-sbornik-itogi-perepisi-naseleniya-respubliki-yuzhnaya-osetiya-2015-qoda.html

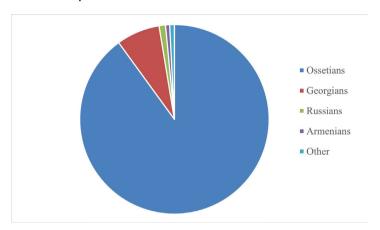


Figure 7: Ethnic composition of South Ossetia in 2016

Considering the economic factors of secession, South Ossetia constituted a rather poor region within the Georgian SSR during the Soviet times with lower living standards than in Georgia proper<sup>658</sup>. T. de Waal claims that "the region was a relatively poor province of Georgia"<sup>659</sup> in the Soviet era. According to him, "in Soviet times, the region lacked a strong identity, in contrast to Abkhazia. The economy was mainly agricultural"<sup>660</sup>. For instance, at the beginning of the 20<sup>th</sup> century, as much as 87 per cent of the population worked in agriculture<sup>661</sup>. In 1926, the distribution of the state budget was 9.3 rubles per capita for Georgia and 4.2 rubles for South Ossetia. In 1929, it was 15 rubles per capita in favor of Georgia and 9.2 rubles for South Ossetia<sup>662</sup>. Since the 1940s, there had been a significant process of industrialization in the South Ossetian Autonomous Oblast, which resulted in the transformation of the region from a predominantly agricultural to an

<sup>658</sup> Cf. Kaufman, S. J. 2000. *Modern Hatreds...*, p. 99.

<sup>659</sup> De Waal, T. 2019. *The Caucasus...*, p. 140.

De Waal, T. 2020. South Ossetia Today. In Beyond Frozen Conflict. Scenarios for the Separatist Disputes of Eastern Europe. London: Rowman & Littlefield International. ISBN 978-1-5381-4418-3. P. 190.

<sup>&</sup>lt;sup>661</sup> Чибиров, Л. А. и др. 1990. *История южных осетин...*, р. 117.

<sup>&</sup>lt;sup>662</sup> Блиев, М. 2006. *Южная Осетия в коллизиях...*, р. 383.

agro-industrial one<sup>663</sup>. Nevertheless, even in the Soviet times, significant differences between South Ossetian lowlands and highlands persisted, due to which the highlands were less developed<sup>664</sup>. In 1970, employment in the industry and construction sectors was 19 per cent, whilst in transport it was 3 per cent<sup>665</sup>. By contrast, employment in the former sectors in the USSR was 38.1 per cent and in the latter 7.5 per cent in the same year. In the Georgian SSR it was 28.8 per cent in industry and construction and 7.2 per cent in transport. By the end of the 1980s, the economy of South Ossetia was based on agriculture, mining of non-ferrous metals, machinery production, forestry, and the production of construction materials<sup>666</sup>.

In 1988, the average monthly salary in South Ossetia was 148.1 rubles, while in the Georgian SSR it was 186 rubles and in the Soviet Union as a whole 219.8 rubles<sup>667</sup>. In 1991, labor productivity in South Ossetia was approximately 40 per cent lower than the average in the Soviet Union, thus placing South Ossetia among the least developed regions of Georgia in terms of social indicators<sup>668</sup>. "The region relied on other parts of Georgia and the Soviet Union for its electricity and gas, as well as communications and transportation infrastructure. In the final days of the Soviet Union, South Ossetia was contributing a mere 2 percent of the regional GDP, the lowest of any of the Georgian regions"<sup>669</sup>.

In the light of D. Horowitz's theory of secession, bearing in mind a relatively low level of socio-economic indicators, South Ossetia would qualify for a backward group in a backward region, which would not be interested in preserving political unity at all; on the contrary, it would seek an early opportunity to secede and unify with Russia, given their ethnic and cultural

<sup>&</sup>lt;sup>663</sup> Cf. Dzhioeva, F. 2016. Cost of Conflict: The Economic Aspect. In Costs of Conflict: Core Dimensions of the Georgian-South Ossetian Context. [s.l.]: George Mason University. P. 46.

<sup>664</sup> Сf. Джавахишвили, А. Н., Рязанцев, С. Н. 1956. Грузинская ССР. Экономико-географическая характеристика. Москва: Издательство Академии наук СССР. Pp. 252–256.

<sup>&</sup>lt;sup>665</sup> Чугаенко Ю. А. 2013. *Грузия-Южная Осетия...*, р. 86.

<sup>666</sup> Cf. Dzhioeva, F. 2016. Cost of Conflict..., p. 46.

<sup>&</sup>lt;sup>667</sup> Ibidem, p. 101.

<sup>&</sup>lt;sup>668</sup> Захаров, В. А. и др. *Абхазия и Южная Осетия...*, р. 143.

<sup>&</sup>lt;sup>669</sup> George, J. A. 2009. The Politics of Ethnic Separatism..., p. 112.

bonds. In this context, the desire to secede would prevail over the economic costs of secession, which in the case of South Ossetia has proven as a correct assumption. The chronic socio-economic underdevelopment of South Ossetia became an incentive to secessionist claims as "they claimed that their level of economic development only equated to half that of the Georgian at the time"<sup>670</sup>.

In addition to the aforementioned circumstances of secession, South Ossetians claim their right to self-determination, specifically the right to *remedial secession*. This is explained by the events that took place in the 20<sup>th</sup> century in the ethnic relations between Georgians and Ossetians and are interpreted in Russian and Ossetian historiography as a "genocide of Ossetians as a means of acquiring the right to their territory through the extermination and expulsion of its bearers—Ossetians"<sup>671</sup>.

Another aspect of the circumstances leading to secession may be considered in this context, namely secession as an internal armed conflict, in which a separatist group fights against the central government with the aim to secede from the parent state. E. Souleimanov notes that "[f]rom June 1991, Tskhinvali was subjected to artillery fire by Georgian paramilitary units from nearby hills, and in the autumn it was nearly encircled by Georgian forces" In such circumstances, a referendum on independence was held in January 1992. In the light of the hostilities that were taking place in the early 1990s as well as in 2008, the creation of the Republic of South Ossetia is also interpreted as "one of the most crucial means of confronting traditional Georgian aggression, [...] deliverance from the aggressor and protection of national interests of the people from external threats" 673.

<sup>&</sup>lt;sup>670</sup> Souleimanov, E. 2013. Understanding Ethnopolitical Conflict. Karabakh, South Ossetia, and Abkhazia Wars Reconsidered. New York: Palgrave Macmillan. ISBN 978-1-4039-9576-6. P. 122

<sup>&</sup>lt;sup>671</sup> Блиев, М. 2006. Южная Осетия в коллизиях..., р. 207.

<sup>&</sup>lt;sup>672</sup> Souleimanov, E. 2013. *Understanding Ethnopolitical Conflict...*, p. 127.

<sup>&</sup>lt;sup>673</sup> Блиев, М. 2006. *Южная Осетия в коллизиях...*, р. 208.

Table 23: An overview of the factors and circumstances of secession of South Ossetia

Factors and causes	South Ossetia	Georgia	Russian Federation
Cultural/ Perceptual	Self-glorification     Fear of subordination and ethnic cleansing     Fear of cultural assimilation (language issues)     Historical grievances ("genocide")	Historical grievances (South Ossetians taking over Georgian lands)     Others-maligning (South Ossetians as colonists of the Georgian land)	Perception of ethnic bonds (with North Ossetia)     Perception of a shared history (Russian Empire, USSR)
Economic	Attempts to control transport and trade through the Caucasus     "Backward group" in a "backward region": early secession	Economic crisis in Georgia	Economic crisis in the USSR in the late 1980s and early 1990s
Political	Disproportionality in political representation on the central level     Existence of a separatist political party     Irredentist sentiments     Limitations of political rights (abolishment of the autonomy)	Fear of secession of South Ossetia     Attempts to preserve territorial integrity     Dissolving of the South Ossetian autonomy	Concerns about respecting the rights of South Ossetians (especially in North Ossetia)     Irredentism (North Ossetia)     Erosion of regional stability in the North Caucasus
Demographic	Immigration of the Ossetian population from South Ossetia	Colonization of Shida Kartli by Ossetians	Influx of refugees to North Ossetia     R e g i o n a l destabilization
Normative	The right to self-determination The right to remedial secession Secession within an internal armed conflict	The principle of territorial integrity	Acting as a regional peacekeeping power

(Author's own compilation)

# 4.3 Attempts to resolve the conflict

The first attempt to resolve the Georgian-Ossetian conflict, ignited at the end of the 1980s, was the Agreement on Principles of Settlement of the Georgian-Ossetian Conflict signed by E. Shevardnadze and B. Yeltsin on 24 June 1992

in Sochi. The so-called Sochi Agreement established a Joint Control Commission, consisting of Georgia, the Russian Federation and South Ossetia as members. The Commission was supposed to "carry out investigation of relevant circumstances and undertake urgent measures aimed at restoration of peace and order and non-admission of similar violations in the future" Moreover, both sides were supposed to withdraw their armed formations. The implementation of the agreement was to be overseen by the Joint Peacekeeping Forces Group. Nevertheless, the conflict in Abkhazia put the reconciliation process to a halt<sup>675</sup>.

The talks were resumed in 1993 and later continued under the auspices of the CSCE (later OSCE) in a format that included Georgia, the Russian Federation, South Ossetia, and North Ossetia. Four working groups were established to deal with the following issues: political status, peace and security, economic rehabilitation, and the return of internally displaced persons<sup>676</sup>.

With regard to political status, in October 1994, the OSCE established three basic principles for the settlement of the conflict, which included: (a) preservation of the territorial integrity of Georgia; (b) the broadest possible autonomy for South Ossetia; (c) the joint and separate competences of the two sides. Nevertheless, the autonomy within Georgia was rejected by both Georgia and South Ossetia, the latter insisting on a federal state with Georgia<sup>677</sup>.

On 16 May 1996, Georgia and South Ossetia signed in Moscow the Memorandum on Measures Providing Safety and the Strengthening of Mutual Confidence between the Sides in Georgian-Ossetian Conflict, which was mediated by North Ossetia, the Russian Federation, and the OSCE. In the Memorandum, the parties to the conflict agreed on the non-use of force as well as any economic or other forms of pressure. Moreover, they pledged to continue negotiations to achieve a full-fledged political settlement<sup>678</sup>.

<sup>&</sup>lt;sup>674</sup> Agreement on Principles of Settlement of the Georgian-Ossetian Conflict. [online] [last retrieved 24-02-2020]. Available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/GE%20RU\_920624\_AgreemenOnPrinciplesOfSettlementGeorgianOssetianConflict. pdf

<sup>&</sup>lt;sup>675</sup> Abramashvili, I. and Koiava, R. 2018. 25 years of Georgia's..., p. 60.

<sup>676</sup> Loc. cit.

<sup>&</sup>lt;sup>677</sup> Birch, J. 1999. *Ossetiya – land of uncertain frontiers...*, p. 509.

<sup>&</sup>lt;sup>678</sup> Меморандум о мерах по обеспечению безопасности и укреплению взаимного доверия между сторонами в грузино-осетинском конфликте. [online] [last retrieved 24-02-2020]. Available at: http://docs.cntd.ru/document/1902534

In November 1996, presidential elections took place in South Ossetia, and Lyudvig Chibirov, who had been a *de facto* head of the republic<sup>679</sup> since 1993, was elected president. After signing the Memorandum, the peace process started. Shevardnadze and Chibirov met three times in total: the first meeting took place in Vladikavkaz in 1996, the second one in Java in 1997, and the last one in Borjomi in 1998. In spite of all efforts, no significant progress was made in the negotiation process. "The parties adhered to irreconcilable positions. We [South Ossetians—P.S.] did not even want to think about connecting the future of South Ossetia with Georgia [...]. And the Georgian side offered us only autonomy within Georgia. However, we had already seen in practice the price of autonomy within Georgia and did not want to return to that status"<sup>680</sup>.

Even though the security situation around the conflict zone had been relatively stable prior to 2003, the number of incidents increased after the so-called Rose Revolution<sup>681</sup>, especially in connection with the antismuggling campaign conducted by the Georgian Government and followed by a shutdown of the Ergneti market. The confrontation escalated further, and several injuries and killings were reported on both sides. A ceasefire was signed on 19 August 2004<sup>682</sup>.

After the 2004 hostilities, M. Saakashvili came up with confidence building measures as well as with a new peace initiative for Georgian-Ossetian relations, which foresaw "a constitutional guarantee of the autonomous status, which includes the right to a freely and directly elected local self-government, including an executive branch and a parliament for South Ossetia" The South Ossetian Parliament was meant to have control over culture, education, social and economic policies, public order, the organization of self-government as well

<sup>&</sup>lt;sup>679</sup> In 1993, Chibirov was elected the chairman of the South Ossetian Parliament. The office of the president of South Ossetia did not exist prior to 1996.

<sup>&</sup>lt;sup>680</sup> Людвиг Чибиров: Скорее мы согласимся стать сельсоветом в составе России, чем республикой в составе Грузии. [online] [last retrieved 24-02-2020]. Available at: https://rossaprimavera.ru/article/4baoag15

<sup>&</sup>lt;sup>681</sup> Georgia's South Ossetia Conflict..., p. 17.

<sup>&</sup>lt;sup>682</sup> Cf. König, M. 2005. The Georgian-South Ossetian Conflict. In OSCE Yearbook 2004. Baden-Baden: Nomos. ISBN 3-8329-1552-4. Pp. 237–249.

Fresident of Georgia's Speech made to the Parliamentary Assembly of the Council of Europe, Wednesday, 26 January 2005. [online] [last retrieved 09-04-2020]. Available at: http://www.assembly.coe.int/nw/xml/Speeches/Speech-XML2HTML-EN.asp?SpeechID=190

as protection of the environment. Another tool of the program was economic development based on funds allocated from the Georgian state budget.

In 2005, the de facto president of South Ossetia announced his own peace plan, which proposed a three-phase conflict resolution based on: (1) demilitarization; (2) confidence building and socio-economic rehabilitation, and (3) political settlement. The plan also called for the creation of a common working group to discuss the peace initiatives as well as for legal and political assessment of the events of 1989–1992 and 2004, respectively<sup>684</sup>. The requirement of assessment of the atrocities committed during the Georgian-Ossetian clashes seemed crucial for the Ossetian side as it appeared in most of their peace initiatives, usually accompanied by a demand for the recognition of the 1920 genocide. In fact, there were plenty of coinciding points in both peace initiatives; therefore, they met with enthusiasm on both sides of the conflict. Nevertheless, the conflict parties failed to agree upon the working group's agenda. As mutual distrust and a lack of political will on both sides persisted, no breakthrough was achieved<sup>685</sup>.

Similarly as in the case of Abkhazia, after Saakashvili's succession to office, Georgia started to change its depiction of the conflict in the hope of receiving support from the West, claiming that the conflict over South Ossetia exists between Georgia and Russia, not between Georgia and South Ossetia. By stressing the sole political nature of the conflict, its ethnic character as such was denied. In his speech to the Parliament, Saakashvili stated that the conflict "has been created by silly and unaware people. [...] The Georgian-Ossetian conflict does not exist at all. This is one more fabrication by imperial ideologists" This, in my view, had a harmful effect on the peace process since it discouraged both South Ossetia and Russia from any meaningful engagement in the pursuit of a political settlement and raised mutual distrust towards any new reconciliation proposals.

<sup>&</sup>lt;sup>684</sup> In 2004, an anti-smuggling campaign of the Georgian Government took place, which resulted in the outbreak of hostilities. (Cf. Инициатива президента Южной Осетии по мирному урегулированию грузино-осетинского конфликта. [online] [last retrieved og-o4-2020]. Available at: https://regnum.ru/news/polit/558935.html)

<sup>&</sup>lt;sup>685</sup> Georgia's South Ossetia Conflict..., p. 11–12.

<sup>&</sup>lt;sup>686</sup> Saakashvili Rejects Terms 'Georgian-Abkhaz' and 'Georgian-Ossetian Conflicts'. [online] [last retrieved 09-04-2020]. Available at: https://civil.ge/archives/112088

In November 2006, the government in Tbilisi attempted to change the status quo in South Ossetia by organizing an alternative presidential election in the villages under the Georgian administration. This resulted in two de facto presidents—E. Kokoity in Tskhinval(i) and D. Sanakoev in Eredvi. Being formally appointed by the Georgian Government as the head of the new "temporary administration unit", Sanakoev managed to secure funding for the development of Georgian-administered villages directly from the Georgian state budget. Kokoity's regime labeled Sanakoev's government as "traitors and puppets" installed by the Georgian Government and threatened to pull out of the peace process. Similarly, the Russian Federation viewed Sanakoev's government as an attempt to undermine "the foundations of the peaceful settlement process based on unconditional international recognition of Sukhumi and Tskhinvali as legitimate parties to the conflicts and accordingly to the negotiations for their peaceful settlement"688. It follows from the 2007 International Crisis Group (hereinafter referred to as "ICG") report that Sanakoev's government lacked any significant support of the majority of ethnic Ossetians living in South Ossetia, who regarded it as a form of provocation, and had support only in the settlements with ethnic Georgian population. Moreover, the Ossetian population perceived the installment of Sanakoev's government as "a way of forcing a settlement upon them on Tbilisi's terms" 689.

The 2008 Five-Day War between Georgia and Russia put an end to the ongoing peace process. Both parties to the conflict failed to abide by the basic principles of international humanitarian law and violated international obligations, in particular the obligation to distinguish between military targets and civilians. The level of distrust of the South Ossetian population towards the Georgian Government increased, and the relations between ethnic communities were harmed.

Having recognized the independence of South Ossetia, the Russian Federation claimed that the Georgian-Ossetian conflict had been finally settled, which resulted, for instance, in the conclusion of work of international observers. After the 2008 war, the Russian Federation demanded that two

<sup>&</sup>lt;sup>687</sup> Geldenhuys, D. 2009. Contested States..., p. 84.

<sup>688</sup> Georgia's South Ossetia..., p. 7.

<sup>&</sup>lt;sup>689</sup> Ibidem, p. 25.

separate OSCE missions be established, one for South Ossetia and one for Georgia, which was unacceptable to Georgia. The mandate of the OSCE Mission to Georgia expired on 31 December 2008 after Georgia had revoked the 1992 Sochi Agreement<sup>690</sup>.

On 1 October 2008, the EU Monitoring Mission was launched. Its task is to monitor the actions of the parties to the conflict, including compliance with the Six-Point Agreement, cooperation with international partners in order to contribute to stabilization, normalization and confidence-building, and contributing to the European policy in support of a durable political solution for Georgia<sup>691</sup>.

Current policies of the Georgian Government towards South Ossetia focus on a soft approach, mostly in the field of health care. Nevertheless, the level of mutual distrust remains relatively high, and all new steps are perceived with suspicion by the other side. Until 2014, there was a platform called "Point of View", which provided room for discussions on confidence-building between Georgian and South Ossetian representatives, including representatives of the civil society, journalists, psychologists, youth, etc., without discussing the status of South Ossetia. Between 2009 and 2014, about 100 participants from South Ossetia took part in this project. What should be noted is that, within this format, Georgia and South Ossetia were represented as parties to the conflict instead of Russia and Georgia, which was welcomed by the South Ossetian participants<sup>692</sup>.

Currently, the only dialogue takes place within the framework of the Geneva International Discussions, in which the representatives of South Ossetia participate together with the representatives of Abkhazia, Georgia, Russia, and the United States. The aim of the South Ossetian delegation is to achieve an agreement with Georgia on non-use of force or the threat of force. Notwithstanding the fact that very little has been achieved within this framework, the Geneva International Discussions remain to be the only regional security format in which the non-recognized actors participate.

<sup>&</sup>lt;sup>690</sup> Stöber, S. 2011. The Failure of the OSCE Mission to Georgia – What Remains? In OSCE Yearbook 2010. Baden-Baden: Nomos. ISBN 978-3-8329-6399-6. Pp.203–220.

<sup>&</sup>lt;sup>691</sup> Acts Adopted under title V of the EU Treaty Council Joint Action 2008/736/CFSPof 15 September 2008on the European Union Monitoring Mission in Georgia, EUMM Georgia. [online] [last retrieved 18-04-2020]. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:248:0026:0031:EN:PDF

<sup>&</sup>lt;sup>692</sup> Сf. Лира Козаева: «Там я агент КГБ, а здесь — Госдепа». [online] [last retrieved 19-04-2020]. Available at: https://www.ekhokavkaza.com/a/26848789.html

South Ossetia has a strategic importance as regards the road connection between the South and the North Caucasus. The resumption of road transport in this direction might be beneficial, especially for Armenia, for which Georgia is a transit country of vital importance, securing a trade route from Russia. Currently, the trade route bypasses South Ossetia through the Kazbegi–Verkhny Lars mountain pass. However, transport conditions are more difficult on this route since it often gets closed in winter due to avalanches. Nevertheless, the issue of customs control remains unresolved and so does the status of South Ossetia. Apart from trade and transit, there are some other issues that might become incentives for future cooperation irrespectively of the status of South Ossetia, for instance, protection of the environment. In my view, there is plenty of room for solving of environmental issues on the Little Liakhvi River as well as waste dumps in the territory of South Ossetia. Therefore, it is crucial that the dialogue is resumed in the near future.

# 4.4 Assessment of de facto statehood

Table 24: Assessment of the de facto sovereignty of South Ossetia

	Score
I. Symbolic attributes 1. Flag 2. National holidays 3. Capital city	2.0
II. Governance 4. Head of state 5. Autonomous government 6. Constitution	2.0
III. Monetary system	0
IV. Territorial integrity	1.5
V. Permanent population	1.0
VI. Actorness	1.0
VII. Security structures	0.5
VIII. Diplomatic relations	0.5
IX. Membership in international organizations	0
Total	4.5

The Republic of South Ossetia – the State of Alania has all symbolic attributes of a state. The state symbols, i.e. the coat of arms, the flag, and the national anthem, are regulated by Article 17 of the Constitution of the Republic of South Ossetia. Specific regulations on state symbols and their use are included in constitutional acts.

The flag of the Republic of South Ossetia consists of three horizontal stripes—white, red, and yellow—which symbolize moral purity (white), martial courage (red), and wealth and prosperity (yellow). They are also meant to represent the traditional division of the Ossetian society into three social groups forming an organic whole: the military aristocracy, the clergy, and ordinary people<sup>693</sup>. The use of the flag is legally regulated by the Constitutional Act on the State Flag of the Republic of South Ossetia of 28 February 2019<sup>694</sup>.

Picture 8: National flag of the Republic of South Ossetia



(Source: *Cumβοπικα*. [online] [last retrieved o6-o2-2020]. Available at: https://south-ossetia.info/respublika-yuzhnaya-osetiya-segodnya/30-2/)

<sup>&</sup>lt;sup>693</sup> Государственная символика Республики Южная Осетия. [online] [last retrieved o6-o2-2020]. Available at: http://www.parliamentrso.org/node/8

<sup>&</sup>lt;sup>694</sup> Конституционный закон РЮО «О Государственном флаге Республики Южная Осетия». [online] [last retrieved o6-o2-2020]. Available at: http://www.parliamentrso.org/node/2314

The coat of arms of the Republic of South Ossetia depicts a Caucasian leopard passant on a golden ground with seven golden mountains in the background symbolizing Ossetian landscape. The use of the coat of arms is regulated by the Constitutional Act on the Coat of Arms of the Republic of South Ossetia of 28 March 2019<sup>695</sup>.



Picture 9: Coat of arms of the Republic of South Ossetia

(Source: Символика. [online] [last retrieved o6-o2-2020]. Available at: https://south-ossetia.info/respublika-yuzhnaya-osetiya-seqodnya/30-2/)

The national anthem of South Ossetia is "Beloved Ossetia!". It is legally regulated by the Constitutional Act on the National Anthem of the Republic of South Ossetia of 22 January 2019. The capital of South Ossetia is Tskhinval(i), pursuant to Article 3.5 of the Constitution of South Ossetia. The legal status

<sup>&</sup>lt;sup>695</sup> Конституционный Закон РЮО «О Государственном гербе Республики Южная Осетия». [online] [last retrieved o6-o2-2020]. Available at: http://www.parliamentrso.org/node/2382

of the capital city is regulated by the Constitutional Act on the Status of the Capital of the Republic of South Ossetia<sup>696</sup>.

The national holiday of the Republic of South Ossetia is the Day of the Republic of South Ossetia, which is celebrated on 20 September. On that day in 1990, the Council of National Deputies of the South Ossetian Autonomous Oblast passed a resolution on state sovereignty of the South Ossetian Soviet Democratic Republic as a part of the Soviet Union. Another public holiday is the Day of Recognition of Independence of South Ossetia, which is celebrated on 26 August, the day when in 2008 the Russian Federation recognized the independence of South Ossetia.

Pursuant to Section III of the Constitution of South Ossetia, the president is the head of state and exercises executive power. The president formally acts as the protector of the Constitution as well as the rights and freedoms of people. Formal requirements for presidential candidates are: minimum age of 35 years, knowledge of the state languages of South Ossetia, permanent residence in the territory of South Ossetia for the past 10 years prior to the day of registration. The president is elected directly for a period of five years<sup>697</sup>.

The Government of the Republic of South Ossetia is a collective body of executive power pursuant to Section V of the Constitution of South Ossetia. In accordance with the Constitution, the president of the Republic of South Ossetia acts as the head of the executive power and determines the actions of the Government. Formally, the Government is led by the chairman of the Government, who is appointed and dismissed by the president of the Republic of South Ossetia. The president also approves the structure of the Government pursuant to Article 50 of the Constitution of South Ossetia 698. It is important to consider whether the Government of South Ossetia is autonomous, i.e. whether it is independent to a certain extent and has the ability to operate without being directly influenced by any other country. In this context, I would

<sup>696</sup> Сf. Конституционный закон Республики Южная Осетия О статусе столицы Республики Южная Осетия. [online] [last retrieved o6-02-2020]. Available at: http://tskhinval.ru/konstitucionnyj\_zakon\_rso\_o\_statuse\_stolicy\_respubliki\_juzhnaja\_osetija.

<sup>&</sup>lt;sup>697</sup> Конституция (основной закон) Республики Южная Осетия. [online] [last retrieved o6-o2-2020]. Available at: http://www.parliamentrso.org/node/13 Para. 47–48.

<sup>&</sup>lt;sup>698</sup> Ibidem, para. 50.

like to point out the reports of international observers, which stated that Moscow staffs over half of the South Ossetian Government<sup>699</sup>, but also that "Russia's influence on and control of the decision-making process in South Ossetia concerned a wide range of matters with regard to the internal and external relations of the entity. The influence was systematic, and exercised on a permanent basis. Therefore the *de facto* Government of South Ossetia was not 'effective' on its own"<sup>700</sup>.

The first Constitution of South Ossetia was adopted on 2 November 1993. The currently binding Constitution was approved in the referendum that took place on 8 April 2001.

The Republic of South Ossetia does not have its own monetary system. The Russian ruble is in use as the official currency. In 2013, the National Bank of the Republic of South Ossetia introduced commemorative coins, known as "South Ossetian zarin". The official exchange rate to ruble has been set by law at 1:10<sup>701</sup>. However, this cannot be considered an official independent currency, as it only has limited use for antiquarian purposes. Therefore, zero points have been attributed to this criterion, which corresponds to "full dependence on an integrated monetary system".

The territorial integrity of South Ossetia is disputed as South Ossetia is claimed by Georgian authorities to be an integral part of the Republic of Georgia and temporarily occupied by the Russian Federation. By contrast, South Ossetia claims to be an independent state that has been recognized by the Russian Federation, Nauru, Nicaragua, Syria and Venezuela. Nevertheless, Georgia has not been exercising effective control over South Ossetia since 1991 with the exception of the period between 2006 and 2008 when some parts of South Ossetia were controlled by pro-Georgian authorities. Thus, territorial integrity ranked 1.5 points, which means that South Ossetia "oversees dependencies with shared territoriality".

<sup>&</sup>lt;sup>699</sup> South Ossetia: The Burden of Recognition..., p. 1.

<sup>700</sup> Independent International Fact-Finding Mission on the Conflict in Georgia. Report. Volume II. 2009. P. 133.

<sup>&</sup>lt;sup>701</sup> Очередная серия памятных монет Южной Осетии поступила в продажу. [online] [last retrieved o6-o2-2020]. Available at: https://south-ossetia.info/ocherednaya-seriya-pamyatnyx-monet-yuzhnoj-osetii-postupila-v-prodazhu/

Due to the lack of any exact statistics on the population of South Ossetia, it is difficult to rank the criterion of permanent population. The estimates vary between 30,000 (according to Georgian authorities) and 70,000 (according to South Ossetian *de facto* authorities). Formally, South Ossetian citizenship was established by the Law on Citizenship of 18 February 1995. The currently binding Law on Citizenship of the Republic of South Ossetia was adopted on 23 August 2006. Although formally South Ossetian passports are in use, they are recognized only by a handful of states. This is why the vast majority of the population of South Ossetia has Russian passports.

As regards actorness, South Ossetia ranks 1.0, which means that "political entity has been granted some foreign policy functions; it is active but not internationally recognized". Similarly to Abkhazia, the foreign policy of South Ossetia is almost exclusively focused on the Russian Federation. When it comes to security structures, South Ossetia ranks 0.5 points as a "political entity [which] has developed its own (illegal) structures and/or relies on external military assistance".

South Ossetia has been so far recognized by six UN member states, one of which has allegedly rescinded its recognition (Tuvalu). For this reason, South Ossetia ranks 0.5 points (diplomatic relations with 2–50 countries) for diplomatic relations and 0 points for international organizations. In total, the sovereignty of South Ossetia ranks 4.5 points. In this respect, the result is very similar to Abkhazia.

## I. Regime-resident relationship

Table 25: Assessment of the criteria concerning the regime-resident relationship

	Average assessment
1. Level of identification of the residents as citizens of South Ossetia	5.56
2. Participation of the population in "national" elections	6.25
3. Participation of the population in "national" referenda	6.0
4. Participation of the population in local civic activities, community initiatives, and communal elections	3.31
5. Activity of civil society institutions (NGOs) in South Ossetia	1.18
Overall assessment	4.46

#### 1. Level of identification of the residents as citizens of South Ossetia

With regard to the level of identification of the residents of South Ossetia as citizens of South Ossetia, there are several issues that need to be taken into consideration. First of all, there is no reliable data indicating how much population has remained in the territory of South Ossetia after the end of hostilities. The *de facto* authorities claimed the population of South Ossetia was about 72,000<sup>702</sup>. According to the 2016 census conducted in South Ossetia, the population was 53,532. Nevertheless, the estimates provided by Georgian authorities as well as by the ICG vary between 20,000 and 30,000 persons<sup>703</sup>. However, there is no way to sufficiently validate either the Georgian or South Ossetian numbers. According to the last pre-conflict census in 1989, the population of South Ossetia counted 98,000 inhabitants.

Secondly, the problem relates to internally displaced persons from the territory of South Ossetia, who are prevented from returning to their homes. Some researchers estimate that the flux of Ossetians to North Ossetia at the beginning of the 1990s was between 30,000 and 100,000 people<sup>704</sup>. Apart from a broad range of these estimates, the figures seem rather exaggerated to me since the whole population of South Ossetia, including all ethnicities, was less than 100,000 in 1989. Russian authorities claimed that around 30,000 people fled to North Ossetia after the outbreak of hostilities in 2008, the majority of whom were able to return to South Ossetia and only less than 2,000 remained in North Ossetia as refugees<sup>705</sup>. The International Crisis Group stated that approximately 20,000 ethnic Georgians fled their homes in 2008 and have been unable to return since. "Today no more than 2,500 ethnic Georgians remain in South Ossetia, mostly in the Akhalgori (Leningor) region. Only a few hundred, in ethnically

<sup>&</sup>lt;sup>702</sup> Республика Южная Осетия. [online] [last retrieved 04-02-2020]. Available at: https://presidentruo.org/category/respublika/

<sup>7</sup>º3 South Ossetia: The Burden of Recognition. 2010. [online] [last retrieved 04-02-2020]. Available at: https://www.crisisgroup.org/europe-central-asia/caucasus/south-ossetia-burden-recognition. P. 1.

<sup>&</sup>lt;sup>704</sup> Cf. Cornell, S. E. 2001. *Small Nations...*, p. 155.

<sup>&</sup>lt;sup>705</sup> Georgia: Massive returns to buffer zone. [online] [last retrieved 04-02-2020]. Available at: https://www.unhcr.org/48f862c52.html. Cf. Maryański, A. 1995. Przemiany ludnościowe w ZSRR. Warszawa-Kraków: Centrum Badań Wschodnich Uniwersytetu Warszawskiego, Wyższa Szkoła Pedagogiczna w Krakowie. ISBN 83-901406-1-6. P. 187.

mixed families, live elsewhere, essentially in four villages in Znauri district, two villages in Java district, and the capital, Tskhinvali"<sup>706</sup>. It has been confirmed by the South Ossetian experts that the residents of the Akhalgori (Leningor) region still keep their Georgian citizenship, which legally prevents them from being granted the citizenship of South Ossetia.

Thirdly, in 2002, the Russian Federation started to grant Russian passports to the residents of South Ossetia, which contributed to the immigration of South Ossetians to North Ossetia. By 2004, the process of passportization has resulted in an increase in the percentage of Russian citizens in South Ossetia from 56 percent to 98 percent<sup>707</sup>.

Another issue that needs to be taken into consideration is the self-identification of the residents of South Ossetia as "Ossetians", i.e. members of the Ossetian nation, including both South Ossetia and North Ossetia, rather than just South Ossetians alone. This reflects the wish of the ethnic South Ossetian population to unify with North Ossetia and thus merge with the Russian Federation.

An expert from South Ossetia stated that "in my opinion, the residents certainly identify themselves as South Ossetians. Concerning the citizenship of the Russian Federation, the issue is that many people have property in North Ossetia; their family members and children live there. We are very much connected with North Ossetia. They get visa, travel documents, and Russian citizenship there, also pensions are higher there. It is very difficult to travel with South Ossetian passports. Of course, you can go to Nicaragua, but you cannot go to other countries. Therefore, it is very useful to have Russian citizenship if you want to travel somewhere. It makes many things easier, for instance, if you have Russian insurance. Thus, I would say that Russian citizenship makes life easier and increases the quality of life. It does not mean that everyone considers themselves a citizen of the Russian Federation. I also have Russian citizenship but do not identify myself as a citizen of Russia" It follows that the citizenship of the Russian Federation is perceived as a factor

<sup>&</sup>lt;sup>706</sup> South Ossetia: The Burden of Recognition..., p. 3.

Nagashima, T. 2019. Russia's Passportization Policy toward Unrecognized Republics Abkhazia, South Ossetia and Transnistria. In *Problems of Post-Communism*. Vol. 66, no. 3. ISSN 1075-8216. P. 188.

<sup>&</sup>lt;sup>708</sup> Interview 24. Warsaw, Tskhinval(i), 22 March 2020.

that is beneficial for practical reasons, such as travel, work, or pension. The residents of South Ossetia, despite having Russian passports, identify themselves as South Ossetians or, in a broader sense, as Ossetians.

### 2. Participation of the population in "national" elections

It has been often pointed out by the experts in the interviews that there is a strong degree of interference of the Russian Federation with elections in South Ossetia. The experts from Tbilisi also questioned the results of the elections since it is hardly possible to verify them. In the parliamentary elections in 2014, the turnout was 21,129 voters (approximately 60.14 percent)<sup>709</sup>. The latest parliamentary elections were held on 9 June 2019 with a turnout of 23,351 voters (approximately 66.24 percent)<sup>710</sup>.

Despite the fact that South Ossetia is often presented in Western literature as a "stooge of Moscow"<sup>711</sup>, the voters in South Ossetia demonstrated their ability to reject a candidate backed by the Kremlin. After the presidential election in November 2011, riots took place in the streets of Tskhinval(i) in support of the opposition presidential candidate, Alla Dzhioeva, who won 57 percent and thus defeated her opponent, Anatoly Bibilov, who, despite the support of Moscow, gained only 40 percent. Nevertheless, the Supreme Court of South Ossetia declared the results of the vote invalid. The South Ossetian *de facto* authorities accused her of an attempt to organize a "colored revolution"<sup>712</sup>. In the new election, which took place in March 2012, Dzhioyeva was prevented from participation.

<sup>709</sup> ЦИК Южной Осетии обнародовала итоговые результаты выборов в парламент. [online] [last retrieved 04-02-2020]. Available at: https://www.kavkaz-uzel.eu/articles/244360/

<sup>&</sup>lt;sup>710</sup> ЦИК обнародовала окончательные итоги парламентских выборов. [online] [last retrieved 04-02-2020]. Available at: https://south-ossetia.info/cik-obnarodovala-okonchatelnye-itogi-parlamentskix-vyborov/

<sup>711</sup> Waters, Ch. 2014. South Ossetia. In Self-Determination and Secession in International Law. New York: Oxford University Press. ISBN 978-0-19-870237.

Political Standoff Escalates in South Ossetia Over Vote. [online] [last retrieved: 04-02-2020]. Available at: https://www.nytimes.com/2011/12/01/world/europe/political-standoff-escalates-in-south-ossetia-over-disputed-vote.html

#### 3. Participation of the population in "national" referenda

The first referendum that took place in the territory of South Ossetia was held on 17 March 1991 and focused on the issue of preservation of the Soviet Union.

The second referendum in South Ossetia was held on 19 January 1992. The questions asked in the referendum were:

- 1. "Do you agree that the Republic of South Ossetia should be independent?"
- 2. "Do you agree with the decision of the Supreme Soviet of 1 September 1991 on unification with Russia?"

The turnout in the referendum was 53,308 voters (approximately 73 percent), of whom 99 percent voted in favor of both questions asked<sup>713</sup>.

The next referendum, "on adoption of the Constitution of the Republic of South Ossetia", took place on 8 April 2001. Detailed information on this referendum is absent. According to available sources, the turnout was approximately 52.3 percent, with 60 percent in support of the constitutional project<sup>714</sup>.

On 12 November 2006, a referendum on the independence of South Ossetia was held. The question was as follows: "Should the Republic of South Ossetia retain its current status as an independent state and be recognized by the international community?" According to official results, as many as 52,030 voters participated in the referendum (approximately 94.6 percent), of whom 98 percent expressed themselves in favor of the independence<sup>715</sup>.

On 23 June 2011, *de facto* President of South Ossetia Eduard Kokoity announced that a referendum would be held on state languages in South

<sup>713</sup> Итоги юго-осетинского референдума 1992 года — актуальны. [online] [last retrieved 04-02-2020]. Available at: http://www.nykhas.ru/274060/itogi-yugo-osetinskogo-referenduma-1992-g/

<sup>7&</sup>lt;sup>14</sup> Cf. Südossetien (Georgien), 8. April 2001: Verfassung. [online] [last retrieved 05-02-2020]. Available at: https://www.sudd.ch/event.php?lang=en&id=geo12001. История противостояния Грузии и Южной Осетии. [online] [last retrieved 05-02-2020]. Available at: http://web.archive.org/web/20081231201916/http://top.rbc.ru/society/08/08/2008/216916.shtml

<sup>715</sup> Two Referendums and Two "Presidents" in South Ossetia. [online] [last retrieved 05-02-2020]. Available at: https://web.archive.org/web/20061128064202/http://www.caucaz.com/home\_eng/breve\_contenu.php?id=279

Ossetia. The question to be asked was as follows: "Do you agree that Ossetian and Russian should be the official languages in the Republic of South Ossetia?"<sup>716</sup> The referendum was scheduled for 11 September 2011; however, it was later rescheduled for 13 November 2011<sup>717</sup>. The turnout was 23,707 voters (approximately 67.05 percent), of whom 19,797 (approximately 83.54 percent) responded positively and 3,902 (approximately 16.46 percent) negatively<sup>718</sup>.

On 9 April 2017, another referendum took place in South Ossetia, which concerned an amendment to the Constitution in relation to the name of the *de facto* state. The question asked in the referendum read: "Do you agree with an amendment to Part 1 of Article 1 of the Constitution of the Republic of South Ossetia with the following wording:

 The Republic of South Ossetia – the State of Alania is a sovereign democratic state based on the rule of law, created as a result of selfdetermination of the people of the Republic of South Ossetia. The names The Republic of South Ossetia and The State of Alania are equivalent"<sup>719</sup>.

The change of the name of the state was justified by the need to "protect the history of the Alans". The concerns stemmed from the fact that in 1998 the Ingush named their capital "Magash", which is actually the historical name of the ancient capital of Alania. In 2015, the Alan Gate, a monumental entrance gate in Magash, was constructed, which caused disputes with North Ossetia and South Ossetia. Similarly, North Ossetia changed its name in 1994 to "The Republic of North Ossetia—Alania". On the other hand, part of the South Ossetian society objected to the effort to change the name of the

<sup>&</sup>lt;sup>716</sup> Указ О назначении референдума Республики Южная Осетия. [online] [last retrieved 05-02-2020]. Available at: https://web.archive.org/web/20111007190007/http://presidentrso.ru/edicts/detail.php?ID=3795

<sup>717</sup> Указ О переносе даты голосования на референдуме Республики Южная Осетия. [online] [last retrieved 05-02-2020]. Available at: https://web.archive.org/web/20110913150350/http://presidentrso.ru/edicts/detail.php?ID=3914

<sup>&</sup>lt;sup>718</sup> Südossetien (Georgien), 13. November 2011: Ossetisch und Russisch als Amtssprachen. [online] [last retrieved 05-02-2020]. Available at: https://www.sudd.ch/event.php?lang=en&id=geo12011

<sup>&</sup>lt;sup>719</sup> Постановление № 18/1 г. от 12 апреля 2017 года О результатах голосования по референдуму Республики Южная Осетия. [online] [last retrieved 04-02-2020]. Available at: https://cikruo.ru/2017/04/12/postanovlenie-v-181-g-ot-12-aprelya-2017-goda-o-rezulytatah-golosovaniya-po-referendumu-respubliki-yuzhnaya-osetiya/

state, stating that a correct name for South Ossetia would be "Iriston" since there is no such word as "Alan" in the contemporary Ossetian language<sup>720</sup>.

In order to attract more citizens, the referendum was organized on the same day as the presidential election. For this reason, it is difficult to judge the criterion of participation in the referenda solely. It follows from the official numbers presented by *de facto* authorities that the turnout in the referenda in South Ossetia is usually high, which is also reflected in the experts' assessment. Nevertheless, the official numbers depict a decrease in the number of voters after 2008 by approximately a half. Since the ethnic Georgian population, who have been expelled from the territory of South Ossetia, are unable to return to their homes and are therefore prevented from participation in referenda, their legitimacy remains in question.

# 4. Participation of the population in local civic activities, community initiatives, and communal elections

Pursuant to Article 89(1) of the Constitution of the Republic of South Ossetia – the State of Alania, "[l]ocal self-government is exercised by citizens through referendum, elections, gatherings, and other forms of direct expression of will through elected and other bodies of self-government". Specific regulations are included in the 2004 Law on Self-Government, but they have not been put into practice yet.

It is apparent that this parameter was ranked relatively low by both Georgian and South Ossetian experts due to the fact that there are no elections on the communal level and mayors are appointed directly by the president even though the Law on Self-Government foresees communal elections. The Government has been postponing some provisions of the law, claiming that the self-government in South Ossetia is not yet ready to bear financial responsibility for their actions. "The Law on Self-Government does exist but

<sup>&</sup>lt;sup>720</sup> Cf. Алания, Осетия или Ир? [online] [last retrieved 26-03-2020]. Available at: https://www.kavkazr.com/a/alania-osetia-ir/28764773.html. Государство Алания: в Южной Осетии проходит референдум о переименовании республики. [online] [last retrieved 26-03-2020]. Available at: https://russian.rt.com/ussr/article/376781-yuzhnaya-osetiya-alaniya-referendum

is not functioning yet, since the introductory documents impose a certain burden on the Republic's budget"<sup>721</sup>.

Similarly, local civic activities and community initiatives have been reported by both Georgian and South Ossetian experts as significantly limited to, for example, organizing a local event, such as a charity concert or collecting money for charity purposes.

## 5. Activity of civil society institutions (NGOs) in South Ossetia

Prior to 2014, there had been NGOs in South Ossetia that were actively working on different issues, including the social and economic spheres, reconciliation, gender equality, etc. One of the positive examples of the work of NGOs in South Ossetia mentioned in the interviews was the opening of the alcohol and drug addiction treatment center "Nadezhda" (in English: "Hope") in 2004 as a pilot project of the social partnership between NGOs and *de facto* authorities<sup>722</sup>. After the 2008 conflict, reconstruction and reconciliation matters received significant support from Western donors. The situation deteriorated in 2014 after the annexation of Crimea when the pressure on NGOs in South Ossetia intensified. The South Ossetian Government adopted a law on non-profit organizations, which mirrored the law in the Russian Federation, and labelled many non-profit organizations as "foreign agents". The difference between the two laws is that pursuant to the one in the Russian Federation, a "foreign agent" is a non-profit organization that receives funding from abroad and performs political activities in the territory of the Russian Federation, whereas in the South Ossetian version the term "foreign agent" applies to any non--profit organization that receives funding from abroad, irrespective of the fact whether it performs political activities or not<sup>723</sup>. What is more, NGOs were

<sup>721</sup> Местное самоуправление в Южной Осетии как виртуальная реальность. [online] [last retrieved 13-03-2020]. Available at: http://respublikarso.org/analytics/2921-mest-noe-samoupravlenie-v-yuzhnoy-osetii-kak-virtualnaya-realnost.html.

<sup>722</sup> Последняя "Надежда". [online] [last retrieved 05-03-2020]. Available at: https://sput-nik-ossetia.ru/South\_Ossetia/20160722/2760904.html

<sup>723</sup> Сf. Федеральный закон от 20 июля 2012 г. N 121-Ф3 «О внесении изменений в отдельные законодательные акты Российской Федерации в части регулирования деятельности некоммерческих организаций, выполняющих функции иностранного агента. [online]

accused of spreading Western, Georgian and anti-Russian propaganda. The South Ossetian press informed that NGOs in Abkhazia focused on supporting the anti-Russian opposition and that their work covered preparations for the Georgian annexation of Abkhazia and South Ossetia<sup>724</sup>. The activities of NGOs were often portrayed as aimed at disruption of the South-Ossetian "statehood".

With regard to the notion of "foreign agent", which was used for labeling non-profit organizations in South Ossetia that were receiving funds from abroad, a South Ossetian expert claimed that "the thing was that the term 'agents' sounded very negatively, just like 'spies'. This terminology was completely unacceptable for us. Moreover, we are publicly known persons and nobody wanted to be called a foreign agent in the mass media. [...] They said it was a juridical term, but how was I supposed to come home and explain to everyone that it was a juridical term?"<sup>725</sup> Representatives of South Ossetian NGOs attempted to change the term to "foreign partner"; nevertheless, the public pressure resulted in closing of the NGOs.

In 2015, the two most well-known NGOs in South Ossetia, "Agency for Social, Economic and Cultural Development of South Ossetia" and "Women's Association for Democracy and Human Rights", closed down due to the dire situation, especially the pressure on NGO leaders by *de facto* authorities. In a press interview, one of the former NGO leaders from South Ossetia, Dina Alborova, stated that NGO representatives were pressurized by *de facto* authorities to withdraw their participation in international forums and were afraid to continue their work. "The last refusal of the participants [...] because of espionage suspicions became a shame at the regional level. The authorities do not understand that they violate the right to free movement. [...] After revelatory statements had appeared on Larisa Sotieva and International Alert,

<sup>[</sup>last retrieved 22-04-2020]. Available at: https://rg.ru/2012/07/23/nko-dok.html. Лира Козаева об иностранных агентах в Южной Осетии. [online] [last retrieved 22-04-2020]. Available at: https://www.youtube.com/watch?v=Wyh2-no37JY

<sup>724</sup> НПО в Абхазии и Южной Осетии: подготовка к аннексии Грузией. [online] [last retrieved 05-02-2020]. Available at: https://www.ritmeurasia.org/news--2018-07-02-npo-v-abhazii-i-juzhnoj-osetii-podgotovka-k-anneksii-gruziej-37292

<sup>&</sup>lt;sup>725</sup> Interview 25. Warsaw, Tskhinval(i), 29 March 2020.

I did not even dare to start any project because I was sure that I would be accused of espionage"726.

Despite the fact that the NGOs in South Ossetia had been closed down, some former activists stayed to participate in conferences and international forums on peace-building and reconciliation. However, they claim to participate in such events secretly as private persons because such activities are not welcome by *de facto* authorities and, due to a massive negative campaign, by the public either.

There are no NGOs working in South Ossetia at present, and the only international organization allowed in South Ossetia is the International Red Cross and Red Crescent Movement. Closing of the NGOs in South Ossetia has been criticized by the civil society since it might have a negative impact on the recognition of South Ossetia. "It may be suitable for Russia, but for South Ossetia, where one of the main political and strategic tasks is international recognition, calling representatives of NGOs agents and applying tough measures to them is not entirely logical. You can strengthen the control and keep them under the control of the state, but do not call them such names and thus scare away representatives of the international community"<sup>727</sup>.

Even though the NGOs in South Ossetia have been closed down, there are still some individual activists pointing out, among other things, the situation of the Georgian ethnic minority in the Leningor (Akhalgori) region, violation of human rights in South Ossetian prisons, or cases of corruption of high-ranking government officials. Nevertheless, *de facto* authorities often put pressure on them in court trials. For instance, Irina Kelekhsaeva, who wrote about an argument between a Russian entrepreneur and the South Ossetian *de facto* president Bibilov, got fired from the state-owned television company "Ir" Another example is activist Tamara Merakishvili, who reported on the

<sup>&</sup>lt;sup>726</sup> Руководители двух НПО в Южной Осетии решили закрыть организации. [online] [last retrieved 05-02-2020]. Available at: https://www.kavkaz-uzel.eu/articles/270708/

<sup>727</sup> Представители третьего сектора Южной Осетии – против термина «иностранный агент». [online] [last retrieved 05-03-2020]. Available at: https://regnum.ru/news/polit/1789011.html

<sup>728</sup> Журналистку в Южной Осетии хотят уволить за критическую публикацию о президенте. [online] [last retrieved 05-03-2020]. Available at: https://jam-news.net/ru/журналистку-в-южной-осетии-хотят -увол/

situation of ethnic Georgians in the Leningor (Akhalgori) region and had previously faced two court trials.

It can be concluded that there are no non-profit organizations in South Ossetia, only activists who are dissidents with critical attitudes towards the *de facto* government. The above facts were repeatedly pointed out by the experts when justifying a relatively low score of the activities of the civil society in South Ossetia, which is essentially non-existent due to the negative political environment and hostile attitudes towards non-governmental organizations. Additionally, the experts from South Ossetia confirmed in their interviews that although there are still some NGOs officially registered in South Ossetia, they only operate on paper, not in real life.

### II. Internal sphere

Table 26: Assessment of the criteria concerning the internal sphere

	Average assessment
6. Defense capability and border control (fighting of illegal trespassing and smuggling)	4.75
7. Internal security (protection of people's rights and freedoms, possessions, public order, fighting of organized crime, etc.)	2.56
8. Effectiveness of the judicial system	2.56
9. Governance (relation between the central and the local government; level of decentralization)	2.0
10. Economic situation (GDP per capita; average income; employment rate; inflation rate)	2.56
11. Level of development of the private economy sector (rate of economic activity)	2.63
12. Social welfare system (unemployment; pensions; family policy; social programs)	3.25
13. Healthcare system (accessibility; facilities; health insurance)	2.19
14. Education system (structure; accessibility; educational programs)	2.50
15. Transport and infrastructure (roads, railway system, air transport, pipelines, hydroelectric system, etc.)	2.69
Overall assessment	2.77

6. Defense capability and border control (fighting of illegal trespassing and smuggling)

The southern border between South Ossetia and Georgia is 391 kilometers long, while the northern border with Russia is 74 kilometers long. Prior to 2008, the Georgian Government often claimed that the territory of South Ossetia was used for transiting goods, especially dangerous substances and counterfeiting, to and from the Russian Federation without proper customs clearance by Georgian authorities. According to the ICG, a major concern was also dollar counterfeiting<sup>729</sup>.

After the recognition of South Ossetia by the Russian Federation, the Treaty on Friendship, Cooperation and Mutual Assistance was concluded between South Ossetia and the Russian Federation on 17 September 2008 (entered into force on 20 January 2009). It includes several key provisions that are crucial not only for the external security of South Ossetia, but also for its existence and sustainability. Pursuant to Article 5 of the treaty, "each of the Contracting Parties will provide the other Contracting Party with the right to build, use, and improve its armed forces, military infrastructure, and military bases (facilities) in its territory"<sup>730</sup>. Pursuant to Article 7 of the treaty, the Russian Federation pledged to take necessary measures in order to protect the state border of the Republic of South Ossetia. In other words, the Russian Federation formally became a guarantor of the territorial integrity of South Ossetia.

More specific provisions on the protection of South Ossetian borders were included in the Agreement between the Russian Federation and the Republic of South Ossetia on Joint Efforts to Protect the State Border of the Republic of South Ossetia, signed in Moscow on 30 April 2009. Interestingly, the agreement defines the term "state border" as the border between the Republic of South Ossetia and Georgia, thus omitting the border between South Ossetia and Russia. Pursuant to Article 2 of the agreement, the joint efforts are aimed

<sup>729</sup> Georgia's South Ossetia Conflict: Make Haste Slowly. 2007. International Crisis Group. Europe Report no. 183. P. 16.

<sup>&</sup>lt;sup>73°</sup> Договор о дружбе, сотрудничестве и взаимной помощи между Российской Федерацией и Республикой Южная Осетия. [online] [last retrieved 11-12-2019]. Available at: http://kremlin.ru/supplement/199

at i.a. "fight against terrorism, smuggling of weapons, ammunition, [...] illegal transport of narcotic substances, psychotropic substances and their precursors across the state border as well as suppression of other illegal activities carried out while crossing the state border; material and technical support for the activities of authorized bodies of the Parties; training of specialists for the authorities of the South Ossetian Party"<sup>731</sup>. For the sake of protection of the state border within the meaning of the agreement, the Russian Federation has established "Border Guard Administration", which is exempted from the civil and administrative jurisdiction of South Ossetia and enjoys tax exemptions.

The Agreement on Joint Efforts to Protect the State Border of the Republic of South Ossetia resulted in the fact that the Russian Federation took over the administration of the border between South Ossetia and Georgia. Since 2009, there has been an intensive process of "borderization" characterized by erecting of border signs, security fences, barbed and concertina wires as well as ploughing of ground lines. The Russian Federation has also built a number of observation posts and installed surveillance technology such as camera pylons and motion detectors hidden in bushes or trees, which makes trespassing the border extremely difficult<sup>732</sup>.

The above agreements were followed by the Agreement between the Russian Federation and the Republic of South Ossetia on Cooperation in Military Field, which was concluded on 15 September 2009 for a period of 49 years. The significance of the agreement for the Russian Federation rests upon the fact that it provides for the establishment of military facilities of each party in the territory of the other party. However, it is clear that the advantage of such a provision can only be taken by the Russian Federation in order to establish its military bases in the territory of South Ossetia. Pursuant to Article 8 of the agreement, "[i]n order to ensure the security of the Parties, as well as peace and stability in the region, the Parties may grant each other

<sup>&</sup>lt;sup>731</sup> Соглашение между Российской Федерацией и Республикой Южная Осетия о совместных усилиях в охране государственной границы Республики Южная Осетия. [online] [last retrieved 11-12-2019]. Available at: http://kremlin.ru/supplement/191

<sup>732</sup> The EUMM Monitor. A bulletin from the European Union Monitoring Mission in Georgia. 2017. Issue 4. [online] [last retrieved 02-03-2020]. Available at: https://eumm.eu/data/file/5774/ The\_EUMM\_Monitor\_Issue\_\_\_\_. April\_\_\_\_\_ENG.M1UBLiudw.PDF

the right to build, use and improve their military infrastructure and military bases in their territory "733".

On 7 April 2010, Russia and South Ossetia concluded the Agreement on the Unified Russian Military Base in the Territory of South Ossetia, based on which the Russian Federation acquired the right to establish military facilities in the territory of South Ossetia, to use the South Ossetian air space as well as some other legal rights and exemptions, for instance, the personnel of a base and their family members are granted a status equal to that of the administrative and technical staff of a diplomatic mission according to 1961 Vienna Convention on Diplomatic Relations. The personnel of a base are also entitled to cross the border of South Ossetia with documents valid to leave the Russian Federation and are not subject to inspection by the border and customs authorities of the Republic of South Ossetia. Furthermore, military facilities belonging to the bases are exempted from the tax regulations of South Ossetia.

Following the agreement, the Russian Federation stationed its armed forces in military bases in Tskhinval(i), Dzartsem, Java (aviation base) and Kurta (airdrome for common use), and the number of Russian soldiers present in South Ossetia was estimated between 3,500 and  $4,000^{735}$ .

On 18 March 2015, the Russian Federation and the Republic of South Ossetia concluded the Treaty on Alliance and Integration, based on which they formed a united defense and security area. Pursuant to Article 2.1 of the treaty, "the Russian Federation provides defense and security of the Republic of South Ossetia, including the protection of the state border of the Republic of South Ossetia. For this purpose, separate units of the Armed Forces and security bodies of the Republic of South Ossetia are part of the Armed Forces and security bodies of the Russian Federation, as agreed by

<sup>733</sup> Соглашение между Российской Федерацией и Республикой Южная Осетия о сотрудничестве в военной области. [online] [last retrieved 11-12-2019]. Available at: http://www.mfa-rso.su/node/1206

<sup>734</sup> Соглашение между Российской Федерацией и Республикой Южная Осетия об объединенной российской военной базе на территории Республики Южная Осетия. [online] [last retrieved 12-12-2019]. Available at: http://docs.cntd.ru/document/902253381

<sup>&</sup>lt;sup>735</sup> Сf. Базы на 49 лет. Совфед ратифицировал соглашения о военных базах в Абхазии и Южной Осетии. [online] [last retrieved 11-12-2019]. Available at: https://rg.ru/2011/09/29/bazy.html

the Contracting Parties"<sup>736</sup>. An armed attack against one of the contracting parties is, in the light of the treaty, inevitably seen as an armed attack against the other contracting party, which is to some extent—at least formally—meant to provide bilateral security guarantees even though it is apparent that this provision is in practice more likely to be invoked by South Ossetia than by the Russian Federation. In my view, the treaty has significantly increased the level of dependence of South Ossetia on Russia given that the policies of South Ossetia have become directly subordinated to those of the Russian Federation, which functions as an indispensable guarantor of the security of South Ossetia. In 2018, the State Duma of the Russian Federation ratified an agreement according to which the South Ossetian armed forces became integrated into the armed forces of the Russian Federation. Consequently, the armed forces of South Ossetia would be reduced and subordinated to the Russian armed forces.

Currently, foreigners can enter South Ossetia only from the Russian Federation through the Nizhnyi Zaramag–Verkhny Ruk border crossing (Rus. Huжний Зарамаг – Верхний Рук) upon invitation by an individual or an organization from South Ossetia. However, any individual who enters South Ossetia from the Russian Federation bears criminal responsibility in Georgia for violating the Law on Occupied Territories. In 2016, there were four border crossings between South Ossetia and Georgia: Perevi and Sinaguri in the Dzaur region, Razdakhan (Mosabruni) in the Leningor (Akhalgori) region, and Khelchua in the Tskhinval(i) region<sup>738</sup>. However, the border crossings with Georgia often remain closed due to alleged reasons of national security. For instance, in February 2019 the South Ossetian de facto authorities closed the border crossings with Georgia due to the swine flu virus. In September

<sup>736</sup> Договор между Российской Федерацией и Республикой Южная Осетия о союзничестве и интеграции. [online] [last retrieved 12-03-2020]. Available at: http://kremlin.ru/supplement/4819

<sup>737</sup> Дума ратифицировала соглашение о порядке вхождения подразделений Южной Осетии в состав Вооруженных сил РФ. [online] [last retrieved 10-06-2019]. Available at: https://www.militarynews.ru/story.asp?rid=1&nid=471954&lang=RU

<sup>738</sup> Генерал Меркурьев: помощь жителей Южной Осетии в охране границ неоценима. [online] [last retrieved 11-12-2019]. Available at: https://sputnik-ossetia.ru/South\_Ossetia/20160430/1817468.html

2019, the *de facto* authorities closed down border crossings Sinaguri and Razdakhan due to alleged provocations at the border. Another occasion when the border crossings with Georgia were closed down was at the end of February 2020, in order to "prevent the spread of corona virus to South Ossetia"<sup>739</sup>. Interestingly, the border crossing with the Russian Federation remained open for another month before complete lockdown.

7. Internal security (protection of people's rights and freedoms, possession, public order, fighting of organized crime, etc.)

The criterion of internal security received a relatively low score from the experts, especially with regard to the situation of ethnic Georgians living in the Leningor (Akhalgori) region. For instance, the closure of the border crossing in the Leningor (Akhalgori) region in September 2019 caused severe difficulties for the local population not only in their daily life (e.g. to those crossing the border in order to receive their pensions in the territory controlled by the Georgian side or those wishing to travel to the territory controlled by the Georgian side in order to attend events such as funerals, etc.), but it also prevented them from receiving sufficient medical care that they would otherwise have received in Tbilisi. The problem of continuing "borderization" causes difficulties for people to reach their property, including their agricultural plots, which used to be a source of income for their families.

Available reports from South Ossetia imply that the situation concerning human rights remains dire. Apart from forcing the NGOs to close down, the *de facto* authorities tend to use the public media to slander civil activists and journalists who report negatively on various activities of high-ranking *de facto* government officials. For instance, South Ossetian journalist Irina Kelekhsaeva filed a lawsuit against the Press Office of South Ossetia for being slandered as "evil", "enemy of the people" and blamed for "undermining the Republic".

<sup>&</sup>lt;sup>739</sup> Южная Осетия полностью закроет границу с Грузией из-за коронавируса. [online] [last retrieved 30-03-2020]. Available at: https://tass.ru/obschestvo/7853585

According to Freedom House, South Ossetia scored two points in political rights and eight in civil liberties, and was consequently labeled as "not free" with only ten points in total<sup>740</sup>.

According to the official South Ossetian sources, organized crime is mostly focused on the smuggling of weapons, ammunition, and explosives to Russia<sup>741</sup>. Prior to the 2008 war, there were reports of transporting arms and ammunition bought from Russian peacekeepers from South Ossetia to Chechen separatists in the Pankisi Gorge. In addition, the Ergneti market played a significant role in the smuggling of goods between the South and North Caucasus in both directions<sup>742</sup>. In June 2016, South Ossetia and Russia signed the Agreement on the Procedure for the Formation and Activities of the Joint Information and Coordination Center of the Internal Affairs Bodies. From the Russian and South Ossetian points of view, this institution seems to have the character of a trans-governmental organization. The aim of the Center is to monitor the criminal situation, especially in the field of involvement of organized crime in the social and economic spheres in South Ossetia.

# 8. Effectiveness of the judicial system

The judicial system in South Ossetia is comprised of the Constitutional Court, the Supreme Court, district courts and the Arbitral Court<sup>743</sup>. Any citizen of South Ossetia who is at least 25 years old with completed higher legal education and at least three years of professional legal experience may be appointed a judge. Although the judicial system is formally independent of the legislative and

<sup>740</sup> Countries and territories. [online] [last retrieved 19-06-2020]. Available at: https://freedom-house.org/countries/freedom-world/scores

<sup>&</sup>lt;sup>741</sup> Трунцевский, Ю. В., Сухаренко, А. Н. 2016. Российско-югоосетинское сотрудничество в сфере борьбы с организованной преступностью. In *Полицейская деятельность*. No. 4. ISSN 2454-0692. Pp. 520–525.

<sup>&</sup>lt;sup>742</sup> Kukhianidze, A. 2004. Organized Crime and Smuggling Through Abkhazia and South Ossetia. In Organised Crime, Trafficking, Drugs: Selected Papers Presented at the Annual Conference of the European Society of Criminology, Helsinki 2003. Vol. 42. P. 91–96.

<sup>&</sup>lt;sup>743</sup> Конституционный Закон Республики Южная Осетия о Судебной Системе Республики Южная Осетия. [online] [last retrieved 30-03-2020]. Available at: https://ugo-osetia.ru/politika/dokumenty/o-sudebnoj-sisteme-respubliki-yuzhnaya-osetiya

executive power, the experts pointed out that the executive power often interferes with the judiciary through personal ties or through appointments.

The criterion of effectiveness of the judicial system was ranked relatively low by both Georgian and South Ossetian experts. While the Georgian experts pointed out problems such as corruption and political pressure, the South Ossetian experts highlighted political pressure and family ties as the biggest obstacles. This is consistent with the main complaints about the judicial system. "Corruption, dependence on the executive branch, nepotism, and secrecy—this is an incomplete list of problems that residents of the republic complain about"<sup>744</sup>. Another issue, stressed by the Georgian experts, was the incompetence and low level of qualification of judges. "People who can afford to pay attorneys from Russia often do so. What is more, the South Ossetian legislation is in principle very similar to the Russian one, thus Russian attorneys represent their South Ossetian clients"<sup>745</sup>.

According to the experts, the judiciary system in South Ossetia is often misused for political purposes, especially against representatives of the opposition, civil society, and activists. What both Georgian and Ossetian experts agreed upon was that the constitutional division between legislative and judicial power has become blurred.

9. Governance (relation between the central and the local government; level of decentralization)

The relation between the central and the local government in South Ossetia has a vertical character as the heads of township administration are appointed by the president even though the Constitution of South Ossetia provides for self-government based on local elections. Relevant provisions of the Constitution were initially placed under a moratorium until 2012; however, the moratorium has been prolonged by a decision of the South Ossetian Parliament of 30 January 2013, so they have never been put into practice. The

<sup>744</sup> *A судьи кто?* [online] [last retrieved 03-04-2020]. Available at: https://www.ekhokavkaza.com/a/29040130.html

<sup>745</sup> Interview 21. Tbilisi, 28 May 2019.

decision to place a moratorium on the constitutional provisions has officially been justified by contradictions between the Law on Self-Government and the Constitution<sup>746</sup>.

Despite the fact that the legal provisions on the direct vote for the heads of the administration of settlements have not yet been implemented, a direct vote took place in 2017 in the settlement of Kvaisi upon the decision of President Bibilov. The most successful candidate was later appointed by the president. In 2019, President Bibilov promised the residents of the settlement Khetagurovo to organize a direct vote for the head of their local administration raises questions since the Law on Self-Government is officially under the moratorium. In consequence, such a vote is regarded as a community initiative, and thus only as a measure of advisory character since the choice of the head of the local administration is still at the discretion of the president. Moreover, such exceptions seem to cause discrepancies within the legal system, given that they occur outside of the existing constitutional framework.

The discourse on local self-government has recently become louder in the South Ossetian media, which expressed criticism of the inability of the *de facto* government to put legal provisions into practice for almost twenty years. Anatoly Bibilov, the *de facto* president of South Ossetia, announced in his speech to the nation and the Parliament that the Legal Committee would consider optimal scenarios for enforcing the provisions of the Constitution<sup>748</sup>. However, no concrete measures or time frame were announced; therefore, it remains questionable whether the provisions on local self-government will be put into practice in the foreseeable future.

Since there is practically no decentralization in South Ossetia, both Georgian and Ossetian experts ranked this criterion relatively low while

<sup>746</sup> Местное самоуправление в Южной Осетии как виртуальная реальность. [online] [last retrieved 03-04-2020]. Available at: http://respublikarso.org/analytics/2921-mest-noe-samoupravlenie-v-yuzhnoy-osetii-kak-virtualnaya-realnost.html

<sup>747</sup> Loc. cit.

<sup>&</sup>lt;sup>748</sup> Послание к народу и Парламенту Республики Южная Осетия. [online] [last retrieved 07-04-2020]. Available at: https://presidentruo.org/poslanie-k-narodu-i-parlamentu-respubliki-yuzhnaya-osetiya-3/

pointing out a highly centralized political apparatus and the reluctance of the Government to conduct necessary reforms.

10. Economic situation (GDP per capita; average income; employment rate; inflation rate)

In contrast to Abkhazia, South Ossetia's economic situation was ranked almost 1.5 points lower. The experts stressed that while Abkhazia had a more diverse economy, South Ossetia was too dependent on the Russian Federation and any diversification was unlikely due to limited markets and resources.

According to the ICC, approximately 99 per cent of the South Ossetian state budget was subsidized by the Russian Federation. In 2018, South Ossetia's own proceeds were approximately 1.8 bn. rubles, while the Russian financial aid (direct subsidy to the South Ossetian state budget) was 5.1 bn. rubles. Furthermore, additional funds of 1.4 bn. rubles were planned within the "Investment Program" (in Russian: Инвестпрограмма). This means that approximately 78.31 per cent of the South Ossetian budget was coming from Russia in the form of subsidies. In 2019, South Ossetia's own income was 1.2 bn. rubles, and the financial aid from the Russian Federation was 4.713 bn. rubles. In the same year, funds of 2.787 bn. rubles were allocated within the Investment Program. It follows from these figures that in 2019 the Russian budgetary aid made up 86.21 per cent of the South Ossetian state budget. In 2020, the state budget of South Ossetia was to consist of 1.365 bn. rubles from own income, 4.66 bn. rubles from the direct subsidy, and 1.5 bn. rubles allocated within the Investment Program. This means that approximately 81.8 per cent of the state budget was coming from the Russian Federation<sup>749</sup>.

<sup>&</sup>lt;sup>749</sup> Cf. Бюджет Южной Осетии: откуда деньги. [online] [last retrieved 19-02-2020]. Available at: https://sputnik-ossetia.ru/infographics/20191113/9586897/Byudzhet-Yuzhnoy-Osetii-otkuda-dengi.html

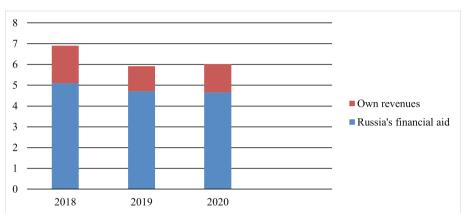
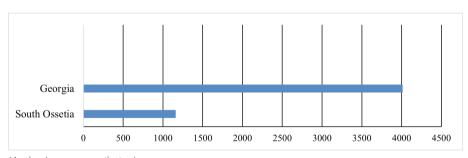


Figure 8: Comparison of South Ossetia's state budget between 2018 and 2020 (in billions of rubles)

It is rather problematic to compare the actual economic development based on GDP per capita since the South Ossetian *de facto* authorities appear to be reluctant to publish such data. In 2015, GDP per capita in South Ossetia was USD 1,161<sup>750</sup>, while in Georgia it amounted to USD 4,012<sup>751</sup>.

Figure 9: Comparison of GDP per capita in Georgia and South Ossetia in 2015 (in USD)



(Author's own compilation)

<sup>&</sup>lt;sup>750</sup> Тадтаев, Д. М. 2018. Предпосылки и условия формирования интегрированной инновационно-инвестиционной политики (на материалах Республики Южная Осетия). Диссертация на соискание ученой степени кандидата экономических наук. Ставрополь: Северо-Кавказский Федеральный Университет. Р. 72.

<sup>&</sup>lt;sup>751</sup> Gross Domestic Product (GDP). [online] [last retrieved 20-04-2020]. Available at: https://www.geostat.ge/en/modules/categories/23/gross-domestic-product-gdp

The average salary in South Ossetia has been constantly growing since the end of the 2008 war. Whilst in 2015 it was approximately 175 euros, in 2020 it was approximately 230 euros. With regard to deposits and credits, V. Charaia claims that deposits in South Ossetia amounted to 3 million U.S. dollars, while credits accounted for only one million U.S. dollars in 2016<sup>752</sup>.

The above-presented figures illustrate, in my view, a significantly high financial dependence of South Ossetia on the Russian Federation. Not only is the South Ossetian state budget subsidized directly by the Russian Federation, but Russia also provides South Ossetia with gas and electricity. In 2017, the debt of South Ossetia for electricity stood at 320 million rubles and for gas 222 million rubles (the state budget of South Ossetia was 8.1 billion rubles in 2017). The *de facto* government sold gas to residents of South Ossetia at subsidized prices; for instance, the price of one cubic meter from Russia was 6.08 rubles, but the residents of South Ossetia paid only 4.27 rubles<sup>753</sup>. All things considered, the economy of South Ossetia is highly unlikely to sustain itself without backing by the Russian Federation.

# 11. Level of development of the private economy sector (rate of economic activity)

South Ossetia has traditionally been an agricultural region. In the Soviet times, it produced mostly wood, dairy products, meat, and raw materials. The agriculture relied on wheat, corn, beetroot, vegetables, and grapes<sup>754</sup>. After the 2008 military conflict, the fields and yards were abandoned. Most of the experts viewed the private economy sector in South Ossetia as almost non-existent, concentrating on providing basic services. This is consistent with the 2010 ICG report, according to which "[s]mall and medium-sized

<sup>752</sup> Charaia, V. 2016. The Financial Side of Conflict: The Case of the Georgian-Ossetian Conflict. In Cost of Conflict: Core Dimensions of the Georgian-South Ossetian Context. [s.l]: George Mason University. P. 43.

<sup>753</sup> Южная Осетия задолжала России за газ и электроэнергию более 540 млн. рублей. [online] [last retrieved 20-04-2020]. Available at: https://tass.ru/ekonomika/4651084.

<sup>&</sup>lt;sup>754</sup> Antadze, K. D. et al. 1967. *Związek Radziecki. Gruzja*. Warszawa: Państwowe Wydawnictwo Naukowe. P. 270.

businesses are limited to small-scale trade, cafes, markets, hairdressing salons, auto repair shops, bakeries and a few minor enterprises. Around two thirds of local businesses are trade-related "755."

Prior to 2004, the local economy was to a large extent based on illegal transit of goods. The most famous example of a thriving black market was the Ergneti market, situated near Tskhinval(i). Georgian individuals used to buy goods from South Ossetians that had been brought from Russia through the Roki Tunnel and later re-sold them without any proper customs clearance. Interestingly, goods were smuggled in both directions. Mostly fuel, grocery products, wheat, and tobacco products were smuggled from Russia to Georgia, whilst mainly alcohol was smuggled from Georgia to Russia. The Ergneti market had also been reported as a place where representatives from both Georgian and South Ossetian sides participated in corrupt agreements, and law enforcement bodies were taking advantage of this situation for their personal enrichment<sup>756</sup>. Georgian authorities closed down the Ergneti market in 2004 and estimated that smuggling through Ergneti caused an approximate damage of 120 million U.S. dollars in unpaid taxes<sup>757</sup>. Nowadays, most goods are transported from the Russian Federation through the Roki Tunnel, which makes them even more expensive than in the North Caucasus.

According to the ICG report, it is estimated that "90 per cent of everything sold in South Ossetia is now imported from Russia. The price of basic commodities is 50 to 100 per cent higher than in Russia's southern districts, mainly due to high transportation costs and monopolies" In comparison to Abkhazia, accommodation options are restricted only to a handful of hotels in Tskhinval(i), which are not accessible through internet portals such as booking.com.

In my opinion, South Ossetia has a high potential in the tourism and agriculture sectors, which are underdeveloped to a large extent not

<sup>755</sup> South Ossetia: The Burden of Recognition..., p. 4.

<sup>&</sup>lt;sup>756</sup> Kukhianidze, A. et al. 2004. Smuggling through Abkhazia and Tskhinvali Region of Georgia. Tbilisi: American University's Transnational Crime and Corruption Center Georgia Office. ISBN 99928-0-830-6. P. 19.

<sup>757</sup> Closure of Ergneti Black Market Boosted Customs Revenues. [online] [last retrieved 10-02-2020]. Available at: https://old.civil.ge/eng/article.php?id=7734

<sup>&</sup>lt;sup>758</sup> South Ossetia: The Burden of Recognition..., p. 5.

only due to the international isolation of South Ossetia, but also because of administrative obstacles caused by the South Ossetian Government (for instance, an invitation letter from South Ossetia is necessary, except for the citizens of the Russian Federation). Therefore, lifting of these obstacles might bring beneficial economic effects to the local population.

# 12. Social welfare system (unemployment; pensions; family policy; social programs)

The essential problem regarding the assessment of the social welfare system in South Ossetia is the lack of any in-depth information from *de facto* authorities. For instance, the number of officially registered unemployed residents is available, but the unemployment rate is not. The official number of unemployed residents was 4,064 in 2016 and 3,320 in 2017<sup>759</sup>. Given the fact that approximately 70 per cent of the population of South Ossetia is economically active, the unemployment rate could have been 10.56 per cent in 2016 and 8.62 per cent in 2017. However, the official data provided by *de facto* authorities do not seem very reliable due to labor migration flows from South Ossetia to North Ossetia and other regions in the North Caucasus, which do not seem to be reflected in the statistics. This has been confirmed by the South Ossetian experts. Some media claim that the real unemployment rate in South Ossetia could even be around 20 per cent<sup>760</sup>.

As regards social programs, these seem to lack any social strategy. For instance, the Government has been planning to introduce unemployment benefits but has failed to do so due to a lack of funding. On the other hand, the Government provides child benefits, which, according to official sources, amount to 2,000 rubles (approximately 25 euros). The average salary in 2020 was approximately 18,000 rubles (230 euros). By contrast, the average salary in the neighboring North Ossetia was 26,957 rubles (approximately

<sup>759</sup> В Южной Осетии снизились показатели безработицы. [online] [last retrieved 31-03-2020]. Available at: http://cominf.org/node/1166514691

<sup>&</sup>lt;sup>760</sup> Drivers and security guards are in-demand in South Ossetia, while lawyers and economists are not. [online] [last retrieved 31-03-2020]. Available at: https://jam-news.net/drivers-and-security-guards-are-in-demand-in-south-ossetia-while-lawyers-and-economists-are-not/

330 euros). The minimum living wage in South Ossetia was 11,000 rubles (around 140 euros) in March 2020. According to MP A. Pliev, head of the Parliamentary Committee on Social Policy and Healthcare, around 80 per cent of the population live below the poverty threshold<sup>761</sup>.

#### 13. Healthcare system (accessibility; facilities; health insurance)

Pursuant to Article 25 of the Constitution of the Republic of South Ossetia, "[e] veryone has the right to health care and qualified medical treatment. Medical treatment in public health facilities is provided to citizens free of charge"<sup>762</sup>. In spite of the constitutional guarantee of free health care, the South Ossetian experts claimed that the everyday reality was very different. With no health insurance system in South Ossetia, the availability of professional treatment is a severe issue. According to the South Ossetian Ministry of Health Care, there were nine hospitals and five policlinics in South Ossetia in 2015. There were 275 medical doctors in total<sup>763</sup>.

Similarly as in the case of Abkhazia, the State Referral Program, launched by the Georgian Government within the State Strategy for Occupied Territories, applies to the residents of South Ossetia, who are entitled to free medical treatment in Georgia. As many as 188 residents of South Ossetia took advantage of this program in 2013<sup>764</sup>. This number has increased to 507, including 57 children, in 2017<sup>765</sup>. The majority of cases were connected with the treatment of cancer since allegedly neither modern therapeutic procedures nor advanced anticancer drugs are available in South Ossetia.

In the light of the COVID-19 pandemic in 2020, Georgia expressed its readiness to provide medical treatment for residents of both Abkhazia and

<sup>&</sup>lt;sup>761</sup> Какая средняя зарплата в Южной Осетии: omeem депутата. [online] [last retrieved 31-03-2020]. Available at: http://www.nykhas.ru/743093/kakaya-srednyaya-zarplata-v-yuzhnoy-osetii/

<sup>&</sup>lt;sup>762</sup> Конституция (основной закон) Республики Южная Осетия, ор. cit.

<sup>&</sup>lt;sup>763</sup> З∂равоохранение. [online] [last retrieved 09-04-2020]. Available at: https://south-ossetia. info/respublika-yuzhnaya-osetiya-segodnya/zdravooxranenie/

<sup>764</sup> The Office of the State Minister of Georgia for Reconciliation and Civic Equality 2013 Report. P. 12.

<sup>&</sup>lt;sup>765</sup> 1644 Abkhaz, S. Ossetians Treated..., op. cit.

South Ossetia, as well as to provide aid to tackle the pandemic<sup>766</sup>. This soon turned to be a matter of dispute with the South Ossetian *de facto* authorities, who claimed that "the biggest source of insecurity for South Ossetia is the outbreak of the COVID-19 epidemic in Georgia"<sup>767</sup> and accused the Tbilisi government of generously offering help to South Ossetia with the hope of receiving financial help from the European Bank for Reconstruction and Development. At the end of March 2020, the Russian Federation provided South Ossetia with 500 test units for corona virus. Despite the claims of the South Ossetian *de facto* authorities that their facilities were well prepared to face the virus, they simultaneously admitted that there were residents of the Leningor (Akhalgori) region who had crossed the border and were later hospitalized in Georgia with the virus<sup>768</sup>.

The level of healthcare in South Ossetia was ranked relatively low by both South Ossetian and Georgian experts due to several factors, such as non-existent health insurance as well as low availability and low level of medical services. The availability of medical services is impaired by transport communications. For instance, it would be approximately three times quicker to transport an ill person from Leningor (Akhalgori) to Tbilisi than to Tskhinval(i). Healthcare is one of the fields in which a significantly high dependence of South Ossetia is apparent. As there are no facilities for treatment of patients suffering from psychiatric problems, they have to be transported to Vladikavkaz, and patients with severe health problems have to seek treatment in the Russian Federation.

<sup>&</sup>lt;sup>766</sup> COVID-19: Tbilisi Warns of 'Grave Situation' in Abkhazia, Tskhinvali Due to Pandemic. [online] [last retrieved 10-04-2020]. Available at: https://civil.ge/archives/345220

<sup>&</sup>lt;sup>767</sup> КГБ: «Главной угрозой безопасности Южной Осетии остается вспышка эпидемии COVID-19 в Грузии». [online] [last retrieved 10-04-2020]. Available at: https://south-ossetia.info/kgb-glavnoj-ugrozoj-bezopasnosti-yuzhnaya-osetiya-ostaetsya-vspyshka-epidemii-koronavirusa-covid-19-v-gruzii/

<sup>768</sup> Loc. cit.

## 14. Education system (structure; accessibility; educational programs)

Similarly to Abkhazia, a number of Georgian experts raised concerns about the quality of education in South Ossetia as well as about the language of instruction. Interestingly, several Georgian experts pointed out relatively high salaries of teachers in South Ossetia. According to the official information of the Ministry of Education of South Ossetia, an average salary of a teacher was approximately 180 euros in a city and approximately 210 euros in a village in 2015, which slightly exceeded the average salary in South Ossetia in the same year (approximately 175 euros)<sup>769</sup>.

The education system in South Ossetia consists of various types of schools, ranging from preschools to a university. The A. A. Tibilov South Ossetian State University, located in Tskhinval(i), was established in 1932 as the State Pedagogical Institute, along with the Department of Agriculture and Biology and the Department of Mathematics and Physics. In 1981, the Institute consisted of seven departments and had around 2,000 students and 116 members of academic staff<sup>770</sup>. Nowadays, it consists of five departments: Department of Engineering and Economy; Department of Ossetian Philology and Pedagogy; Department of Russian Literature, Foreign Languages and Journalism; Department of Natural Sciences and Psychology; Department of History and Law<sup>771</sup>.

Similarly to Abkhazia, South Ossetia is given quotas for students who wish to receive their university education in the Russian Federation. For instance, in 2018 and 2019, the Russian Federal Agency "Rossotrudnichestvo" offered each year a quota of 18 study places to South Ossetia. In addition to that, quotas are passed to South Ossetia by other institutions, such as in 2019 by KGB (9 places), the Ministry of Interior (22 places), the Ministry of Emergency Situations (4 places), and the Ministry of Defense (91 places)<sup>772</sup>.

<sup>&</sup>lt;sup>769</sup> Cf. Образование. [online] [last retrieved 09-04-2020]. Available at: https://south-ossetia. info/respublika-yuzhnaya-osetiya-segodnya/obrazovanie/ Как выглядит непризнанная «свобода»: Южная Осетия. [online] [last retrieved 09-04-2020]. Available at: https://vchaspik.ua/stati/bolshoy-format/414685-kak-vyglyadit-nepriznannaya-svoboda-yuzhnaya-osetiya

<sup>770</sup> Южная Осетия в период строительства социализма..., р. 158.

<sup>771</sup> Юго-Осетинский государственный университет имени А.А. Тибилова. [online] [last retrieved 05-03-2020]. Available at: http://xipu.ru/

<sup>772</sup> Обучение в России: какие квоты получила Южная Осетия в этом году. [online] [last retrieved 05-03-2020]. Available at: https://sputnik-ossetia.ru/South\_Ossetia/

What was perceived negatively in the interviews was the fact that Georgian as the language of instruction as well as Georgian curriculum in the Georgian schools located in the Leningor (Akhalgori) region were abolished in 2017 and replaced by Russian curriculum and Russian as the language of instruction. The Georgian experts were also concerned by the fact that while in Georgia there is a 12-year system of education, the Russian system applied in South Ossetia involves only 11 grades. Prior to 2017, pupils in the Leningor (Akhalgori) region were allowed to use Georgian course books (with the exception of history, which was translated from Russian to Georgian); however, in 2017 they had to switch to Russian course books<sup>773</sup>. This is, in my opinion, likely to have negative effects on ethnic Georgians who wish to continue their university education at Georgian or European universities. The Georgian experts also implied that the imposition of Russian curriculum on ethnic Georgians may lead to a growth of distrust towards *de facto* authorities and result in further emigration of ethnic Georgians from South Ossetia.

15. Transport and infrastructure (roads, railway system, air transport, pipelines, hydroelectric power, etc.)

In 2010, the ICG described in its report the road system in South Ossetia as "neglected", especially with regard to the road connecting the capital with the city of Leningor (Akhgalgori)<sup>774</sup>. The South Ossetian experts described the current road system as very good and ranked it quite high. Since the publication of the aforementioned report, the construction of a direct tarmac road between Tskhinval(i) and Leningor (Akhalgori) has been completed. Of strategic importance is the Roki Tunnel, opened in November 1984 and connecting Tskhinval(i) and Vladikavkaz, as it is the only direct road connecting South

20190628/8885251/Obuchenie-v-Rossii-kakie-kvoty-poluchila-Yuzhnaya-Osetiya-v-etom-godu.html. *Как получить квоту и куда поступить?* [online] [last retrieved 05-03-2020]. Available at: https://ugo-osetia.ru/obshhestvo/kak-poluchit-kvotu-i-kuda-postupit.

<sup>773</sup> Грузинские школы в Южной Осетии переходят на русский. [online] [last retrieved 09-04-2020]. Available at: https://www.bbc.com/russian/features-40987171

<sup>&</sup>lt;sup>774</sup> South Ossetia: The Burden of Recognition..., 2010, pp. 5–6.

Ossetia with Russia that could be in use the whole year although it is often closed in winter due to severe weather conditions, such as avalanches, and falling rocks, which might block the road.

The railway infrastructure in South Ossetia remains underdeveloped and dysfunctional today. The railway line connecting Tskhinval(i) and Gori was in use from 1940 until 1991 but was closed down after the outbreak of the conflict. After the 2008 war, plans to construct a railway from Vladikavkaz to Tskhinval(i) appeared. The railway connection was supposed to be 149 kilometers long with four tunnels<sup>775</sup> and should have been an alternative to the road connection via the Roki Tunnel. Nevertheless, the construction has not yet begun and is, in my view, unlikely to begin, given the relatively low economic benefits, high costs, the small population of South Ossetia that could possibly take advantage of the railway connection and, finally, the legal consequences that might follow under international law.

Unlike in Abkhazia, there has never been any airport in South Ossetia. In 2009, plans were published to construct an airport for both passenger traffic and military use in the former Georgian village of Tamarsheni<sup>776</sup>. Nevertheless, such plans seem very unrealistic from my point of view due to the non-recognition of South Ossetia. Moreover, given the small population of South Ossetia and the costs of air transport, such a project could hardly be profitable. Currently, passengers from South Ossetia take advantage of airports in the Russian Federation. The nearest airport is located in Vladikavkaz.

South Ossetia is supplied with electricity and gas from the Russian Federation. Electricity lines follow the main road between South Ossetia and Russia, the Transcaucasian Highway. The construction of the gas pipeline "Dzuarikau-Tskhinval" in the length of 174 kilometers, which connects North Ossetia with South Ossetia, was started in 2006 and completed in August 2009. Prior to that, gas was supplied from Georgia. The

<sup>775</sup> Грузия грозит РФ судом за строительство железной дороги на Цхинвали. [online] [last retrieved 11-03-2020]. Available at: https://ria.ru/20081002/151812526.html.

<sup>&</sup>lt;sup>776</sup> В пригороде Цхинвала появится первый в республике аэропорт. [online] [last retrieved 10-03-2020]. Available at: http://osinform.org/11790-v-prigorode-ckhinvala-pojavitsja-per-vyjj-v.html.

capacity of the pipeline is 252.5 bn cubic meters of gas per year<sup>777</sup>. With its construction, the Russian Federation secured gas delivery to South Ossetia while bypassing Georgia.

#### III. External sphere

Table 27: Assessment of the criteria concerning the external sphere

	Average assessment
16. Cooperation with international organizations and UN member states	0.88
17. Abidance by international law standards for human rights	1.81
18. Foreign trade and foreign investment	1.44
19. International civic, cultural, sports, and educational cooperation	1.63
20. Future aspirations to become a fully recognized state	2.75
Overall assessment	1.70

# 16. Cooperation with international organizations and UN member states

The Republic of South Ossetia – the State of Alania has officially been recognized by the Russian Federation, Nicaragua, Venezuela, Nauru and Syria. Tuvalu did recognize the independence of South Ossetia but later recognized the territorial integrity of Georgia, thereby rescinding its recognition of South Ossetia. In contrast to Abkhazia, Vanuatu has never recognized the independence of South Ossetia. Despite the fact that five UN member states have recognized South Ossetia and officially established mutual diplomatic relations, international cooperation exists only with the Russian Federation. The diplomatic relations with the other four states "bring almost nothing of practical value to South Ossetia; communication and trade are difficult, if not physically impossible. Moscow has failed to achieve recognition

<sup>7777</sup> Открытие самого высокогорного газопровода в мире «Дзуарикау-Цхинвал». [online] [last retrieved 10-03-2020]. Available at: https://eurasia.expert/gazoprovod-dzuarikau-tskhinval/.

from any European government or even strategic allies in Central Asia"<sup>778</sup>. The formal character of the diplomatic relations is mirrored by the fact that South Ossetia has no embassies within these four states as there are no South Ossetian citizens in their territories<sup>779</sup>.

The 2015 Treaty on Alliance and Integration foresees coordination and mutual information exchange in the field of foreign policy. The Russian Federation pledged to "do its utmost to promote the development of external relations of the Republic of South Ossetia, including the expansion of the circle of countries that have officially recognized it, and creating conditions for the Republic of South Ossetia to join international organizations and associations, including those created upon initiative and (or) with the assistance of the Russian Federation"<sup>780</sup>. By close examination of the provisions of the treaty in the field of foreign policy, one has to be careful so as not to overlook the fact that what is in current circumstances referred to as the "coordinative relationship" is in fact very much restrained in practice by an overwhelming dependence on the Russian Federation.

## 17. Abidance by international law standards for human rights

International human rights standards were of major concern to the Georgian and South Ossetian experts alike. On 22 February 2018, three Georgian citizens, A. Tatunashvili, L. Kutashvili, and I. Pavliashvili, were detained by South Ossetian *de facto* authorities in the Leningor (Akhalgori) region. It was later reported that A. Tatunashvili died in a hospital in the Tskhinval(i) District on the following day. According to South Ossetian *de facto* authorities, Tatunashvili was detained, but he attempted to seize the weapons from one of the guards. Tatunashvili was reported to have tripped on a staircase, in consequence of which he was transported to the hospital, where he died of heart failure<sup>781</sup>.

<sup>&</sup>lt;sup>778</sup> South Ossetia: The Burden of Recognition..., p. 9.

<sup>779</sup> Loc. cit.

<sup>&</sup>lt;sup>780</sup> Договор между Российской Федерацией и Республикой Южная Осетия о союзничестве и интеграции, op. cit.

<sup>&</sup>lt;sup>781</sup> Как погиб Арчил Татунашвили. [online] [last retrieved 20-02-2020]. Available at: https://www.ekhokavkaza.com/a/29059308.html

Georgian authorities claimed that Tatunashvili had died in mysterious circumstances due to the fact that the *de facto* authorities initially refused to hand over the body for autopsy. The body was finally handed over after 26 days, on 20 March 2018, with all inner organs removed. According to the Georgian Prosecutor's Office, "Tatunashvili was transported to Tskhinvali from Akhalgori, where he was severely tortured, with more than 100 injuries on his body. The torture led to the death of Tatunashvili" In June 2018, a Georgian court sent two employees of South Ossetia's law enforcement agencies to pre-trial detention *in absentia*. The Tatunashvili case was also brought before the European Court of Human Rights against the Russian Federation".

Another concern is the expropriation and deliberate destruction of houses of ethnic Georgians, which took place after the 2008 war. This has been pointed out by international organizations such as Human Rights Watch or International Crisis Group. Human Rights Watch in its 2009 report stated that in the period after the 2008 war, "South Ossetian forces over a period of weeks deliberately and systematically destroyed ethnic Georgian villages in South Ossetia that had been administered by the Georgian government. They looted, beat, threatened, and unlawfully detained numerous ethnic Georgian civilians, and killed several, on the basis of ethnicity and imputed political affiliations of the residents of these villages, with the express purpose of forcing those who remained to leave [...]"784. Satellite images taken between 10 and 19 August 2009 revealed that 152 buildings have been destroyed, burnt, or damaged in the village of Tamarasheni and another 137 houses in the villages Eredvi, Berula and Argvitsi were destroyed by the Russian military"85.

National Forensics Bureau: Tatunashvili sustained over 100 injuries while alive. [online] [last retrieved 20-02-2020]. Available at: https://agenda.ge/en/news/2018/1216; Court sends two charged for Tatunashvili's case to pre-trial detention in absentia. [online] [last retrieved 20-02-2020]. Available at: https://agenda.ge/en/news/2018/1294.

<sup>&</sup>lt;sup>783</sup> Two ECHR Applications Lodged against Russia overTatunashvili Case. [online] [last retrieved 20-02-2020]. Available at: https://civil.ge/archives/249852

<sup>&</sup>lt;sup>784</sup> Human Rights Watch. Up In Flames. Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia. 2009. [s. l.]. ISBN 1-56432-427-3. P. 3.

<sup>&</sup>lt;sup>785</sup> Hebo npomus  $P\Phi$ . [online] [last retrieved 18-04-2020]. Available at: https://www.gazeta.ru/politics/2008/10/09\_a\_2852904.shtml

### 18. Foreign trade and foreign investment

The geographical position of South Ossetia, surrounded by Georgia from the south and by Russia from the north, determines to a large extent the possibilities for foreign trade. Therefore, the Russian Federation remains the only partner with whom any foreign trade can be conducted. Furthermore, foreign investments come solely from the Russian Federation, mostly through the Investment Program for the Promotion of Social and Economic Development (the so-called Investprogramma). For instance, the Investment Program foresaw an investment of 4.5 bn. rubles within the years 2020–2022 for the construction of social facilities, utilities, and transport infrastructure<sup>786</sup>. The projects include reconstruction of utility lines and bridges, and building of new apartment houses, schools, kindergartens, and landfills<sup>787</sup>. In the period 2015–2017, a sum of 9.1 bn. rubles was dedicated to the Investment Program and 4.5 bn. rubles in the years 2018–2019<sup>788</sup>.

The ICG estimated that approximately 90 per cent of everything sold in South Ossetia had been imported from Russia. Shortly after the 2008 war, it was reported that construction materials, such as bricks, beams, and iron from abandoned Georgian houses, were collected and exported to North Ossetia, where they were sold at a lower price<sup>789</sup>. This source of trade has been exhausted though. The above-presented figures illustrate that without the Russian investment programs, any post-war reconstruction in South Ossetia would have hardly been possible. This parameter has been ranked relatively low, precisely due to the fact that Russia remains by and large the only investment power in South Ossetia. Moreover, some experts from Tbilisi with legal background did not consider the Russian Federation a foreign trade partner, claiming that the Russian Federation is acting as an occupying power in the territory of South Ossetia.

<sup>&</sup>lt;sup>786</sup> Утверждена Инвестпрограмма развития РЮО на следующие три года. [online] [last retrieved 20-02-2020]. Available at: https://south-ossetia.info/utverzhdena-investprogramma-razvitiya-ryuo-na-sleduyushhie-tri-goda/

<sup>&</sup>lt;sup>787</sup> В Южной Осетии запустили трехлетнюю инвестпрограмму. [online] [last retrieved 20-02-2020] Available at: https://regnum.ru/news/economy/2828766.html

<sup>&</sup>lt;sup>788</sup> В Южной Осетии определили, как будут развивать республику в 2020—2022 годах. [online] [last retrieved 20-02-2020] Available at: https://eadaily.com/ru/news/2019/04/22/v-yuzhnoy-osetii-opredelili-kak-budut-razvivat-respubliku-v-2020-2022-gody

<sup>&</sup>lt;sup>789</sup> South Ossetia: The Burden of Recognition..., p. 5.

### 19. International civic, cultural, sports, and educational cooperation

Prior to 2014, South Ossetian civic organizations were participating in international projects, especially in the field of peace building, post-conflict reconstruction, and dialogue process. Nowadays, there are no civic organizations in South Ossetia owing to severe legal regulations adopted by *de facto* authorities. Nevertheless, some experts from South Ossetia stated that they had been cooperating with NGOs in Abkhazia in the field of civic education.

It is worth mentioning that South Ossetia is a member of the Confederation of Independent Football Associations and takes part in the CONIFA World Football Cup. In 2019, the South Ossetia National Football Team won the European Championship, which was hosted by Nagorno-Karabakh in Stepanakert.

In the field of educational cooperation, it does not come as a surprise that the South Ossetian State University cooperates closely with the North Ossetian State University in Vladikavkaz, Russia. Apart from that, the South Ossetian experts stated that cooperation had been established with universities in Donetsk and Lugansk and that there had been two students from Syria in the academic year 2019–2020 who were pursuing their university education in South Ossetia. In 2019, the South Ossetian State University concluded an agreement on cooperation with the Donetsk National University in the self-proclaimed Donetsk People's Republic<sup>790</sup>.

Ranking of this parameter by both Georgian and South Ossetian experts was relatively low due to a quite limited scope of cooperation. First of all, the civil sector is practically non-existent in South Ossetia. Secondly, the sports cooperation is narrowed down to Russia and non-recognized states. Thirdly, the cooperation in the field of culture and education is limited to Russia and the non-recognized entities of Donetsk and Lugansk. Thus, it follows that the South Ossetian institutions have failed to establish any wider range of international contacts.

<sup>&</sup>lt;sup>790</sup> Сведения о заключенных договорах с иностранными и (или) международными организациями по вопросам образования и науки. [online] [last retrieved 25-04-2020]. Available at: http://donnu.ru/sveden/inter

### 20. Future aspirations to become a fully recognized state

Compared to Abkhazia, the discourse regarding the future aspirations of South Ossetia to become a fully recognized independent state is more complicated. In general, there are two mainstream views on this issue. The first view claims that the South Ossetians should take advantage of the independence in order to build state structures, independent policies in internal affairs, and national self-consciousness. According to South Ossetian political scientist Dina Alborova, "[i]ndependence means responsibility, the responsibility of everyone for themselves and their country. I wish that we all became responsible. [...] We shift our responsibility to Russia, we are waiting for something to happen, but I wish that we focused more on ourselves. Next, and I always recall this argument, I want to be the national majority in our country. I used to belong to a minority and did not like it very much and I no longer wish for something like that. I want the opportunity to decide on internal affairs independently. [...] I would like us to determine the priorities of internal politics by ourselves. Even today in a state of partial sovereignty, because we had given away part of our sovereignty a long time ago, we still keep some type [of sovereignty] in which we can control and conduct our own policies"791.

On the other hand, according to the second view, *de facto* statehood is perceived as a transitional period towards the final stage, which is the unification with North Ossetia and the Russian Federation. Political elites in South Ossetia often tend to recall the idea of incorporation of South Ossetia in the Russian Federation for the sake of security and preservation of the people<sup>792</sup>. For instance, in August 2006, South Ossetian President E. Kokoity stated that "we will seek union with North Ossetia within the Russian Federation"<sup>793</sup>. However, he claimed later: "Yes, many in South Ossetia are talking about the reunification with North Ossetia within Russia, and nobody can ban

<sup>&</sup>lt;sup>791</sup> Алборова о будущем Южной Осетии: я— за независимость. [Interview with Dina Alborova (podcast)]. [online] [last retrieved 18-02-2020]. Available at: https://sputnik-ossetia.ru/radio/20190918/9284221/Alborova-o-buduschem-Yuzhnoy-Osetii-ya---za-nezavisimost. html

<sup>&</sup>lt;sup>792</sup> Сf. Кулумбегов, Р. 2019. *Южная Осетия в зеркале событий и фактов*. [s. l.]: Lambert Academic Publishing. ISBN 978-3-659-88119-0. Р. 24.

<sup>&</sup>lt;sup>793</sup> South Ossetia Sends Russia Mixed Signals. [online] [last retrieved 18-02-2020]. Available at: https://www.nytimes.com/2008/09/12/world/europe/120ssetia.html

expressing such ideas. However, South Ossetia is not going to become part of Russia; it intends to build intergovernmental relations with international law with all states"<sup>794</sup>. This was, in my opinion, caused by the fact that Moscow was consistently rejecting any initiatives to incorporate South Ossetia after its recognition. Secondly, even before the 2008 war and the granting of recognition by the Russian Federation, Moscow had never supported any South Ossetian initiatives for incorporation into the Russian Federation. The ICG also noted that while the idea of unification with Russia was supported by the South Ossetian population, who hoped for less corruption and better social and economic opportunities, it had little support in North Ossetia. "In North Ossetia, immediately after the 2008 war, the idea of a 'united Ossetia' grew in popularity, but the enthusiasm quickly disappeared"<sup>795</sup>.

In 2019, South Ossetian President A. Bibilov announced that South Ossetia should be incorporated into the Russian Federation and the Ossetian nation should be unified. "From the historical point of view, it would be just if the Republic of South Ossetia was incorporated into the Russian Federation. A nation cannot live divided. One part, the smaller one, is a republic, and the other one is part of the Russian Federation. [...] For the Ossetian nation, this is very significant and crucial"<sup>796</sup>. Nonetheless, those demands were not backed by Moscow, and after the annexation of Crimea the scenario of incorporating South Ossetia into the Russian Federation has become, in my opinion, rather unlikely.

Following the interviews with South Ossetian experts, it seems that the popularity of the idea of unification with the Russian Federation stems mostly from two main factors—culture and security in a broad sense. The cultural factor is reflected in the perception of a single Ossetian nation. The factor of security is present in several sectors, such as economy (e.g. payment of pensions and salaries) or military security (perception of the Russian Federation as a guarantor of security). On the other hand, the South Ossetian experts stressed that South Ossetians are well aware of the fact that if the government in Russia changes one day, Russia might lose its interest in South

<sup>794</sup> Ibidem.

<sup>&</sup>lt;sup>795</sup> South Ossetia: The Burden of Recognition..., p. 23.

<sup>&</sup>lt;sup>796</sup> Президент Южной Осетии заявил, что республика должна войти в состав России. [online] [last retrieved 19-02-2020]. Available at: https://ria.ru/20190806/1557233650.html

Ossetia and trade it with Georgia. The unification with Russia would eliminate this scenario.

The reintegration of South Ossetia into Georgia remains, according to the South Ossetian experts, out of question. Moreover, Georgia is blamed for the international isolation of South Ossetia, which resulted in high dependence on Russia. "I always say that what is going on now and why we move in this specific direction is the fault of Georgia and the international community. However, we have no other choice. There is no other option because we were put in this framework"<sup>797</sup>. It seems that in these circumstances, the *status quo* is currently preferred to any attempt at reintegration. Similarly to Abkhazia, the South Ossetian experts expressed their wish for "good neighborly relations" and cooperation in certain areas. Broader recognition, including recognition by Georgia, is seen as a rather long-term goal. A change in the policy of nonrecognition, according to the experts from South Ossetia, might come with future generations. "Speaking of recognition, of course, it is crucial for us that Georgia recognizes the independence of South Ossetia, but until then Georgia should also recognize the genocide and correctly assess the events that took place in the 20th century; they should apologize and repent for the events of 2008, and after that Georgia should recognize the independence of South Ossetia. Only then can we talk about trust and measures to restore trust. This is the position of South Ossetia towards Georgia, what Georgia should do in order to restore relations with South Ossetia"<sup>798</sup>.

The ICG stated in its 2010 report that "South Ossetia's prospects for a future as an independent state are poor"<sup>799</sup>. As opposed to Abkhazia, state structures were much less advanced in South Ossetia at the time of recognition by the Russian Federation<sup>800</sup>. Moreover, the level of dependence of South Ossetia on the Russian Federation in different spheres is much higher than in the case of Abkhazia. One of the experts in Tbilisi stated that "independence has no chance", and it is very unlikely that independence, even on the *de facto* level, could be sustained without the Russian support. Despite the fact that the idea of incorporation into the Russian Federation lacks support of the

<sup>&</sup>lt;sup>797</sup> Interview 24. Warsaw, Tskhinval(i), 22 March 2020.

<sup>798</sup> Ibidem

<sup>&</sup>lt;sup>799</sup> South Ossetia: The Burden of Recognition..., p. 23.

<sup>800</sup> Nußberger, A. 2015. Abkhazia..., op. cit.

4.5 Legal status 285

Russian central government, it remains popular among the South Ossetian political elites and the local population.

## 4.5 Legal status

The ambiguity of the status of South Ossetia stems from the fact that there are different views by different states and actors on the issue of recognition of South Ossetia. Hence, two groups of actors can be distinguished: those who have recognized South Ossetia as an independent state and those who have not.

As in 2021, South Ossetia has been recognized by five UN member states: Russia, Nicaragua, Venezuela, Nauru, and Syria (Tuvalu rescinded its recognition). Interestingly, prior to 2008, South Ossetia had not been recognized by any of the UN member states. On 15 April 2008, the UN Security Council unanimously passed a resolution in which it reaffirmed the commitment of all member states to the sovereignty, independence, and territorial integrity of Georgia within its internationally recognized borders<sup>801</sup>. Thus, it can be concluded that by no means was South Ossetia considered a state prior to 2008. After the 2008 military conflict between Georgia and Russia, there has been a significant shift in the policy of the Russian Federation towards South Ossetia, and the Russian Federation recognized the independence of South Ossetia on 26 August 2008. The Russian Federation claims it did so for the following reasons<sup>802</sup>:

- The freely expressed will of the Ossetian people in the form of a referendum;
- Labelling of the military conflict between Georgia and Russia as the genocide of the Ossetian people, which entitles them to exercise the right to *remedial secession*. The president of the Russian Federation stated that "Tbilisi made its choice during the night of August 8, 2008. Saakashvili opted for genocide to accomplish his political objectives. By

<sup>&</sup>lt;sup>801</sup> UN Security Council Resolution 1808 (2008). [online] [last retrieved 24-04-2020]. Available at: http://unscr.com/en/resolutions/doc/1808

<sup>802</sup> Statement by President of Russia Dmitry Medvedev, op. cit.

doing so he himself dashed all the hopes for the peaceful coexistence of Ossetians, Abkhazians and Georgians in a single state"803;

• Recognition as "*ultima ratio*" as a result of failed negotiations between Tbilisi and Tskhinval(i), simultaneously putting the blame on Tbilisi.

After recognition by the Russian Federation, only four other states followed. Even though there had been a lot of enthusiasm in South Ossetia about other states that would follow Russia in recognizing, it turned out that Russia has failed to secure wider recognition among the members of the international community and is unlikely to do so in the nearest future.

Notwithstanding the previous arguments, there are at least two significant shortcomings in recognizing South Ossetia as a state. Firstly, more than 90 per cent of the residents are holders of Russian passports and thereby citizens of the Russian Federation. While in 2003 approximately 56 per cent of the South Ossetian population had Russian passports<sup>804</sup>, the process of mass issuing of Russian passports to the residents of South Ossetia was particularly intensive in 2004. In September 2004, de facto President Eduard Kokoity stated that 98 per cent of the population had Russian passports, and thus "South Ossetia is already Russia"805. The problem with the so-called passportization rests upon the fact that the Russian Federation could claim personal jurisdiction over its citizens in South Ossetia. Secondly, there is considerable doubt about the effectiveness of the *de facto* government due to both financial and personal dependence on Russia. According to the International Fact-Finding Mission on the Conflict in Georgia, "Russian officials already had de facto control over the institutions in South Ossetia before the outbreak of the conflict"806 since the *de facto* ministries and other state agencies were largely staffed either by Russian officials or by South Ossetians with Russian citizenship. Thus, the IFFM came to the conclusion that "South Ossetia came close to statehood without quite reaching the threshold of effectiveness. It was—from the perspective of international law—thus not a state-like entity,

<sup>803</sup> Loc cit

<sup>&</sup>lt;sup>804</sup> Nagashima, T. 2019. Russia's Passportization Policy..., pp. 186–199.

<sup>&</sup>lt;sup>805</sup> Гордиенко, А. 2004. *Южная Осетия — это уже Россия*. [online] [last retrieved 24-04-2020]. Available at: http://www.ng.ru/cis/2004-09-17/1\_kokoyty.html

<sup>&</sup>lt;sup>866</sup> Independent International Fact-Finding Mission on the Conflict in Georgia Report. Volume II. 2009. P. 132.

4.5 Legal status 287

but an *entity short of statehood*"807. What is more, the South Ossetian policies in regard to the issues of independence and unification with the Russian Federation have been largely inconsistent, and, as I have shown, the society in South Ossetia remains to be polarized in this question.

Table 28: UN member states that recognize South Ossetia as an independent country

State	Date of recognition
Nauru	16 December 2009
Nicaragua	5 September 2008
Russian Federation	26 August 2008
Syria	29 May 2018
Tuvalu	19 September 2011 (revoked recognition on 31 March 2014)
Venezuela	10 September 2009

(Source: Author's own compilation)

The Republic of Georgia insists on the principle of territorial integrity and claims that the recognition of Abkhazia and South Ossetia by the Russian Federation constitutes an open annexation of a part of the territory of Georgia. In August 2008, Deputy Minister of Foreign Affairs Giga Bokeria stated that "[t]his is an unconcealed annexation of these territories, which are part of Georgia"<sup>808</sup>.

Pursuant to the Law on Occupied Territories issued by Georgia in 2008, South Ossetia (referred to as the Tskhinvali Region—the territories of the former South Ossetian Autonomous Region) is considered a territory under temporary military occupation by the Russian Federation. This law regards the Tskhinvali Region as an integral part of Georgia. Foreign citizens and stateless persons are allowed to enter the territory of South Ossetia only from the direction of Gori municipality. Entering South Ossetia from the Russian Federation (Verkhny Zaramag direction) is prohibited for foreign nationals, and any violation of the law may lead to criminal liability under the Georgian

<sup>807</sup> Ibidem, p. 134.

Russia recognizes breakaway Georgian regions. [online] [last retrieved 23-04-2020]. Available at: https://www.ynetnews.com/articles/0,7340,L-3587980,00.html

legislation. Permission to enter South Ossetia may be granted if the entry serves the peaceful settlement of the conflict, de-occupation, confidence building between the population, or humanitarian purposes.

In reaction to the recognition of South Ossetia and Abkhazia by the Russian Federation, President Bush issued a statement in which he declared that "[t]he territorial integrity and borders of Georgia must be respected, just as those of Russia and any other country. Russia's action only exacerbates tensions and complicates the diplomatic negotiations. In accordance with United Nations Security Council Resolutions that remain in force, Abkhazia and South Ossetia are within the internationally recognized borders of Georgia, and they must remain so"809.

Similarly, the Parliamentary Assembly of the Council of Europe in its Resolution 1633 (2008) condemned the recognition of the independence of South Ossetia and Abkhazia by Russia as a violation of international law and Council of Europe statutory principles and called upon Russia to withdraw its recognition<sup>810</sup>. "The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia and calls on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and respect fully the sovereignty and territorial integrity of Georgia, as well as the inviolability of its frontiers"<sup>811</sup>.

In a similar tone, the European Parliament condemned the recognition of the independence of South Ossetia and Abkhazia, which it referred to as "Georgian breakaway territories"<sup>812</sup>. In 2018, the European Parliament in its Resolution on Georgian occupied territories 10 years after the Russian invasion

President Bush Condemns Actions Taken by Russian President in Regards to Georgia. [online] [last retrieved 26-04-2020]. Available at: https://georgewbush-whitehouse.archives.gov/news/releases/2008/08/20080826-2.html

<sup>810</sup> Cf. Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia. [online] [last retrieved 26-04-2020]. Available at: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17708&lang=en

<sup>&</sup>lt;sup>811</sup> Resolution 1633 (2008). The consequences of the war between Georgia and Russia. [online] [last retrieved 26-04-2020]. Available at: https://assembly.coe.int/nw/xml/XRef/Xref-XM-L2HTML-en.asp?fileid=17681&lang=en

<sup>812</sup> Cf. European Parliament resolution of 3 September 2008 on the situation in Georgia. [online] [last retrieved 27-04-2020]. Available at: https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0396+0+DOC+XML+Vo//EN

4.5 Legal status 289

reaffirmed its support for sovereignty and territorial integrity and demanded that Russia reverse its decision to recognize the independence of Abkhazia and Tskhinvali Region/South Ossetia as well as "cease its occupation of Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia [...] and stop de facto integration of both regions into Russian administration"<sup>813</sup>.

In August 2019, the Ministry of Foreign Affairs of the Republic of Poland issued a statement in which it denounced the so-called process of borderization, which is seen by the Ministry as "another illegal action conducted by the *de facto* authorities of South Ossetia/Tskhinvali region [which] not only aggravates the already horrible humanitarian situation, but also poses serious threat to security and stability on the ground"814.

The aforementioned views of some states and international organizations, in my opinion, demonstrate a negative attitude of the international society towards the secession of South Ossetia and its recognition by the Russian Federation. The international community even tends to consider South Ossetia together with Abkhazia as territories under temporary occupation by the Russian Federation.

Notwithstanding the previous objections, it is undisputable that between 1992 and 2008 South Ossetia was treated as a partial subject of international law due to its participation in the peace process and membership in the Joint Control Commission for Georgian-Ossetian Conflict Resolution. South Ossetia was also party to the 1996 Memorandum on Measures on Providing Safety and Strengthening of Mutual Confidence between the Sides in the Georgian-Ossetian Conflict. However, the 1992 Agreement on Principles of Settlement of the Georgian-Ossetian Conflict was concluded between Russia and Georgia. Therefore, it appears that from the legal standpoint, the conflict in South Ossetia was rather treated as a belligerency due to the fact that the insurgents had exercised effective control over the territory for a certain period of time.

<sup>&</sup>lt;sup>813</sup> European Parliament resolution of 14 June 2018 on Georgian occupied territories 10 years after the Russian invasion. [online] [last retrieved 27-04-2020]. Available at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0266\_EN.html

<sup>&</sup>lt;sup>814</sup> MFA statement on another act of borderization in Tskhinvali region / South Ossetia. [online] [last retrieved 20-04-2020]. Available at: https://www.gov.pl/web/georgia/mfa-statement-on-another-act-of-borderization-in-tskhinvali-region--south-ossetia

## 5 De facto statehood in the post-Soviet space

## 5.1 The post-Soviet space

This chapter is based on the work of B. Buzan and aims to analyze the nature of the post-Soviet space as well as the position of Abkhazia and South Ossetia therein. The central term in B. Buzan's theory is "security complex", which he defines as "a set of units whose major processes of securitization, desecuritization, or both are so interlinked that their security problems cannot be reasonably analyzed or resolved apart from one another" The post-Soviet space is a centered regional security complex comprising the states that had previously belonged to the former USSR. In this context, the Russian Federation is seen as "the center" or "fulcrum", whilst the other states are perceived rather as a periphery. The post-Soviet region is composed

Buzan, B. and Waever, O. 2003. Regions and Powers. The Structure of International Security. Cambridge: Cambridge University Press. ISBN 978-0-521-81412-6. P. 44.

According to C. Wittke, the terms "post-Soviet space" and "post-Soviet area" are "used in a descriptive way across disciplines to refer to the 15 newly independent states that formerly belonged to the Soviet Union (with some differentiation, e.g., between the four Baltic states and the eleven other states). (Wittke, C. 2018. "Test the West": Remaining Sovereignties in the Post-Soviet Space. In *Review of Central and East European Law*. Vol. 43, no. 1. ISSN 0925-9880.)

of four sub-regions: (1) the Baltic states, (2) the western group of states, (3) the Caucasus and (4) Central Asia.

After the break-up of the Soviet Union, Russia came up with different strategies of preserving its influence over the region. For instance, the geopolitical concept of "near abroad" (in Russian: δπυжнее зарубежье) was aimed at securing Russian interests in the region thanks to historic, cultural and economic bonds, which transformed into a certain degree of pressure. Therefore, it was supposed to be "a politicized geographic space where Russia has special interests and influence and that appears, in effect, to be a space of particular contested conditional, and hierarchical sovereignties" The effectiveness of integration projects, such as the Commonwealth of Independent States or the Eurasian Economic Union 1919, is, in my opinion, rather disputable. The Russian Federation, however, often exploited the Russian minorities living in the territory of other states, supporting their separatist attempts, as we have witnessed, inter alia, in Georgia, Moldova, and Ukraine.

The first region—the Baltic states (i.e. Lithuania, Latvia, and Estonia)—has already managed to move out of the post-Soviet sphere. Interestingly, these states wish to be perceived as neither "Baltic" nor "Eastern-European", but rather as "Northern-European". This clearly demonstrates their desire not to be connected with Russia. A common similarity of the above states is the Russian minority living in their territory. Currently, the Russian minority comprises 5.8 per cent of the total population of Lithuania and 25 per cent in Latvia; the largest minority lives in Estonia, making up 26.9 per cent of the total population<sup>820</sup>. Especially in Latvia and Estonia, the current ethnic situation is the result of internal colonization during the Soviet times. The situation of the Russian minority regarding their human rights is often depicted in Russian propaganda as being threatened by the respective countries.

<sup>817</sup> Ibidem, p. 3.

<sup>&</sup>lt;sup>818</sup> The organization was formally established in 1991. As in 2021, there were nine member states—Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Uzbekistan. Georgia joined the CIS in 1994 and withdrew in 2008, effectively in 2009, as a result of the 2008 military conflict with Russia.

<sup>&</sup>lt;sup>819</sup> The project was launched in January 2015 between Belarus, Kazakhstan and the Russian Federation. Armenia and Kyrqyzstan acceded in the same year.

<sup>820</sup> Total Population by Country. [online] [last retrieved 05-11-2020]. Available at: http://world-populationreview.com/countries/

The second sub-region—the western "theatre" (i.e. Moldova, Belarus, Ukraine, and Russia)—is the most important to Russia since these territories have been perceived as an integral part of Russia and still raise identity questions for Russia. Any attempts to separate from the Russian sphere of influence would be met with opposition and hostility on the Russian side. This has proved correct in the case of Crimea in 2014 and the subsequent separatist conflicts in the east of Ukraine. Moreover, in the case of Moldova, the Russian minority and the separatist tendencies in Transnistria have been taken advantage of in order to keep the influence in the area. Another interesting case is Belarus, where the process of Russification developed to such a degree that the Belarusian language had only a minor position in practice. Therefore, if Belarus shifted more towards the West, it would be highly possible for Russia to follow a similar scenario of "protecting" the Russian-speaking population that lives in Belarus or perhaps support their secessionist tendencies.

The third sub-region is the Caucasus, which consists of the North Caucasus (belonging to the Russian Federation) and the South Caucasus (belonging to Armenia, Azerbaijan, and Georgia). The former includes federative units such as Adygea, Chechnya, Dagestan, Ingushetia, Kabardino-Balkaria, Karachay-Cherkessia, and North Ossetia; the latter includes unrecognized or partially recognized units such as Nagorno-Karabakh, Abkhazia, and South Ossetia. The South Caucasus is part of the Caucasus regional subcomplex and consists of three countries: Armenia, Azerbaijan, and Georgia. On a larger scale, it is part of the post-Soviet regional security complex, which is, according to Buzan's theory, a centered security complex where the central role is attributed to the great power, i.e. the Russian Federation. The region has a strategic geopolitical position as it is located on the border between Europe and Asia on the one hand and close to the Middle East on the other. Separatist tendencies in the South Caucasus have been exploited to secure Russian interests in the area and to weaken the respective states. The strategic significance of the South Caucasus rests upon its possibilities for the control of oil and gas transport. The sub-complex status is, however, undermined by the following issues:

- (1) secessionist regions in Georgia,
- (2) the conflict between Armenia and Azerbaijan over Nagorno-Karabakh,

- (3) spillover between the North and the South Caucasus through peculiar coalitions of ethnic groups, and
- (4) energy and pipelines<sup>821</sup>.

N. Gabelia and R. Gurashi noted that the South Caucasus and the North Caucasus are perceived as a unique system, in which the Russian Federation attempts to achieve its goals. "Despite this region being divided into two parts—the Russian (the North Caucasus) and the independent (Transcaucasia)—Moscow perceives it as a unique single system, both from an economic point of view and in terms of political-security strategy. Russia's main interest concerns two important goals: the conservation of its territorial integrity and the safeguarding of its strategic economic interests in Transcaucasia"822. The preservation of the territorial integrity of the Russian Federation in the Caucasus concerns the separatist movements in the North Caucasus. On the other hand, the South Caucasus is preserved by the Russian Federation as a "buffer zone", which has strategic significance for its economic and security goals.

Thus, it can be agreed with Buzan that the above countries fit the definition of a sub-region within a regional security complex. Nevertheless, similar problems can be found in other former Soviet republics, and so it remains, in my opinion, questionable whether it is really for security reasons or rather due to geographic closeness that they form a sub-region together.

One of the characteristic features of the post-Soviet space appears to be the phenomenon of "frozen conflicts", where "there has been relatively recent violent conflict over secession, with the secessionist parties being military successful, having established effective control over specific territories and setting up *de facto* institutions<sup>823</sup>. In the post-Soviet space, this applies to Abkhazia, the Donetsk People's Republic, the Lugansk People's Republic, Nagorno-Karabakh, South Ossetia, and Transnistria. However, the term "frozen conflict" appears to be slightly misleading as "no situations are fully frozen"<sup>824</sup>; therefore, "frozen"

<sup>&</sup>lt;sup>821</sup> Buzan, B. and Waever, O. 2003. *Regions and Powers...*, p. 423.

<sup>&</sup>lt;sup>822</sup> Gabelia, N. and Gurashi, R. 2017. Historic and sociologic reasons for the transformation of Abkhazia's ethnic conflict. A possible federal result. [s.l.]: Saari Ltd. P. 73.

Nodia, G. 2004. Europeanization and (Not) Resolving Secessionist Conflicts. [online] [last retrieved 20-01-2019]. Available at: https://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2004/1-2004Commento1.pdf. P. 1.

<sup>824</sup> Loc. cit.

applies to conflict resolution or the *status quo* of a respective entity. A recent example is Nagorno-Karabakh, where in 2020 Azerbaijan managed to regain the majority of the territories lost at the beginning of the 1990s.

In the case of Chechnya, the humanitarian situation, which is the result of the policy of state oppression against secessionists by the Russian Federation, caused serious concerns in the West. It appears that the shifting point was the attack on the World Trade Center in September 2001 and the subsequent start of the "global war on terror". At that time, the West needed allies for the war, and this came handy to Russia so that the secessionists in Chechnya could be depicted as terrorists. In this way, Russia could fight the breakaway tendencies internally, without further concern from the West.

The last sub-region is Central Asia (i.e. Turkmenistan, Uzbekistan, Kyrgyzstan, and Tajikistan), marked by a certain degree of inefficiency of the government, religious movements, and considerable Russian minorities. Apart from Russia, China and Turkey have been trying to gain some influence in the sub-region. In some countries, such as Kazakhstan, the fears of secessionist tendencies are present.

B. Buzan also outlines a few scenarios of transformation of the post-Soviet region, namely: (1) a change in the global position of Russia, (2) an internal transformation from a centered to balanced complex, and (3) an external transformation regarding the border in Europe. However, a more specific picture of possible future development remains unclear.

In general, I tend to agree with Buzan's theory on regional security and the structure of post-Soviet space as a centered regional security complex since Russia remains the most influential power in the region. In fact, the Russian Federation has exploited several ways of preserving its influence in the post-Soviet region (or perhaps re-establishing its dominance), including cooperation, integration, manipulating the internal policies, and even using armed force. All these tendencies were clearly present in the conflicts over Abkhazia and South Ossetia, as well as in the following period of negotiations and stalemates. The following elements can be identified specifically:

 Cooperation: The first years following the armed conflicts at the beginning of the 1990s were marked by meetings of Yeltsin and Shevardnadze. A clear example of cooperation was the military aid that Russia provided to Shevardnadze, which helped him in the struggle for

- power against Gamsakhurdia. It appeared that the Russian Federation even attempted to force Abkhazia to a compromise by imposing sanctions on Abkhazia in 1996.
- 2. Integration: Since the recognition of Abkhazia and South Ossetia by the Russian Federation in 2008, both entities have been implementing legislation that mirrors Russian laws. Plans have been set for the creation of a common socio-economic space between Abkhazia and the Russian Federation, which was strongly condemned by Georgian authorities in Tbilisi.
- 3. Manipulating the internal policies: Russia actively participated, for example, in the transition of power from Abkhaz President Raul Khajimba, who resigned after large-scale protests, to Aslan Bzhania. After the protests broke out, V. Surkov, assistant to the president of the Russian Federation, arrived in Sukhum(i) in January 2020 to ease the situation<sup>825</sup>. After his visit, Khajimba resigned. Similarly, in 2012 Russia was involved in presidential elections in South Ossetia, in which the results in favor of A. Dzhioyeva were declared invalid.
- 4. Using armed force: An armed conflict occurred in August 2008, and hostilities were taking place in Abkhazia, South Ossetia as well as in Georgia proper. Moreover, Russian troops are still present in the territories of Abkhazia and South Ossetia to date.

It is characteristic for most of the post-Soviet countries that there is a Russian minority living in their territory, which is often exploited by the Russian Federation. On the one hand, Russia supports separatist tendencies in the neighboring countries as a form of pressure, whilst on the other hand suppresses separatism in its own territory (e.g. in Chechnya). The ability of the Russian Federation to strengthen its position and become a global power is, however, limited by its economic situation and the current sanctions imposed after the annexation of Crimea and the involvement of the Russian Federation in the armed conflict in the east of Ukraine. In my opinion, the international community needs to be consistent in the matter of sanctions and strongly oppose illegal actions towards other sovereign states.

<sup>&</sup>lt;sup>825</sup> Владислав Сурков приехал в Абхазию. [online] [last retrieved 15-10-2020]. Available at: https://www.interfax.ru/world/690911.

From my point of view, the weakness of Buzan's theory rests in his hesitation to clearly predict the future development, leaving many possible scenarios open without fully exhausting them. Also, the definition of "regional security complex" leaves quite a lot of discretion for possible interpretations to the reader. Undoubtedly, there might be some security problems that link the nearby countries together, whilst the differences, not only in their internal, but especially in their external development after 1989, do contradict the theory. Thus, it seems that apart from internal and external security links it is the geographic element, i.e. geographic closeness, that still plays a highly significant role in the analysis of security issues.

One of the most significant matters in the foreign policy of all three countries located in the South Caucasus are the *de facto* regimes relating to the territories of Georgia, Armenia, and Azerbaijan. All three countries seceded from the USSR in 1991 and since then have been articulating their own internal and external policies. It could be generalized that domestic vulnerabilities are in all three cases connected with the transition to democracy and democratization processes, including the fight against corruption, as well as with ethnic grievances.

The intra-regional relations between respective states are also influenced by separatist movements and the relations with Russia. Due to the conflict over Nagorno-Karabakh, the relations between Armenia and Azerbaijan have been tense, which led Armenia to seek Russian support. Similarly, the relations between Armenia and Georgia are, to a certain extent, shaped by the Russian factor as Armenia often follows the Russian pattern of voting at international forums. Considering the geographic position of Armenia, which is surrounded by Turkey, Azerbaijan (hostile relations), Georgia and Iran, it is in the Armenian best interest to keep good relations with Georgia. Nevertheless, the struggle to limit the Russian influence can be seen as a similarity in the foreign policies of both Georgia and Azerbaijan. Thus, the relations among the South Caucasus states correspond well to Buzan's theory of amity and enmity patterns<sup>826</sup>, which shape the character of the regional security complex.

Buzan, B. and Waever, O. 2003. Regions and Powers. The Structure of International Security, 2004, p. 49.

The influence of the Russian Federation has been present in all three *de facto* regimes in the South Caucasus—Abkhazia, South Ossetia, and Nagorno-Karabakh. Although Russia is officially acting as a mediator, it is in Russia's interest to keep the frozen conflicts alive as leverage on the respective countries. Thanks to the various forms of support provided by a third country, including budgetary subsidies, the *de facto* entities have managed to sustain for almost three decades<sup>827</sup>. C. Wittke noted that "Russia often plays the role of a kin parent state for the putative internal stabilization of the de facto state entities and the perpetuation of their external limbo" In my view, the role of the Russian Federation in the internal stabilization of Abkhazia and South Ossetia is indisputable, but in general its influence on internal policies varies in different entities, and at least in Nagorno-Karabakh Russia cannot be considered a "kin state" even though its role has increased after the end of the Second Karabakh War<sup>829</sup>.

The Russian Federation constitutes the "center" of the post-Soviet area, the former member countries being in the peripheral position. In spite of the collapse of the Soviet Union, Russia as its successor continues to pursue imperialistic goals within that area and is still able to manipulate certain policies in the countries of the post-Soviet space, with the exception of the Baltic countries. Thus, as things currently stay, only "negative" peace in the region is possible<sup>830</sup>.

The third level of analysis of the regional security complex concerns its interactions with the neighboring countries, i.e. Turkey and Iran. Currently, they may have some influence in certain areas (e.g. Turkey in Abkhazia in the field of trade), but they are able to manipulate neither internal nor external policies.

The final phase of the analysis in Buzan's theory is the interplay with the global powers. The most influential global player for the South Caucasus

<sup>&</sup>lt;sup>827</sup> Blakkisrud, H. and Kolstø, P., Dynamics of de facto statehood: the South Caucasian de facto states between secession and sovereignty. In *Southeast European and Black Sea Studies*, vol. 12, no. 2. Pp. 281–297.

<sup>828</sup> Wittke, C. 2018. "Test the West"..., p. 7.

<sup>&</sup>lt;sup>829</sup> An armed conflict between Azerbaijan and Armenia in 2020 over the territory of Nagorno-Karabakh, in which Azerbaijan reclaimed the territories lost to Armenia in the early 1990s.

<sup>830</sup> Cf. Abramashvili, I. and Koiava, R. 2018. 25 years of Georgia's peace policy. Pp. 60–78.

countries remains, without any doubt, Russia. "Russia is committed to sustaining its influence in the South Caucasus and will actively oppose U.S. engagement [...] Russia will remain the most consequential external actor in the South Caucasus"<sup>831</sup>. On the other hand, the USA are not considered a dangerous competitor for Russia when it comes to the South Caucasus, since the U.S. would be "unwilling to risk a confrontation with Russia over Georgia's pursuit of NATO membership"<sup>832</sup>.

Regarding the integration of Georgia in NATO and the EU, Georgian President Salome Zourabichvili said that the solution to the problem of occupied territories does not depend on any new kind of relation between Georgia and Russia alone, but rather on the relations of Georgia with the European Union and NATO. According to her, a new move could be made in respect of the occupation line, in which matter Georgia is not taking enough action. In this regard, further steps could be taken in cooperation with the EU Monitoring Mission as well as with the EEAS itself. However, according to Salome Zourabichvili, there is no movement on the part of Russia towards the resolution of the frozen conflicts nor any sign of moving forward in official declarations. Thus, any kind of change in the foreign policy of the Russian Federation regarding Abkhazia and South Ossetia would be a consequence of the type of relationship that Russia has with the EU and NATO. Interestingly, the Georgian president holds the opinion that Georgia yielded to the Russian provocation in 2008. The question posed by her is whether the Georgian Government could have done more back in 2008 to avoid the provocation<sup>833</sup>. In the following years, the main goal of the president will be to further succeed in proceeding with the integration of Georgia into Western structures<sup>834</sup>. However, the resolution of the status of Abkhazia and South Ossetia will not

<sup>&</sup>lt;sup>831</sup> Rumer, E. et al. *U.S. PolicyToward the South Caucasus:TakeThree*. [online] [last retrieved o7-12-2018]. Available at: https://carnegieendowment.org/2017/05/31/u.s.-policytoward-south-caucasus-take-three-pub-70122.

<sup>832</sup> Loc cit

<sup>833</sup> Salome Zurabishvili: Georgia became more democratic without Saakashvili. [online] [last retrieved 07-12-2018]. Available at: http://newsvideo.su/video/9645251.

<sup>&</sup>lt;sup>834</sup> Euronews speaks to Georgia's new President-elect, Salome Zurabishvili. [online] [last retrieved 09-12-2018]. Available at: https://www.euronews.com/2018/11/29/euronews-speaks-exclusively-to-georgia-s-new-president-elect-salome-zurabishvili.

be possible without the involvement of the Russian Federation in conflict resolution mechanisms.

With respect to the role of integration of Georgia into Western political and security structures, some researchers assume that these processes might lead to further alienation between Georgia and Russia, and consequently from Abkhazia and South Ossetia. For instance, Russian researchers S. Markedonov and A. Skakov claim that "the integration [of Georgia—P.S.] did not get Abkhazia and South Ossetia any closer; on the contrary, it pushed the elites of those republics to a closer cooperation with Moscow"835. This is certainly true in the case of South Ossetia, but such a claim would be quite simplified with regard to Abkhazia. The Abkhaz elites were willing to cooperate with the West (for instance, when Sergei Shamba held the office of foreign minister and prime minister), and they are still willing to establish contacts and cooperation with the West in order to de-isolate Abkhazia.

To summarize, there are many similarities in external policies of the countries in the South Caucasus. On the other hand, there are significant differences in their goals concerning pro-Western integration. However, the strategy of integration combined with sanctions imposed on Russia by the Western countries may, in my opinion, prove successful in the long-term perspective.

## 5.2 Abkhazia and South Ossetia in the foreign and security policy of the Russian Federation

At the end of the 1980s and in the early 1990s, Abkhazia and South Ossetia played a crucial role in affecting the policies of Georgia. At that time, Georgia had to deal with political instability, deep economic crisis, and the outbreak of separatism in its regions. Later, the crisis was exacerbated by hundreds of thousands of internally displaced persons from Abkhazia and South Ossetia. Through its presence in both separatist conflicts,

<sup>&</sup>lt;sup>835</sup> Маркедонов, С., Скаков, А. 2017. Постсоветская Грузия: от турбулентности к стабильности и предсказуемости. In *Эволюция постсоветского пространства: прошлое, настоящее, будущее.* Москва: НП РСМД. ISBN 978-5-9909275-4-4.

the Russian Federation was able to secure that Georgia would join the Commonwealth of Independent States and maintain Russian military bases on its territory.

In the period after the end of the Georgian-Abkhaz military conflict in 1993 until the late 1990s, the policies of the Russian Federation towards Abkhazia were marked by a rather glaring inconsistency. Even though Russia did not initially participate directly in the hostilities during the Georgian-Abkhaz war, it did provide weapons to the Abkhaz separatists. As A. Eberhardt noted, "[t]he main instrument of Russian policy, and consequently, the most important factor fostering destabilization, was Russia's military presence in the region of the conflict. Russian units regularly provided weapons and fuels to the Abkhazian forces, and even participated in the armed conflict, albeit to a limited extent"836. The position of neutrality soon shifted to support for the Georgian side as Russia feared separatism in the North Caucasus. This might have been driven by the Confederation of Mountain Peoples of the Caucasus, which supplied volunteers who actively participated in the hostilities on the Abkhaz side. The conflict in Abkhazia and the political turmoil in Georgia soon became instruments thanks to which Russia could exert influence on Georgia. On the one hand, Russia supported the Abkhaz forces in the last phase of the Georgian-Abkhaz war but, on the other hand, helped Shevardnadze suppress Gamsakhurdia in the internal struggle for power. As a result, Georgia joined the Commonwealth of Independent States in December 1993 and agreed to Russian military bases on its territory837. Back in 1993, Russia seemed to be interested in preserving the territorial integrity of Georgia in return for maintaining its influence over Tbilisi, thereby driving the Abkhaz elites into an agreement with the Georgian Government. The aim was to exert positive influence on the Georgian Government to join the Commonwealth of Independent States. As a result of the internal struggle against Chechen separatism, Russia severed its relations with Abkhazia after

<sup>&</sup>lt;sup>836</sup> Eberhardt, A. 2007. Armed conflicts in Georgia: the Russian Factor. In Security Challenges in the post-Soviet Space. European and Asian Perspectives. Warsaw: Polski Instytut Spraw Międzynarodowych. ISBN 83-89607-17-1. P. 140.

<sup>&</sup>lt;sup>837</sup> Cf. Kazantsev, A. et al. 2020. Russia's policy in the "frozen conflicts" of the post-Soviet space: from ethno-politics to geopolitics. In *Caucasus Survey.* Vol. 8, no. 20. ISSN 2376-1199. Pp. 142–162.

the Georgian-Abkhaz war and imposed sanctions since Chechen insurgents had been allegedly trained in Abkhazia.

With the outbreak of the armed conflict in Chechnya, the Russian Federation had to fear the danger of disintegration in the North Caucasus. In addition to that, anti-Russian tendencies started to grow in the South Caucasus around the mid-1990s, especially in Georgia and Azerbaijan. This even led to the strengthening of ties between Georgia and Chechnya, which both shared anti-Russian sentiments. Therefore, the Russian Federation needed to reconsider its policies of isolation towards Abkhazia, which could have led to the unification of the North Caucasus on anti-Russian sentiments. In order to stabilize its position in the South Caucasus, it was in the interest of the Russian Federation to support the disintegration tendencies in the respective states as well as to strengthen the ties with Abkhazia/South Ossetia<sup>838</sup>.

Towards the end of the 1990s, Russia ultimately lost its interest in the resolution of the conflicts and started to prefer *status quo*, i.e. frozen conflicts that could be turned into political leverage over Georgia. Sanctions against Abkhazia were gradually lifted after 2002, and Russia adopted a different approach based on conferral of Russian citizenship on the residents of Abkhazia. The Russian-Abkhaz relations worsened in 2004 for a short period of time, when the Russia-backed presidential candidate R. Khajimba lost to S. Bagapsh, and Russia reintroduced economic sanctions against Abkhazia. However, the relations normalized after Khajimba was appointed vice president.

With respect to South Ossetia, Russia has been initially involved in the peace process as a mediator since the 1990s. At the same time, it provided economic assistance to the South Ossetian *de facto* government. The South Ossetian population shares ethnic bonds with the population of North Ossetia, which is a republic within the Russian Federation. Besides, a significant number of the population of South Ossetia sought refuge in the territory of North Ossetia during the armed conflict. South Ossetia has expressed its desire to join the Russian Federation several times; such proposals, however, have never been accepted by Russia. In the 1990s, Russia formally supported the territorial integrity of Georgia while combatting separatism in North

<sup>&</sup>lt;sup>838</sup> Затулин, К. 2011. *Россия и Абхазия. Две страны – один народ*. Санкт-Петербург: Алетейя. ISBN 978-5-91419-530-1. Р. 78.

Ossetia. It seemed that *status quo*, as in the case of Abkhazia, was preferred by the Russian Federation. A similar process of passportization took place after 2002. The impetus regarding South Ossetia became apparent after Saakashvili's government installed Sanakoev's administration in South Ossetia. The clashes led to the strengthening of Russian military involvement in the area.

The political influence of the Russian Federation over South Ossetia can be illustrated on the example of *de facto* presidential elections at the end of 2011, in which Alla Dzhioyeva ran against the Moscow-backed candidate Anatoly Bibilov and managed to defeat him despite the fact that, after the first round, Russian President Medvedev met Bibilov in Vladikavkaz and expressed his support<sup>839</sup>. However, the Supreme Court of South Ossetia annulled the elections after charges that she had bribed voters during her campaign<sup>840</sup>. Even though new elections took place in March 2012, in which Dzhioyeva was prevented from participation, I believe that Dzhioyeva's initial victory could be seen as a sign of resistance of the South Ossetian population against the interference of the Russian Federation into their domestic affairs.

In contrast to the inconsistent policies of the Russian Federation towards both Abkhazia and South Ossetia in the 1990s, a consolidation came after V. Putin had assumed the office of president. The 2000 Foreign Policy Concept of the Russian Federation viewed the Caucasus as a region that "will help advance Russian economic interests, including in the matter of the choice of routes for important energy flows"<sup>841</sup>. With regard to the CIS member states, the Concept declared that Russia attached a priority importance "to join efforts toward settling conflicts in CIS member states, and to the development of cooperation in the military-political area and in the sphere of security, particularly in combatting international terrorism and extremism"<sup>842</sup>. The trends such as increased regional engagement, outlined in the 2000 Foreign

<sup>839</sup> Medvedev Endorses Kremlin's Candidate In South Ossetian Presidential Run Off. [online] [last retrieved 17-07-2020]. Available at: https://www.rferl.org/a/medvedev\_endorses\_kremlins\_candidate\_in\_south\_ossetian\_presidential\_run-off/24399707.html

<sup>840</sup> South Ossetia's Alla Dzhioyeva Comes Into Her Own. [online] [last retrieved 17-07-2020]. Available at: https://www.rferl.org/a/south\_ossetia\_dzhioyeva\_comes\_into\_her\_own/24409725.html

<sup>&</sup>lt;sup>841</sup> The Foreign Policy Concept of the Russian Federation. [online] [last retrieved 16-07-2020]. Available at: https://fas.org/nuke/guide/russia/doctrine/econcept.htm

<sup>842</sup> Loc. cit.

Policy Concept, were sustained in the 2008 Concept. On the regional level, the priorities included "prevention of risks of destabilization of the situations in Central Asia and Transcaucasia"<sup>843</sup>.

Whilst at first the Russian Federation seemed to prefer the preservation of status quo regarding Abkhazia and South Ossetia, the situation changed after Kosovo's declaration of independence in 2008 and the subsequent recognitions issued by a number of Western countries. Russian President V. Putin previously claimed in 2007 that Russia would not consider Kosovo a unique case. He stated that "[t]here is nothing to suggest that the case of Kosovo is any different to that of South Ossetia, Abkhazia or Trans-Dniester. The Yugoslav communist empire collapsed in one case and the Soviet communist empire collapsed in the second. [...] South Ossetia, Abkhazia and Trans-Dniester have been living essentially as independent states for 15 years now and have elected parliaments and presidents and adopted constitutions. There is no difference"844. When the Five-Day War between Georgia and Russia broke out in August 2008, Russia militarily intervened in both Abkhazia and South Ossetia. An actual milestone in both conflict regions was the recognition by the Russian Federation on 26 August 2008, which put an end to the discussions about their status. From the point of view of the Russian Federation, Abkhazia and South Ossetia are independent states, and thereby the conflict has been ultimately resolved. The Russian Federation claimed that its efforts to resolve the conflict had been rejected by Georgia<sup>845</sup>. The recognition of Abkhazia and South Ossetia by the Russian Federation was thus merely an acknowledgement of their right to remedial secession.

A number of agreements have been signed between Abkhazia/South Ossetia and the Russian Federation since 2008, especially with regard to political cooperation, financial support, social and economic development, military cooperation, etc. This has, in my opinion, largely contributed to the fact that

<sup>843</sup> Concept of the Foreign Policy of the Russian Federation. [online] [last retrieved 16-07-2020].
Available at: https://www.mid.ru/en/foreign\_policy/official\_documents/-/asset\_publisher/
CptlCkB6BZ29/content/id/122186

<sup>844</sup> Interview with Newspaper Journalists from G8 Member Countries. [online] [last retrieved 21-07-2020]. Available at: http://en.kremlin.ru/events/president/transcripts/24313

<sup>&</sup>lt;sup>845</sup> Medvedev's Statement on South Ossetia and Abkhazia. [online] [last retrieved 15-07-2020]. Available at: https://www.nytimes.com/2008/08/27/world/europe/27medvedev.html

Abkhazia and South Ossetia are often perceived as satellites of the Russian Federation. In 2014, the Agreement on Alliance and Strategic Partnership was signed between the Russian Federation and Abkhazia, followed by the Agreement on Alliance and Integration between the Russian Federation and South Ossetia in 2015. The different titles of the agreements as well as the broader scope of discretion given to the Abkhaz side are the result of the Abkhaz struggle to renegotiate the conditions of the agreement, especially with regard to citizenship<sup>846</sup>.

Following the armed conflict between Georgia and Russia, Georgia adopted the Law on Occupied Territories, which labelled the Russian Federation as the "occupying power" with regard to Abkhazia and South Ossetia and attributed direct responsibility for exercising effective control over these territories to the Russian Federation. However, in international law, it is not possible to impose responsibility for certain acts on a state by a unilateral act of domestic law of another state. This is contradictory to the principle of *par in parem non habet imperium*, according to which a state cannot exercise its jurisdiction over another sovereign state. Moreover, labelling Abkhazia and South Ossetia as "occupied territories" has had a harmful effect on the dialogue between Tbilisi and Sukhum(i)/Tskhinval(i). "Considering the entire territories of Abkhazia and South Ossetia as 'occupied territories', the official [government in—P.S.] Tbilisi has disregarded those as parties to conflict, and declared that Georgia had a single interstate conflict with Russia, which had logically completed the stalemate"

The Russian Federation condemned the imposition of the Law on Occupied Territories, claiming that Abkhazia and South Ossetia are independent states and denying the exercise of effective power over these territories. Moreover, Georgia often uses the term "creeping annexation" in order to describe "Russia's policy toward its two client states in the South Caucasus" and the borderization policies along the administrative boundary line between

<sup>&</sup>lt;sup>846</sup> Cf. Kolstø, P. 2020. Biting the hand that feeds them? Abkhazia-Russia client-patron relations. In *Post-Soviet Affairs*. Vol. 36, no. 2. ISSN 1060-586X. P. 145.

<sup>&</sup>lt;sup>847</sup> Khutsishvili, G. 2018. *How to resolve conflicts. Book IV*. Tbilisi: International Centre on Conflict and Negotiation. ISBN 978-9941-9483-3-6. P. 601.

<sup>848</sup> Ibidem, p. 151.

Georgia proper and Abkhazia/South Ossetia<sup>849</sup>. However, in my opinion, this term is inaccurate in the case of Abkhazia mostly due to the larger autonomy of the Abkhaz *de facto* authorities compared to South Ossetia.

It follows from the previous analyses that the relations between the Russian Federation and Abkhazia/South Ossetia are highly asymmetrical, which is marked by one-sided dependence of these entities on Russia despite the fact that the agreements signed between Abkhazia/South Ossetia and Russia are formally based on the principle of equality<sup>850</sup>. The dependence of these entities on Russia translates into various fields. However, providing financial support to these territories might prove difficult in the future given that the state of Russian economy continues to deteriorate. In 2019, Russia ranked 11th in the world by nominal GDP. Moreover, Russian economy has been hit relatively hard by sanctions, a decrease in oil prices as well as by the global economic recession that started in March 2020 as a result of the pandemic. Whilst the monthly GDP growth rate was 0.8 per cent in March 2020, it dropped down to -12 per cent in April 2020851. What is more, Russia's share in the global gross domestic product seems to have been decreasing as well. Whereas in 2014 its share in the global GDP was 3.51 per cent, it has dropped to 3.02 per cent by 2020 and was expected to decrease to 2.84 per cent in 2024852. Thus, it is questionable how long the Russian Federation will be willing to support Abkhazia and South Ossetia as formally independent states. Moreover, the economic problems in the Russian Federation are directly reflected in Abkhazia and South Ossetia since both of them adopted ruble as their national currency.

The 2015 National Security Strategy of the Russian Federation considers expanding of NATO and the establishment of its military infrastructure

<sup>&</sup>lt;sup>849</sup> Georgian MFA: Russia doubled its illegal activities in Georgia amid pandemic. [online] [last retrieved 10-01-2021]. Available at: https://agenda.ge/en/news/2020/1604

<sup>850</sup> Cf. Kvarchelia, L. 2012. Perceptions of the EU in Abkhazia and prospects for the EU-Abkhazia Engagement. [online] [last retrieved 20-07-2020]. Available at: https://rc-services-assets. s3.eu-west-1.amazonaws.com/s3fs-public/PPP\_2012analysis1\_EN\_0.pdf

<sup>&</sup>lt;sup>851</sup> Gross domestic product (GDP) monthly growth rate in Russia from January 2019 to April 2020. [online] [last retrieved 11-07-2020]. Available at: https://www.statista.com/statistics/1009056/gdp-growth-rate-russia/

<sup>&</sup>lt;sup>852</sup> Russia: Share of global gross domestic product (GDP) adjusted for Purchasing Power Parity (PPP) from 2014 to 2024. [online] [last retrieved 11-07-2020]. Available at: https://www.statista.com/statistics/271379/russias-share-of-global-gross-domestic-product-gdp/

in close proximity to the Russian borders as a threat to national security. In this respect, Abkhazia and South Ossetia may be perceived as "buffer zones" at the borders of Russia, where Russian military troops are stationed. Abkhazia is of utmost importance to the Russian Federation because of its access to the Black Sea, which now serves as a direct extension of the Russian Black Sea coast, whilst South Ossetia has a strategic position given that Russian troops are stationed just a few kilometers away from the capital of Georgia. Provided that the expansion of NATO is perceived as a security threat, the frozen conflicts in Abkhazia and South Ossetia are being exploited by the Russian Federation to prevent Georgia from integration in NATO and the European Union.

Pursuant to the 2015 National Security Strategy of the Russian Federation, one of the key areas of foreign policy of the Russian Federation is "the development of bilateral and multilateral cooperation relations with the member states of the Commonwealth of Independent States, as well as with the Republic of Abkhazia and the Republic of South Ossetia"853. This is consistent with the perception of the former USSR countries as "near abroad", which is of deep significance in the foreign policy of the Russian Federation.

According to N. Gabelia and R. Gurashi, Russia "supports Abkhazia's independence in order to weaken Georgia and keep it in its orbit. [...] On the other hand, it carefully measures its interventions in order to avoid dangerous repercussions for the status quo"<sup>854</sup>. Undoubtedly, Russia attempts to prevent NATO from spreading into its neighborhood. In this context, Abkhazia and South Ossetia constitute an obstacle to the integration of Georgia into NATO. Another cause of concern for Russia are the separatist movements in the North Caucasus, which was clearly demonstrated in the 1990s when Russia imposed sanctions on Abkhazia for fear of supporting the separatists in Chechnya.

The fact that Abkhazia and South Ossetia are crucial elements in Russia's foreign policy in the Caucasus in order to preserve Russia's influence is well known in both Sukhum(i) and Tskhinval(i). On the one hand, this seems to make both entities confident that Russia will continue to support their

<sup>&</sup>lt;sup>853</sup> Указ Президента Российской Федерации от 31 декабря 2015 года N 683 «О Стратегии национальной безопасности Российской Федерации». [online] [last retrieved 10-07-2020]. Available at: https://rg.ru/2015/12/31/nac-bezopasnost-site-dok.html

<sup>&</sup>lt;sup>854</sup> Gabelia, N. and Gurashi, R. 2017. *Historic and sociologic reasons...*, p. 73.

de facto independence. In this respect, the recognition of their independence in 2008 has only cemented this perception. Thus, I agree with B. Coppieters' view that "Russian geopolitical interests will dictate a close alliance with Abkhazia, contrary to the rather tactical Russian approach taken in applying the principle of divide and rule during and in the aftermath of the 1992–93 war. Russia's strategic interest in opposing Georgia is not expected to change in the decades to come"855. On the other hand, experts from both entities pointed out that their independence was rather fragile and might be at stake if Russia decided to incorporate the entities. In such conditions, there might be a subtle opposition against the increasing Russian influence, but it will probably not be expressed openly. Therefore, I believe that Abkhaz political elites are likely to remain pro-Russian while simultaneously opposing the increase of Russian influence. On the other hand, South Ossetian political elites will probably remain highly dependent on Russia, and the strength of opposition will be significantly lower.

It is worth noting that current Abkhaz and South Ossetian political elites are pro-Russian, and each political party in these entities promotes "strategic partnership" with Russia. Of course, this does not come as a surprise given the low number of states that have officially recognized the independence of Abkhazia and South Ossetia. In this respect, any other scenario of cooperation seems rather unlikely. The significance of Russian influence can be illustrated by the fact that even President of Abkhazia Aslan Bzhania has both Russian and Abkhaz citizenship. The fact that the president of an (alleged) state is simultaneously a citizen of another state seems rather peculiar, bearing in mind that the president is usually viewed as a guarantor of a country's independence. Nevertheless, Russia is seen as a protector and guarantor of independence and security of Abkhazia. At the moment, however, unification with Russia is not desired by the Abkhaz.

In this context, another aspect of Russian foreign and security policy seems to be of crucial significance. The vast majority of the population of Abkhazia and South Ossetia are citizens of the Russian Federation. Despite the fact

<sup>855</sup> Coppieters, B. 2004. The Georgian-Abkhaz conflict. In Europeanization and conflict resolution: case studies from the European periphery. Gent: Academia Press. ISBN 90-382-0648-8. P. 212.

that all experts from both *de facto* states pointed out that their ethnicity was either Abkhaz or Ossetian, they were all holders of Russian passports. Thus, it is logical to ask what prevents the Russian Federation from incorporating these territories if their population are Russian citizens anyway? Pursuant to Article 44 of the National Security Strategy, "the main directions of ensuring state and public security are [...] the increase of the effectiveness of protecting the rights and legitimate interests of Russian citizens abroad"856. Bearing in mind the unlawful incorporation of Crimea into the Russian Federation, a similar scenario for Abkhazia and South Ossetia cannot be excluded in the future.

The incorporation of Abkhazia and South Ossetia into the Russian Federation could possibly take place for the sake of alleged protection of interests of the Russian citizens living in these territories. In fact, there are political parties in Russia that claim that the territories inhabited mostly by ethnic Russians should be incorporated into Russia. For instance, P. Gaprindashvili claims that "a full annexation of these Georgian territories into the Russian Federation could be highly likely in the foreseeable future. In the case of South Ossetia, an imminent annexation threat is also expressed in referendum discussions which would allow the local population to 'vote' for unification with North Ossetia and thus become a part of the Russian Federation. Although Russia hitherto remains ambivalent about the referendum, given the precedent of Crimea, this opportunity could be exploited at any time"<sup>857</sup>. Acquiring Abkhaz citizenship and, consequently, property in Abkhazia remains an issue in Abkhaz-Russian relations. The Russian Federation attempts to increase pressure on Abkhazia, whilst Abkhazia struggles to preserve its autonomy from Russia in certain areas.

In July 2020, Russian political party "Za pravdu" (in English: For Truth) published its political program, in which it called for the incorporation of those territories into the Russian Federation in which more than 75 per cent of the population would be in favor. Furthermore, the party called for an immediate recognition of the Pridnestrovian Moldavian Republic, the Donetsk People's Republic and the Lugansk People's Republic and for their

<sup>856</sup> Loc. cit.

<sup>857</sup> Gaprindashvili, P. 2019. The Future of Georgia-Russia Relations. The Need for a Comprehensive Anti-annexation Policy. In *Politik und Gesellschaft im Kaukasus. Eine unruhige Region zwischen Tradition und Transformation*. Wiesbaden: Springer Vs. ISBN 978-3-658-26374-4. Pp. 412–413.

incorporation into the Russian Federation along with Abkhazia and South Ossetia. "According to the results of the referenda, we call for an immediate accession of Abkhazia and South Ossetia to the Russian Federation with the rights of constituent entities" This program instigated fierce criticism by Abkhaz politicians and NGOs. The *de facto* Ministry of Foreign Affairs of the Republic of Abkhazia commented that it "publicly urge the party leaders and social movements to carefully study the specifics and political status of states in respect of which certain intentions are officially voiced" However, I have not noticed any similar protest issued by any official South Ossetian *de facto* institution. In my opinion, it needs to be stressed that nowadays there are two different concepts for these entities in the Russian foreign policy. Whilst Tiraspol has not been recognized by the Russian Federation and is seen as a part of Moldova, Abkhazia and South Ossetia were recognized by the Russian Federation in 2008 as independent states, and their status is outlined in a number of documents concluded between Russia and the respective entities.

When considering practical impacts of the recognition granted to Abkhazia and South Ossetia, the vast majority of experts tended to be rather skeptical. Undoubtedly, it has put an end to proposals for a common state with Georgia. In the case of Abkhazia, it has also brought investments, trade and cooperation with Russia after several years of international isolation. However, it has also driven the entities in question into further international isolation. Although relations with five UN member states formally exist, economic and political cooperation in reality takes place solely with the Russian Federation.

The direct support provided to Abkhazia and South Ossetia by the Russian Federation can be divided into the following categories:

- 1. Political support: recognition as independent states; provision of Russian passports to their residents;
- 2. Economic support: direct economic subsidies to the government; direct investments; development funds (*Investprogramma*); outlets for goods and raw materials:

<sup>&</sup>lt;sup>858</sup> Предвыборная программа политической партии ЗА ПРАВДУ. [online] [last retrieved 10-07-2020]. Available at: https://zapravdu.org/wp-content/uploads/2020/07/Programma\_ZA\_PRAVDU.pdf

<sup>859</sup> Commentary of the Ministry of Foreign Affairs of Abkhazia. [online] [last retrieved 10-07-2020]. Available at: http://mfaapsny.org/en/allnews/news/notes/kommentariy-mid-abkhazii67/

- 3. Social support: pensions and health care for the residents with Russian citizenship;
- 4. Cultural support: student quotas at Russian universities;
- 5. Military support: Russian military bases in the territories of Abkhazia and South Ossetia; protection of their borders;
- 6. Diplomatic support: promoting interests of Abkhazia and South Ossetia in third countries through diplomatic representation of the Russian Federation.

M. Kosienkowski claimed that indirect support of the Russian Federation was provided to Abkhazia and South Ossetia on three levels prior to recognition. However, I firmly believe that the concept has remained the same to date. Firstly, it is the global level on which the Russian Federation represents the political agenda of Abkhazia and South Ossetia. Secondly, Russia provides support on the regional level to the breakaway entities in the territory of the former USSR. Thirdly, there are political visits between Russian and Abkhaz/ South Ossetian officials on the bilateral level<sup>860</sup>.

When it comes to reception of the Russian support for Abkhazia and South Ossetia, there is a slight difference between them. Whilst South Ossetia is almost completely isolated by the international community, and thus relies almost exclusively on the Russian Federation, Abkhazia makes an effort to balance the influence of the Russian Federation by establishing foreign contacts and collaboration. This could be illustrated on the example of NGOs; in South Ossetia they are non-existent, whereas in Abkhazia they play a significant role in different sectors.

Lastly, the relations between Abkhazia/South Ossetia and Georgia seem to reflect the relations between Russia and Georgia, and hostility on the Georgian-Russian level often appears to be translating onto the Georgia-Abkhazia/South Ossetia level. For instance, the severance of Georgian-Russian relations after mass demonstrations in Tbilisi in June 2019 led to the severance of relations between Georgia and Abkhazia/South Ossetia and the subsequent closure of borders. Formally, Russia supports the Abkhaz and South Ossetian positions that the only

<sup>&</sup>lt;sup>860</sup> Cf. Kosienkowski, M. 2008. Federacja Rosyjska wobec statusu Abchazji i Osetii Południowej. In Region Kaukazu w stosunkach międzynarodowych. Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej. ISBN 978-83-227-2843-7. Pp. 209–218.

viable way of establishing mutual relations rests upon good neighborliness and on the principle of equality. Since Russia has currently no interest in resolving the conflicts through international engagement, it is "not only creating an environment where any solution of the conflict is virtually impossible, but is also unattractive [for the governments of Abkhazia and South Ossetia—P.S.]"<sup>861</sup>. Consequently, the stalemate will most likely persist for years to come.

In the interviews, several experts from Tbilisi expressed their opinion that the relations between Tbilisi and Sukhum(i) and Tbilisi and Tskhinval(i) could go down the right path if Russian political elites changed in the future. However, I tend to be rather skeptical towards these views. First of all, results of the referendum held in Russia in July 2020 led to further strengthening of President Putin's position. Even when he is succeeded by someone else, it is not very likely that the policies of Russia in the South Caucasus will change. Moreover, the current political situation in Russia does not give much hope that the policies of the Russian Federation towards Abkhazia or South Ossetia would develop in favor of Georgia. The foreign policy visions of the four most popular political parties in Russia—United Russia, which is led by D. Medvedev and enjoys the highest popular support, the Communist Party of the Russian Federation under G. Zyuganov, A Just Russia—For Truth headed by S. Mironov, and the Liberal Democratic Party of Russia founded by V. Zhirinovsky and currently led by V. Slutsky—aim at a strong position of Russia with territorial gains. Firstly, United Russia has been the ruling party uninterruptedly since 2003 and has been involved in all Russia's foreign policies, such as the 2008 war between Russia and Georgia, the recognition of Abkhazia's and South Ossetia's independence as well as the 2014 annexation of Crimea. Moreover, it nowadays advocates lifting of the sanctions imposed after the annexation of Crimea<sup>862</sup>. Secondly, the Communist Party of the Russian Federation aims at reestablishment of socialism and the former USSR<sup>863</sup>.

<sup>&</sup>lt;sup>861</sup> Hoch, T. et al. 2014. Russia's role in the official peace process in South Ossetia. In *Bulletin of Geography. Socio-economic Series*. No. 23. P. 68.

<sup>&</sup>lt;sup>862</sup> Сf. Предвыборная программа Партии «ЕДИНАЯ РОССИЯ» на выборах депутатов Государственной Думы ФС РФ VII созыва. [online] [last retrieved 14-07-2020]. Available at: https://er.ru/party/program/#33

<sup>863</sup> *Программа партии*. [online] [last retrieved 14-07-2020]. Available at: https://kprf.ru/party/program

After the 2008 war, its leader G. Zyuganov claimed that the recognition of Abkhazia and South Ossetia was the only possible solution that defends the geopolitical position of Russia<sup>864</sup>. As I have previously mentioned, the political party A Just Russia—For Truth advocates the incorporation of Abkhazia and South Ossetia into the Russian Federation. Thirdly, the Liberal Democratic Party of Russia advocates the return of the territories that Russia lost and the reestablishment of "Great Russia"<sup>865</sup>. In addition, Zhirinovsky was known for his views on the need to reestablish the former Soviet Union and for his support of separatism among the Russian minority in the Baltic states<sup>866</sup>. With regard to Abkhazia and South Ossetia, Zhirinovsky stated that the best solution would be their incorporation into the Russian Federation<sup>867</sup>.

Following the protests in support of the opposition leader Alexei Navalny, there was a wave of enthusiasm in the West that a shift in the foreign policy of the Russian Federation could come with a new leader such as Navalny. This view was supported by the fact that Navalny rejected the narrative of Western conspiracy against Russia. What is more, Navalny seems to focus on economic benefits and urged that public resources should not be spent on supporting loyal foreign regimes. Therefore, it is likely that he may eventually reconsider some foreign expenditures. On the other hand, it has to be noted that Navalny supports the recognition of Abkhazia and South Ossetia, justifying his position by the armed conflicts that took place in the 1990s and in 2008. At the same time, Navalny pointed out that separatist entities in the post-Soviet area need to be taken into consideration as separate cases. As a result, Navalny called for a second referendum in Crimea in order to legitimize its incorporation into Russia<sup>868</sup>. Therefore, it appears that the foreign policy of the Russian

<sup>&</sup>lt;sup>864</sup> Зюганов одобрил признание Абхазии и Южной Осетии. [online] [last retrieved 14-07-2020]. Available at: https://www.vesti.ru/article/2172391

<sup>&</sup>lt;sup>865</sup> «Мощный рывок вперед. 100 пунктов». [online] [last retrieved 14-07-2020]. Available at: https://ldpr.ru/party

Nuclear Threats and Busty Ladies in the Race for Second-Place in Russia. In Der Spiegel. [online] [last retrieved 14-07-2020]. Available at: https://www.spiegel.de/international/world/zhirinovsky-s-follies-nuclear-threats-and-busty-ladies-in-the-race-for-second-place-in-russia-a-538403.html

<sup>&</sup>lt;sup>867</sup> Жириновский предлагает бывшим республикам СССР войти в состав России. [online] [last retrieved 16-07-2020]. Available at: https://ria.ru/20060904/53491091.html

<sup>868</sup> Навальный об Абхазии и Южной Ocemuu. [online] [last retrieved 19-01-2021]. Available at: https://www.myvideo.ge/v/3297379

Federation regarding Abkhazia and South Ossetia would be maintained even if Navalny eventually succeeded Putin in the office of president.

On the other hand, part of the Russian liberal opposition considers the independence of Abkhazia and South Ossetia as a costly, unsuccessful project. For instance, Aleksei Melnikov, former deputy member of the Russian Duma representing the political party "Yabloko", noted in January 2021 that conflicts in Abkhazia and South Ossetia should be resolved based on the principle of territorial integrity of Georgia. The Russian Federation should withdraw its recognition of Abkhazia and South Ossetia, which should then be returned to Georgia within a certain period of time while the whole process ought to be observed by the EU, the UK and the USA<sup>869</sup>. Nevertheless, such projects represent only a minor way of thinking. Judging by the visions of foreign policy of all four most successful political parties in Russia, no significant changes towards Abkhazia and South Ossetia are to be expected within the next years.

Table 29: Future scenarios regarding Abkhazia and South Ossetia

Future scenario	Representative	
1. Incorporation of Abkhazia and South Ossetia into the Russian Federation	Zhirinovsky, Mironov	
2. Supporting Abkhazia and South Ossetia as "independent states" (status quo)	Putin (Medvedev), Zyuganov, Navalny	
3. Returning Abkhazia and South Ossetia to Georgia	Melnikov	

(Source: Author's own compilation)

Instead of direct annexation, the integration policies could eventually lead to a closer cooperation between the Union State of Russia and Belarus<sup>870</sup>. However, Belarus has not yet recognized any of the entities in question, and,

<sup>&</sup>lt;sup>869</sup> Абхазия и Южная Осетия. Отказаться от признания. [online] [last retrieved 29-01-2021]. Available at: https://echo.msk.ru/blog/alex\_melnikov/2777846-echo/

<sup>870</sup> Russia's New Model for the Annexation of Abkhazia. [online] [last retrieved 10-01-2021]. Available at: https://www.geocase.ge/en/publications/324/rusetis-akhali-modeli-afkhazetis-aneqsiistvis

fearing further sanctions from the West<sup>871</sup>, nothing seems to indicate that the recognition would be on Belarus's agenda. Therefore, if Russia and Abkhazia/ South Ossetia pursued this scenario, it would be more likely for the *de facto* entities to obtain an associated status, which would not require granting of recognition by Belarus.

Once again, it is worth noting that the policies of the Russian Federation towards the *de facto* states in the post-Soviet space are marked by a relatively high level of inconsistency. With regard to the Second Karabakh War in 2020, President of the Russian Federation Vladimir Putin noted at a meeting of the Valdai Club that "a situation in which a significant part of the territory of Azerbaijan has been lost cannot last forever"<sup>872</sup>. This has been widely interpreted as an expression of support in favor of the territorial integrity of Azerbaijan. On the other hand, in the case of Abkhazia and South Ossetia, the Russian Federation acknowledges their right to self-determination and provides direct support to these entities, including their recognition, which is perceived as violation of the territorial integrity of Georgia.

With regard to the Second Karabakh War<sup>873</sup>, it should be noted that the conflict between Armenia and Azerbaijan was resolved in 2020 by armed force, which sets serious obstacles for the future reconciliation process. Even though Azerbaijan managed to regain the majority of the territories lost to Armenia in the 1990s, the status of Nagorno-Karabakh itself remains unsettled. This has, in my opinion, a potential to become a source of future conflicts since none of the parties is fully satisfied with the outcomes of the ceasefire. The Russian Federation formally played the role of a mediator and participated in the ceasefire process. Following the ceasefire agreement, the Russian Federation deployed its peacekeeping mission in Nagorno-Karabakh

<sup>&</sup>lt;sup>871</sup> Лукашенко заявил, что именно Запад давил на Минск в вопросе о Южной Осетии и Абхазии. [online] [last retrieved 10-01-2021]. Available at: https://tass.ru/mezhdunarodnaya-panorama/9139195

<sup>&</sup>lt;sup>872</sup> Путин заявил, что число погибших в Карабахе приближается к 5 тыс. [online] [last retrieved 05-12-2020]. Available at: https://tass.ru/politika/9792147

<sup>&</sup>lt;sup>873</sup> The term "Second Karabakh War" refers to the armed conflict concerning the former Nagorno-Karabakh Autonomous Oblast, which broke out on 27 September 2020 and ended on 10 November 2020.

for a period of five years  $^{874}$ . The Russian Federation clearly decided to be more active, replacing the ineffective Minsk Group under the auspices of the OSCE and thereby reaffirming its security role in the South Caucasus.

As the issue of Nagorno-Karabakh has been resolved in a way that the parent state reclaimed its territory by using armed force, the armed conflict has undoubtedly become a source of concern for Abkhazia and South Ossetia, especially in that Georgia could resolve the conflicts unilaterally or that Russia might cease its military support for these entities. In Abkhazia, there is a popular narrative of a "heroic" struggle for freedom against Georgia in the early 1990s. A similar narrative of a small, brave nation struggling against a mighty enemy was present in Nagorno-Karabakh. However, one of the deciding factors of victory in both cases was the disorganization of the enemy's army back in the 1990s. On the other hand, there are several differences between these conflicts. Firstly, Nagorno-Karabakh has never been recognized by any other state, not even by Armenia, whilst Abkhazia and South Ossetia have been granted recognition by Russia and a few other UN member states. Secondly, Abkhazia and South Ossetia have been provided with a number of security and economic guarantees by the Russian Federation, while in the case of Nagorno-Karabakh its sole security and economic guarantor was Armenia. Therefore, the Russian Federation is not likely to act in the same way with regard to Abkhazia and South Ossetia.

## 5.3 Elements of stability and sustainability of Abkhazia and South Ossetia

In Chapters 3 and 4, the elements of stability of Abkhazia and South Ossetia were analyzed based on literature and interviews with experts from Georgia proper, Abkhazia and South Ossetia. The nuances and peculiarities were analyzed in the respective chapters.

<sup>&</sup>lt;sup>874</sup> Заявление Президента Азербайджанской Республики, Премьер-министра Республики Армения и Президента Российской Федерации. [online] [last retrieved 05-12-2020]. Available at: http://kremlin.ru/events/president/news/64384

The first group of parameters concerned the relationship between the *de* facto regime and residents. In both entities, the experts indicated a relatively high level of identification of residents as citizens of the respective de facto states. Both Abkhazia and South Ossetia introduced their own citizenship. However, most Mingrelians living in the Gal(i) Region in Abkhazia have retained their Georgian citizenship and so have ethnic Georgians in the Leningor (Akhalgori) region in South Ossetia. What is more, in South Ossetia there is a strong identification with being "Ossetian" rather than "South Ossetian", and the concept of South Ossetian independence is being constantly questioned and undermined by the supporters of the incorporation of South Ossetia into the Russian Federation. Another significant aspect in this context is the policy of passportization carried out by the Russian Federation, which has led to issuing of Russian passports to the residents of Abkhazia and South Ossetia. The second parameter, participation of the population in "national" elections, was ranked in a similar way with respect to Abkhazia and South Ossetia. Even though the participation in the elections is relatively high, the vast majority of ethnic Georgians in the Gal(i) Region in Abkhazia and in the Leningor (Akhalgori) region in South Ossetia are prevented from participating therein. The criterion of participation of the population in "national" referenda was ranked similarly. However, a difference was apparent in the criterion of participation of the population in civic activities, community initiatives and communal elections, in which South Ossetia ranked lower due to the fact that communal elections do not take place there. A significant difference was observed in the activity of civil society institutions (NGOs) in the territories of the respective de facto states. Owing to regulations regarding non-profit organizations together with the anti-campaign against civil society organizations and labelling their activists as "foreign agents", the NGOs in South Ossetia have closed down. On the other hand, there is a strong societal support for NGOs in Abkhazia, which are active in different spheres of public life, including civic education, ecology, human rights, etc., and even participate in the legislative process.

Figure 10: Level of identification of residents as citizens of the respective *de facto* states

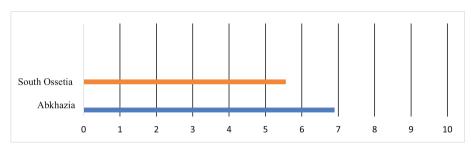


Figure 11: Participation of the population in national elections (de facto)

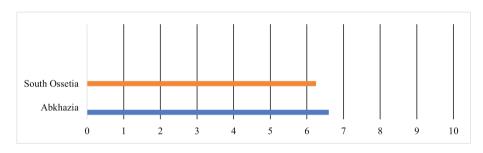


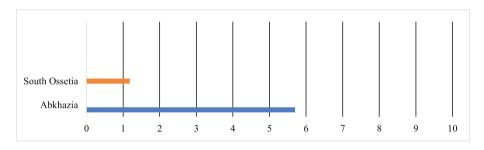
Figure 12: Participation of the population in national referenda (de facto)



South Ossetia
Abkhazia
0 1 2 3 4 5 6 7 8 9 10

Figure 13: Participation of the population in local civic activities, community initiatives and communal elections

Figure 14: Activity of civil society institutions (NGOs) in the territories of the respective *de facto* states



The second group of parameters concerned the internal sphere of the *de facto* states. Defense capability and border control (fighting of illegal trespassing and smuggling) was ranked higher in Abkhazia than in South Ossetia. Even though the term "borderization", i.e. building of barriers along the administrative boundary line, applies to both entities, the degree of integration of the South Ossetian military is higher compared to Abkhazia. In 2017, the Armed Forces of South Ossetia were formally integrated into the Armed Forces of the Russian Federation. On the other hand, Abkhazia is generally accessible to foreign visitors, while South Ossetia can only be entered by third-state nationals through the Russian Federation. Internal security (protection of peoples' rights and freedoms, possessions, public order, fighting of organized crime, etc.) was ranked relatively low in both Abkhazia and South Ossetia. There are regular reports on illegal detentions along the

administrative boundary line with regard to both entities. The most well-known cases include the torture and murder of Archil Tatunashvili in South Ossetia, which occurred in February 2018<sup>875</sup>, and the case of Giga Otkhozoria, who was shot by an Abkhaz border guard on the territory controlled by Georgia in May 2016<sup>876</sup>. Other recent cases include the detention of Georgian medical doctor Vazha Gaprindashvili in South Ossetia in November 2019<sup>877</sup> and the detention of Zaza Gakheladze in July 2020, who was sentenced to over 12 years in prison in Tskhinvali<sup>878</sup>, but was finally released in July 2021<sup>879</sup>. As I have mentioned in Chapter 4, there have been several cases when journalists and public activists were harassed by official authorities in South Ossetia.

The effectiveness of the judicial system received slightly more points for Abkhazia than for South Ossetia even though both systems were criticized for corruption and nepotism. The judicial system in Abkhazia, however, seems to be more independent than the one in South Ossetia, which directly applies Russian legislation. Experts from South Ossetia also raised serious concerns about the independence of the judicial power from the government. Since September 2020, the South Ossetian Parliament has been paralyzed due to a constitutional crisis. In February 2021, the Prosecutor General announced that the parliamentary rules of procedure, adopted in 2004, were void due to the fact that they had never been published in the Code of Law<sup>880</sup>.

- <sup>875</sup> Georgian autopsy says Tatunashvili sustained over 100 injuries before dying. [online] [last retrieved 22-02-2021]. Available at: https://oc-media.org/georgian-autopsy-says-tatunashvili-sustained-over-100-injuries-before-dying/
- 876 Giga Otkhozoria's murder. [online] [last retrieved 22-02-2021]. Available at: https://jamnews.net/giga-otkhozorias-murder/
- <sup>877</sup> Famous Georgian doctor, three others illegally detained by occupation forces. [online] [last retrieved 22-02-2021]. Available at: https://aqenda.ge/en/news/2019/3070
- 878 12 years for picking mushrooms in S. Ossetia Tbilisi demands release of Georgian citizen. [online] [last retrieved 22-02-2021]. Available at: https://jam-news.net/georgia-demands-to-release-a-georgian-citizen-arrested-in-south-ossetia-news-zaza-gakheladze-occupation-harzel/
- <sup>879</sup> Illegally detained Zaza Gakheladze says release from occupied Tskhinvali prison was unexpected. [online] [last retrieved 16-07-2021]. Available at: https://agenda.ge/en/news/2021/1974
- <sup>880</sup> Генпрокурор Южной Осетии назвал «незаконной» приостановку работы парламента. [online] [last retrieved 22-02-2021]. Available at: https://regnum.ru/news/3194869.html. South Ossetia crisis becomes constitutional. [online] [last retrieved 22-02-2021]. Available at: https://oc-media.org/south-ossetia-crisis-becomes-constitutional/

A significant difference was present in the parameter of "governance" (relation between the central and the local government; level of decentralization). In this respect, Abkhazia received more points than South Ossetia mostly due to the fact that decentralization is practically non-existent in South Ossetia. In Abkhazia, self-government has been established, but it does not function flawlessly given that there is room for governmental interference with self-government bodies. This usually occurs through direct appointment of heads of local administration by the president of the Republic of Abkhazia. Heads of regional administration then appoint heads of settlement administration. The result of this system is that only deputies of local administration are elected directly, not the heads of administration, which is justified by the demographic and ethnic situation in Abkhazia (i.e. the fear of the Georgian ethnic minority).

With respect to the economic situation (GDP per capita; average income; employment rate; inflation rate), the situation in Abkhazia was viewed more positively, mostly because of the diversification of state income and the support from the diaspora. In both entities, there is a high level of economic dependence on the Russian Federation, which translates into the fact that the majority of budgetary income consists of Russian financial aid. Without this income, the economies would hardly be sustainable. The level of development of the private economy sector (rate of economic activity) scored better in Abkhazia because of a greater diversification of its private economy (tourism; services; local agriculture). In South Ossetia, problems such as depopulation of towns and regions as well as poor infrastructure and utility services, were highlighted<sup>881</sup>. Moreover, the experts claimed that depopulation and isolation were causing difficulties in running of small businesses. As a result, the vast majority of products has to be imported from the Russian Federation, which makes them expensive and less available to the local population.

The social welfare system (unemployment; pensions; family policy; social programs) ranked better in Abkhazia than in South Ossetia. In both entities, pensions are provided by the Russian Federation to the residents with Russian

<sup>&</sup>lt;sup>881</sup> Cf. Empowering conflict-affected communities to respond to security problems in South Ossetia. [online] [last retrieved 10-02-2021]. Available at: https://www.saferworld.org.uk/resources/publications/733-empowering-conflict-affected-communities-to-respond-to-security-problems-in-south-ossetia

passports. Abkhazia and the Russian Federation concluded the Agreement on Alliance and Strategic Partnership in 2014, and Russia and South Ossetia concluded the Agreement on Alliance and Integration in 2015<sup>882</sup>. Even though each entity has a separate pension system, pensions are significantly lower compared to those provided by the Russian Federation.

The healthcare system (accessibility; facilities; health insurance) was assessed as rather poor in both Abkhazia<sup>883</sup> and South Ossetia. The problems that the healthcare system is facing include the lack of modern diagnostic equipment, low remuneration for medical staff, and drug abuse (especially in Abkhazia)<sup>884</sup>. Some residents of Abkhazia and South Ossetia opt for receiving medical care in Russia (Krasnodar Krai or North Ossetia), but they are often unable to cover the costs of treatment. Following the adoption of the document *State Strategy on Occupied Territories. Engagement through Cooperation*, Georgia provides free healthcare to residents of Abkhazia and South Ossetia. In recent years, the program attracted many persons who were willing to travel and cross the administrative boundary in order to receive medical services. In my opinion, this is a good example of trust-building between the populations from both sides of the administrative boundary line.

The major issues regarding the education system (structure; accessibility; educational programs) concerned the access to education for ethnic Georgians in their own language in the Gal(i) District in Abkhazia and in the Leningor (Akhalgori) region in South Ossetia since the main language of instruction in both entities is Russian. Abkhazia has quite a long tradition of university education. In 1993, the Georgian branch of the Abkhaz State University was relocated to Tbilisi, where it functions up to this day. The Russian Federation provides quotas at Russian universities to students from Abkhazia and South Ossetia on a competitive basis. The Georgian Government also provides free university education for residents of Abkhazia and South Ossetia, but this educational program is not popular among Abkhazians and Ossetians due

<sup>&</sup>lt;sup>882</sup> The difference in the names of the agreements indicates that Abkhazia attempted to reserve a greater amount of autonomy than South Ossetia.

<sup>&</sup>lt;sup>883</sup> Cf. Security for all – a challenge for Eastern Abkhazia. Community perceptions of safety and security. [online] [last retrieved 10-02-2021]. Available at: https://www.saferworld.org.uk/resources/publications/743-security-for-all-a-a-challenge-for-eastern-abkhazia. P. 7.

<sup>884</sup> Cf. Hammarberg, T. and Grono, M. 2017. Human Rights..., pp. 41–46.

to the fact that there is still a strong hostility between Abkhazians/Ossetians and Georgians.

When it comes to transport and infrastructure (roads, railway system, air, transport, pipelines, hydroelectric system, etc.), Abkhazia scored better for this parameter than South Ossetia. The main transport corridors in Abkhazia (Zugdidi-Sukhum[i]-Sochi) and in South Ossetia (Gori-Tskhinval[i]-Vladikavkaz) have been blocked since the early 1990s. In Abkhazia, the railway connection to the Russian Federation has been restored, but the southern route to Georgia remains disrupted. In 2011, plans for reestablishment of transport corridors were negotiated between Georgia and the Russian Federation, according to which cargo was supposed to pass sealed through Abkhazia and South Ossetia, but neither of these entities was interested. After the end of the Second Karabakh War, plans for reestablishment of the railway connection through Abkhazia were resumed, but this will hardly be possible without the resolution of the status of Abkhazia and South Ossetia. None of the entities has air transport although the Sukhum(i) airport operated until the end of the Georgian-Abkhaz war, and plans for its reestablishment have been announced recently. The position of Abkhazia regarding transport is better thanks to its access to the Black Sea. Owing to that, Abkhazia has established sea transport routes to the Russian Federation and Turkey. Since 2015, there have been restrictions on electricity consumption in the winter period in Abkhazia. The situation has worsened due to cryptocurrency mining and a higher demand for electricity, which resulted in regular electricity blackouts, especially in winter. In South Ossetia, major investments took place after 2008, such as the construction of the "Dzaurikau-Tskhinval(i)" gas pipeline to North Ossetia. Some segments of the infrastructure, especially the sewage system, are dilapidated and in need of major investments in both entities.

Sochi O Adler Arkhyz Архыз Архыз Teberda Адлер Теберда Mt Elbrus / Эльбрус Dombai Gagra Домбай Terskol Терскол Me Pitsunda მეს Sokhumi ბიჭვინთა სოხუმი Lower Gulripshi ქვემო გულრიფშის Tsalenjikha წალენჯიხა **Ö** Zugdidi Martvili მარტვილი Senaki ქუ სენაკი Samtredia

Map 5: Zugdidi-Sukhum(i)-Sochi rail and road corridor through Abkhazia

(Source: Google Maps)

Урус-Мартан Shali Шали Alagir Алагир Vladikavkaz E117 Stepantsminda სტეფანწმინდა Oni ონი Gudauri გუდაური Sachkhere საჩხერე isi National Park ისი Chiatura ჭიათურა Tskhinvali O E117 Zestafoni ზესტაფონი Kareli Khashuri ქარელი Dusheti Kvareli ხაშური დუშეთი Telavi ყვარელი თელავი Lagodekhi Borjomi ლაგოდეხი ბორჯომი Gurjaani Sagarejo საგარეჯო გურჯაანი Akhaltsikhe Sighnaghi სიღნაღი Bakuriani ბაკურიანი **O**Tbilisi ახალციხე

Map 6: Tbilisi–Tskhinval(i)–Vladikavkaz road corridor through South Ossetia

(Source: Google Maps)

Figure 15: Defense capability and border control (fighting of illegal trespassing and smuggling)

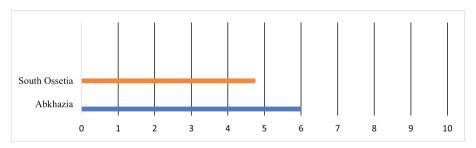


Figure 16: Internal security (protection of people's rights and freedoms, possession, public order, fighting of organized crime, etc.)

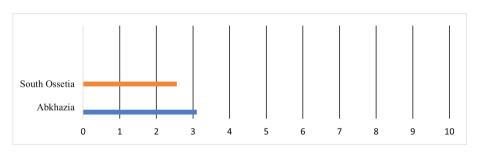


Figure 17: Effectiveness of the judicial system

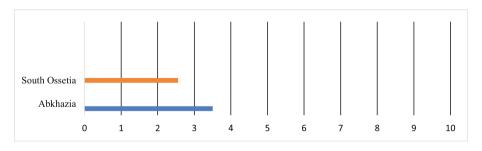


Figure 18: Governance (relation between the central and the local government; level of decentralization)

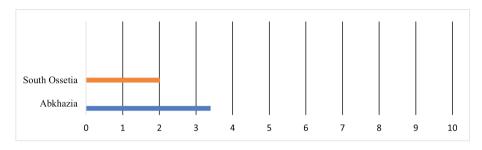


Figure 19: Economic situation (GDP per capita; average income; employment rate; inflation rate)

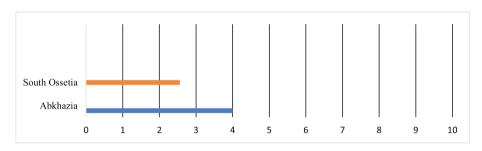


Figure 20: Level of development of the private economy sector (rate of economic activity)

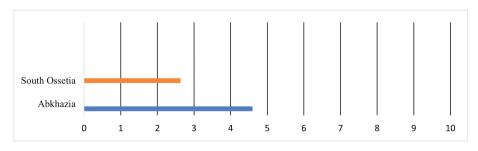


Figure 21: Social welfare system (unemployment; pensions; family policy; social programs)

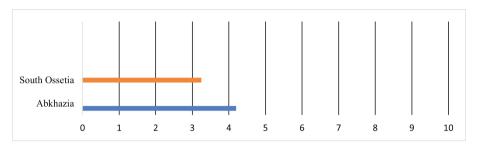


Figure 22: Healthcare system (accessibility; facilities; health insurance)

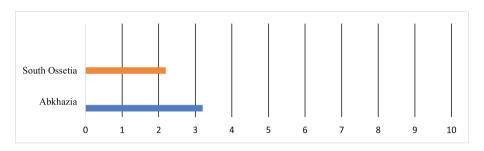
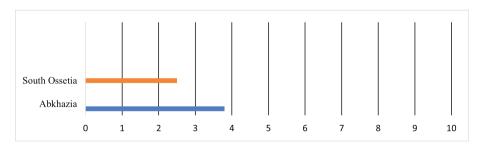


Figure 23: Education system (structure; accessibility; educational programs)



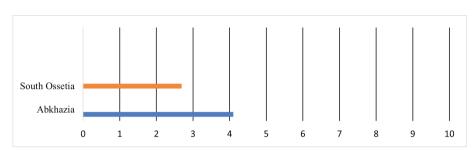


Figure 24: Transport and infrastructure (roads, railway system, air transport, pipelines, hydroelectric system, etc.)

The cooperation with international organizations and UN member states was assessed significantly higher in Abkhazia than in South Ossetia. Both entities have been recognized by the Russian Federation and a few other states, but Abkhazia seems to be much more interested in developing contacts with other states—in addition to the Russian Federation, Abkhazia has opened its embassies in Syria and Venezuela. Moreover, it has a strong economic cooperation with Turkey, where a large Abkhaz diaspora is located.

In 2006, Abkhazia, South Ossetia and Transnistria established the Community for Democracy and Rights of Nations (in Russian: Сообщество за демократию и права народов), an international organization, which was joined by Nagorno-Karabakh (Artsakh) in 2007. The aim of the Community for Democracy and Rights of Nations was to develop political, economic, environmental, cultural, and humanitarian cooperation, as well as free movement of the citizens of the member entities and settlement of the conflicts<sup>885</sup>. However, after the 2008 recognition of Abkhazia and South Ossetia, the Community for Democracy and Rights of Nations has practically lost its purpose, and the *de facto* states have been developing their cooperation on the inter-parliamentary level<sup>886</sup>.

With regard to abidance by international standards for human rights, this parameter ranked lower in South Ossetia than in Abkhazia. The office

<sup>&</sup>lt;sup>885</sup> Устав Сообщества «За демократию и права народов». [online] [last retrieved 22-02-2021]. Available at: http://mfa-pmr.org/ru/qnk

<sup>886</sup> Interview 19. Sukhum(i), 21 May 2019.

of ombudsperson was created in South Ossetia in 2012 and in Abkhazia in 2016. Abkhazia's higher score in the field of protection of human rights could be explained by its greater openness to the outside world and by the functioning of non-profit organizations, which are active in the field of human rights. Major human rights concerns relate to the right to citizenship, the right to free movement, the right to security, the right to healthcare, the right to education, the right to free association, the right to fair court trial<sup>887</sup>, etc. Other issues that need to be addressed include the return of internally displaced persons, their right to property (especially with regard to looting and destruction of houses of ethnic Georgians) and the freedom of movement (forceful detentions along the administrative borderline). It is important to note the decision of the European Court of Human Rights of 21 January 2021, in which the Court established the responsibility of the Russian Federation for violations of human rights, stemming from the European Convention of Human Rights, in the territory of Abkhazia and South Ossetia after the end of the active phase of hostilities. The Court also established that the Russian Federation had been exercising effective control over the territory of Abkhazia and South Ossetia since the cessation of hostilities, labelling the Russian Federation the sole occupying power<sup>888</sup>.

For both Abkhazia and South Ossetia, the Russian Federation is the main trade partner. However, Abkhazia obtained better score in foreign trade and foreign investment than South Ossetia due to the fact that it has been able to diversify its economic relations, including those on an informal basis. "After 2011, Abkhazia successfully established trade relationships with Turkey and other countries—leading trade with other countries to total between 11% and 43% since then—and encouraged tourism and foreign direct investment" The opening of free economic zones between Abkhazia and Georgia on the Ingur(i) River and between South Ossetia and

<sup>&</sup>lt;sup>887</sup> Подходы к защите прав человека в конфликтных и спорных субъектах Восточной Европы. Отчет регионального семинара FIDH. [online] [last retrieved 25-02-2021]. Available at: https://www.fidh.org/IMG/pdf/rapport\_disputed\_entities\_ru-ld.pdf Pp. 11–31.

<sup>888</sup> Case of Georgia v. Russia (II). Application no. 38263/08. Judgment of 21 January 2021. [online] [last retrieved 23-01-2021]. Available at: https://hudoc.echr.coe.int/eng#{%22appno%22: [%2238263/08%22],%22itemid%22:[%22001-207757%22]}. Pp. 142–144.

<sup>&</sup>lt;sup>889</sup> Waldner, B. 2018. Can Neoliberal Small State Theory Explain..., p. 23.

Georgia<sup>890</sup>, perhaps in Ergneti, where a market used to function, may lead to the establishment of new forms of economic cooperation and development of services, which would improve the quality of life of the local population. This is consistent with one of the goals of the State Strategy on Occupied Territories.

With regard to the international civic, cultural, sport, and educational cooperation, Abkhazia received a higher score thanks to its contacts, participation in international programs and various activities of its non-profit organizations. Both Abkhazia and South Ossetia are active members of the Confederation of Independent Football Associations (CONIFA), and the Abkhaz State University managed to establish a number of contacts in Western Europe. The Abkhaz and Ossetian experts complained in the interviews that attempts to participate in international events are often hindered by official authorities in Georgia, who demand that Abkhaz participants be referred to as representing "Abkhazia, Georgia", which Abkhazians find unacceptable.

The future aspirations of Abkhazia to become a fully recognized state scored significantly higher than those of South Ossetia. The reason is that in South Ossetia the debate on its future status has been going on since the early 1990s, and the society appears to be divided between the supporters of independence and the supporters of unification with Russia. In South Ossetia, two referenda took place on the unification with Russia, whereas in Abkhazia there is currently no similar discussion. Another point is that the Ossetians living in South Ossetia do not constitute a "South Ossetian" nation, but are part of the Ossetian nation, whose homeland is in North Ossetia in Russia. Therefore, the separatist claims of South Ossetia can hardly be backed by arguments relating to the right to self-determination of nations. On the other hand, the majority of experts in Georgia proper and in Abkhazia agree that there is a strong desire in Abkhazia to become a fully recognized and independent state. The heavy dependency on the Russian Federation is perceived as a geopolitical necessity rather than something desirable.

<sup>890</sup> Cf. Opening the 'Ingur/i gate' for legal business. Views from Georgian and Abkhaz private companies. [online] [last retrieved 25-02-2021]. Available at: https://www.international-alert.org/publications/opening-inguri-gate-legal-business

Figure 25: Cooperation with international organizations and UN member states

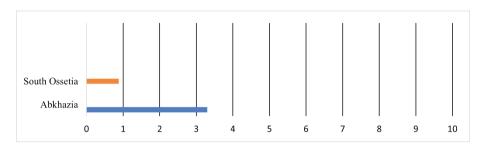


Figure 26: Abidance by international law standards for human rights

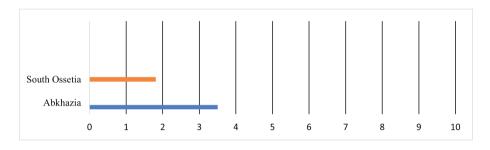
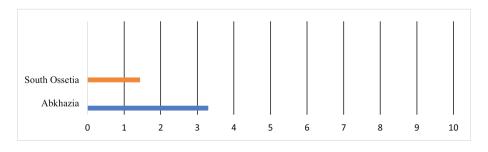


Figure 27: Foreign trade and foreign investment



South Ossetia
Abkhazia
0 1 2 3 4 5 6 7 8 9 10

Figure 28: International civic, cultural, sports, and educational cooperation

Figure 29: Future aspirations to become a fully recognized state

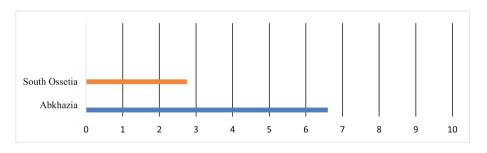


Table 30: International recognition of Abkhazia and South Ossetia

Abkhazia	South Ossetia	
Nauru Nicaragua Russian Federation Syria Tuvalu (revoked) Venezuela Vanuatu (revoked)	Nauru Nicaragua Russian Federation Syria Tuvalu (revoked) Venezuela	

	Abkhazia	South Ossetia
Embassies in UN member states	Russian Federation Syria Venezuela	Russian Federation
Embassies in other <i>de facto</i> states	South Ossetia	Abkhazia

Table 31: Diplomatic relations of Abkhazia and South Ossetia

Sources: Абхазия в системе международных отношений. [online] [last retrieved 10-01-2021]. Available at: http://mfaapsny.org/ru/foreign-policy/abkhazia/; Внешняя политика Южной Осетии. [online] [last retrieved 10-01-2021]. Available at: https://south-ossetia.info/vneshnyaya-politika-yuzhnoj-osetii/

# 5.4 De facto statehood of Abkhazia and South Ossetia

Since granting of the recognition by the Russian Federation to Abkhazia and South Ossetia in 2008, these entities have undergone a major development towards the unification of certain spheres of their policies. The Russian Federation has since then been providing security as well as economic, social and diplomatic assistance to Abkhazia and South Ossetia. Therefore, this relationship could be labelled as "patron–client relationship"<sup>891</sup>.

Nevertheless, the majority of the international community remains committed to the sovereignty and territorial integrity of Georgia. This has been reaffirmed in numerous resolutions of the UN Security Council prior to 2008<sup>892</sup>, the European Parliament<sup>893</sup> and the Parliamentary Assembly of the Council of Europe<sup>894</sup>. Since the end of the 2008 military conflict, the

<sup>&</sup>lt;sup>891</sup> Kolstø, P. 2020. *Biting the hand...*, pp. 140–158.

<sup>892</sup> Cf. Resolution 1716 (2006) Adopted by the Security Council at its 5549<sup>th</sup> meeting, on 13 October 2006. [online] [last retrieved 15-02-2021]. Available at: https://digitallibrary.un.org/record/584578

<sup>893</sup> Cf. European Parliament resolution of 14 June 2018..., op. cit.

<sup>&</sup>lt;sup>894</sup> E.g. Unlimited access to member States, including "grey zones", by Council of Europe and United Nations human rights monitoring bodies. [online] [last retrieved 13-02-2021]. Available at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=25168&lang=en. Interestingly, the aforementioned resolution refers to Abkhazia and South Ossetia as "territories [of Georgia] which are under the control of de facto authorities".

resolutions of the UN General Assembly have been concerned mostly with the status of internally displaced persons from Abkhazia and the Tskhinvali Region/South Ossetia, implicitly reaffirming its commitment to the territorial integrity of Georgia by referring to the secessionist regions as "Abkhazia, Georgia" and "Tskhinvali Region/South Ossetia, Georgia"<sup>895</sup>. In January 2021, the European Court of Human Rights provided an analysis of the violations of human rights in the territory of Abkhazia and South Ossetia after the end of the 2008 military conflict.

In 2008, Georgia submitted a claim with the European Court of Human Rights, which concerned the "indiscriminate and disproportionate attacks against civilians and their property on the territory of Georgia by the Russian army and/or separatist forces placed under their control"896, thereby claiming that the Russian Federation had established an administrative practice that led to the violation of Article 2 (the right to life), Article 3 (the prohibition of torture), Article 5 (the right to liberty and security), Article 8 (the right to respect for private and family life) and Article 13 (the right to an effective remedy) of the European Convention on Human Rights, as well as Article 1 (the right to property) and Article 2 (the right to education) of Protocol No. 1 and Article 2 (the freedom of movement) of Protocol No. 4. Furthermore, the Georgian Government claimed that "the violations of the Convention fall within the jurisdiction of the Russian Federation under Article 1 of the Convention because it exercised effective authority and control over the relevant areas where the violations took place and/or exercised jurisdiction through state agent authority and control. The violations took form of a repetitive pattern of acts and omissions that amount to an administrative practice incompatible with the Convention [...]"897. The Russian Federation opposed these allegations, mostly claiming that those events took place outside the jurisdiction of the Russian Federation and outside Russia's effective control. According to the Russian Federation, the military intervention conducted by

<sup>895</sup> Cf. Resolution adopted by the General Assembly on 3 September 2020. 74/300. Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia. [online] [last retrieved 13-02-2021]. Available at: https://undocs.org/en/A/RES/74/300

<sup>896</sup> Case of Georgia v. Russia (II). Application no. 38263/08..., para. 8.

<sup>897</sup> Ibidem, para. 48.

the Russian armed forces in August 2008 was "an urgent response to Georgia's aggression"  $^{898}$ .

The ECHR in its judgment established that "the Russian Federation exercised 'effective control', within the meaning of the Court's caselaw, over South Ossetia, Abkhazia and the 'buffer zone' from 12 August to 12 October 2008, the date of the official withdrawal of the Russian troops. Even after that period, the strong Russian presence and the South Ossetian and Abkhazian authorities' dependency on the Russian Federation, on whom their survival depends [...], indicate that there was continued 'effective control' over Abkhazia and South Ossetia''899. The fact that the Court established that the Russian Federation exercised effective control over the territory of Abkhazia and South Ossetia implies that Russia bears responsibility for the violations of the Convention as the occupying power.

Following the case *Chiragov and others v. Armenia*, the Court recalled that with regard to the occupation of a territory the notions "effective control" and "actual authority" were widely considered to be synonymous. The military occupation of a territory requires the presence of foreign troops, which are in a position to exercise effective control without the consent of the sovereign<sup>900</sup>.

With regard to the internally displaced persons from Abkhazia and South Ossetia, the Court concluded that the *de facto* authorities and the Russian Federation had a duty to enable the return of the displaced persons to their respective homes. In this context, the Court stated that there had been an administrative practice of continuous nature rather than isolated cases and that the Russian Federation was responsible for violations of its obligations resulting from Protocol No. 4.

The Court observed that there had been an administrative practice and established direct responsibility of the Russian Federation for the following violations:

<sup>898</sup> Ibidem, para 79.

<sup>899</sup> Ibidem, para. 174

<sup>&</sup>lt;sup>900</sup> Chiragov and others v. Armenia. Application no. 13216/05. Judgment of 16 June 2015. [online] [last retrieved 23-01-2021]. Available at: https://hudoc.echr.coe.int/fre#{%22ite mid%22:[%22001-155353%22]}. Para. 96.

- Articles 2, 3 and 8 of the Convention as well as Article 1 of Protocol No. 1 as regards the killing of civilians and the torching and looting of houses in Georgian villages in South Ossetia and in the "buffer zone"<sup>901</sup>;
- Article 3 with regard to the conditions of detention of Georgian civilians and the humiliating acts to which they were exposed, which must be regarded as inhumane and degrading treatment<sup>902</sup>;
- Article 3 as regards the acts of torture of which the Georgian prisoners of war were victims<sup>903</sup>;
- Article 2 of Protocol No. 4 with regard to the inability of Georgian nationals to return to their respective homes<sup>904</sup>.

Nevertheless, the Court stated that the events that occurred during the active period of the hostilities did not fall within the jurisdiction of the Russian Federation. That part of the claim was declared inadmissible by the Court. The Court refused to assess the events because such an assessment would have probably moved the ECHR towards international humanitarian law.

The significance of the ECHR's decision rests upon the following reasons: Firstly, the Court established that the Russian Federation has been exercising effective control over the territory of Abkhazia and South Ossetia since the end of the hostilities; therefore, it bears responsibility for the violations of the Convention. There appears to be a consensus throughout the Court that the Russian Federation is the sole occupying power in the territories of Abkhazia and South Ossetia. This is crucial for the Georgian Government in terms of *soft-power* policies, which include raising awareness throughout the international community about the occupation of Abkhazia and South Ossetia by the Russian Federation and the policy of non-recognition of these territories. Secondly, the decision could affect other cases pending before the ECHR, such as those regarding Crimea and Donbas. Moreover, it could be an impetus for bringing interstate disputes by the Georgian Government and other parent-state governments to relevant international courts, for instance the International Court of Justice or the International Criminal Court.

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901 Case of Georgia v. Russia..., para. 205.
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<sup>&</sup>lt;sup>902</sup> Ibidem, para. 250.

<sup>903</sup> Ibidem, para. 279.

<sup>904</sup> Ibidem, para. 299.

Georgia had already appealed to the ICJ with regard to alleged violations of the International Convention on Elimination of All Forms of Racial Discrimination, but the Court found the claim inadmissible.

In 2020, the Council of Europe issued a report on the conflict in Georgia. With regard to Abkhazia, major concerns about the situation of the Mingrelian population in the Gal(i) Region were raised. Their situation deteriorated after the closure of the checkpoint on the Ingur(i) River due to the coronavirus epidemic as they were prevented from crossing the administrative boundary line to collect pensions and receive medical services in the Georgia-controlled territory. Another problem is the limited use of the Georgian language as a language of instruction in schools in the Gal(i) and Tkvarchal (Tkvarcheli) Regions, which violates the right of the local population to education in native language. With regard to South Ossetia, the closure of the administrative boundary line has been identified as one of the major obstacles for the Georgian population, which not only restricted the freedom of movement, but also caused severe humanitarian problems in terms of accessibility of medical services and medicine. This has been referred to as an "instrumentalization of the humanitarian situation", in which the *de facto* authorities applied restrictions to the freedom of movement as a policy towards ethnic Georgians. The dire situation of the local population led to several attempts at crossing the administrative boundary line and subsequent detentions by the *de facto* authorities. The Council of Europe concluded that the actions of the de facto authorities constituted "the continuing borderization and creeping annexation of the Georgian regions of South Ossetia and Abkhazia by the Russian Federation, which are at odds with its obligations and commitments to the Council of Europe"905. For both Abkhazia and South Ossetia, the issue of the return of internally displaced persons remains unsolved. It can be concluded that the most serious concerns expressed by the Council of Europe with regard to Abkhazia and South Ossetia were related to the situation concerning human rights of the local Georgian population.

<sup>905</sup> Consolidated report on the conflict in Georgia (October 2019—March 2020). [online] [last retrieved 10-01-2021]. Available at: https://www.ecoi.net/en/file/local/2029771/Inf%282020%2910E. pdf. Cf. Consolidated report on the conflict in Georgia (April – September 2020). [online] [last retrieved 10-01-2021]. Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a066cb

Despite the concerns raised by different international bodies, especially with regard to effective control over Abkhazia and South Ossetia as well as the humanitarian situation, the regimes created in these territories have already been existing for several decades. Even though international legal bodies perceive them as an inseparable part of Georgia, the parent state has not been exercising effective control over them. In order to be considered a *de facto* state, the entity in question needs to fulfill the following requirements:

• It is a geopolitical unit created as a result of secession from the previous state.

Bearing in mind the definition of secession, Abkhazia unilaterally withdrew from the Republic of Georgia against the will of the latter. From the legal point of view, Abkhazia constituted an integral part of the Republic of Georgia. The process of secession was carried out by the population residing in Abkhazia although it has to be noted that ethnic Georgians, previously constituting about half of the whole population, did not participate in this process, which remains a major point of concern. In the case of Abkhazia, all elements of secession were present. There was neither consensus on secession nor the approval of the previous state. Abkhazia, as a geopolitical unit created in the process of secession, remains independent from the Republic of Georgia and aspires to become an independent state. The Georgian authorities have not exercised effective control over the territory since 1993. In order to justify the last element of secession, it should be added that the Republic of Georgia, as the previous state, continues to exist as a subject of international law.

As regards South Ossetia, firstly, the Supreme Soviet of the Republic of South Ossetia declared independence from Georgia on 21 December 1991. A referendum on independence and on the unification with Russia was held on 19 January 1992. In consequence, the Supreme Soviet of the Republic of South Ossetia passed another Declaration of Independence of the Republic of South Ossetia. Secondly, there is neither consensus about the separation nor consent of the previous state. The Republic of Georgia did not foresee the legal procedure of separation of its autonomous oblast. What is more, the South Ossetian autonomy was abolished on 11 December 1990. Georgia considers South Ossetia to be an integral part of its territory, and this view was also held by the international community when Georgia became a member of the United Nations. Thirdly, there is the creation of a geopolitical unit independent

from the previous state with the intent to become a state. Despite the fact that the intensions of South Ossetia to function as an independent state have not been consistent, it has been functioning more or less independently from Georgia since the end of the conflict in 1992. Fourthly, the Republic of Georgia continues to exist as a subject of international law although it no longer exercises effective control over approximately 20 per cent of its territory that is *de jure* considered to be part thereof.

• It exercises effective control over its territory with a degree of stability.

As I have pointed out, effective control over the territory is exercised by the *de facto* authorities. It cannot be disputed that the regimes are stable, which has been demonstrated by almost three decades of their existence. Despite the lack of an official peace agreement, there are no ongoing hostilities; thus, both insurgency and belligerency can be excluded from consideration. However, the aforementioned judgment of the European Court of Human Rights may have brought some discrepancy into the perception of *de facto* states since it stated that the effective control over Abkhazia and South Ossetia is exercised by the Russian Federation. Undoubtedly, there has been a shift of competencies towards Russia, especially in the field of external security.

• It has not been recognized by the majority of the international community (it has been recognized by no UN member state or by few of them).

So far, Abkhazia has been recognized by five UN member states (the Russian Federation, Nauru, Nicaragua, Syria and Venezuela). South Ossetia has been so far recognized by five UN member states. The vast majority of the international community continues to consider Abkhazia and South Ossetia as an integral part of Georgia and upholds its territorial integrity.

• It has the ability to exercise most of the internal and external functions of a state, including provision of services.

It follows from the research conducted with the experts in Georgia proper and Abkhazia that the latter is characterized by a relatively high stability. The parameters relating to the relationship between the regime and the residents scored 6.17 points, to the internal sphere 3.98 points and to the external sphere 4.08 points. Despite non-recognition, the inner state-building processes show a significant level of progress.

The average score of South Ossetia for the parameters relating to the regime-resident relationship was 4.46 (ranging from 1.18 to 6.25), 2.77 for

the internal sphere (ranging from 2.0 to 4.75) and 1.70 for the external sphere (ranging from 0.88 to 2.75). This was significantly lower than in the case of Abkhazia. The assessment of parameters both in the internal and the external sphere clearly reflects the heavy dependence on the Russian Federation, without which the exercise of state functions would most probably be severely disrupted. Moreover, some state functions, especially in the external sphere, have been delegated to the Russian Federation. Notwithstanding the previous reservations, Abkhazia and South Ossetia can clearly be considered *de facto* states.

One of the main objectives of the monograph, as outlined in the first research question, was to analyze the notion of *de facto* state and identify its key defining elements. Therefore, I have examined the definitions of *de facto* states and other similar notions. Based on a qualitative analysis of these terms, I am convinced that the notion of *de facto* state consists of the following four elements, which are to be present simultaneously:

- 1. It is a geopolitical unit created as a result of secession from the parent state:
- 2. It exercises effective control over its territory with a degree of stability (insurgencies and belligerencies are excluded from this definition);
- 3. It has not been recognized by the majority of the international community (it has been recognized by no UN member states or only by few of them);
- 4. It has the ability to exercise most of internal and external functions of a state, including provision of services.

The term "de facto state" applies to geopolitical units functioning as states. However, from the point of view of international law, they remain without broader international recognition, and their statehood is questioned. Nevertheless, it seems that the attribute "de facto" may overcome the discrepancy between the political and the legal perception of this phenomenon. The term "de facto state" appears to be most accurate when describing an entity

that fulfills basic requirements of a state, albeit without broader international recognition. In public international law, the term "*de facto* regime" is preferred so as not to attribute statehood to an entity which may have been created in breach of peremptory norms of international law.

The traditional scholarship on statehood has focused on three basic elements: territory, permanent population, and effective government. It needs to be highlighted that the term "effective government" indicates that a government acts independently of foreign powers and is able to enact and enforce rules inside the state as well as to fulfill its obligations under international law. It has been established that a temporary loss of effective control in consequence of a foreign invasion, internal armed conflicts, riots, or natural disasters does not affect the international status of states. The term "sovereignty" has been analyzed in Chapter 1. Each element of statehood is a bearer of sovereignty, that is, sovereignty blends the requirements of statehood together. A state can be created through several modes under international law, such as original occupation of a territory, granting of independence to colonial entities, unification of states, separation, secession, dissolution, and through an international legal act. The process of state creation must not contradict the right to self-determination of peoples, which belongs to jus cogens principles of international law. The maintaining of international relations with other states falls within external functions of states, while internal functions include regulatory, cultural, educational, and social spheres of state activities.

The theoretical findings discussed in Chapter 1 and Chapter 2 have been applied to the cases of Abkhazia and South Ossetia. With regard to the second research question, secession has been defined as a process consisting of four elements:

1. A unilateral withdrawal of an integral part of the territory of an existing state carried out by the population of that state. Abkhazia and South Ossetia unilaterally declared their independence from Georgia at the beginning of the 1990s, which was accompanied by an internal armed conflict. In 1990 Abkhazia unilaterally declared itself "the Abkhaz Soviet Socialist Republic". Later, in 1994, a new constitution was adopted, which declared Abkhazia an independent state. In October 1999, a referendum took place in the territory of Abkhazia, after which another declaration of independence was adopted. In the case of South

Ossetia, a declaration of independence was adopted in May 1992, following a referendum, which took place in January 1992. Another referendum on independence took place in November 2006.

- 2. There is neither consensus nor approval by the state from which the territorial part seeks withdrawal. The constitutional framework of the Republic of Georgia did not foresee its autonomous republic or autonomous unit gaining independence. On the opposite, the central government in Georgia condemned the unilateral declaration of independence by Abkhazia and South Ossetia and maintained that these geopolitical units remain integral and inseparable parts of Georgia.
- 3. The actual creation of a geopolitical unit over which the previous state no longer exercises effective control and which aspires to become an independent state or accedes to another already existing state. Geopolitical units functioning independently of the previous state have been created in both cases. Georgia has not been exercising effective control over the territories of Abkhazia and South Ossetia (with the exception of the Upper Kodor(i) Valley in Abkhazia). Besides, both units have managed to develop administrative structures similar to those of a state. While Abkhazia has consistently sought legal independence from Georgia, in South Ossetia there appears to be no clear consensus on the issue of incorporation into the Russian Federation.
- 4. The continuous existence of the previous state as a subject of international law. Georgia remains to exist as a subject of international law; however, it no longer exercises effective control over Abkhazia and South Ossetia. In spite of that, Georgia maintains that Abkhazia and South Ossetia are its inseparable parts.

For the above reasons, I believe that the processes in Abkhazia and South Ossetia that led to their unilateral withdrawal from Georgia and their actual independence from the parent state qualify for secession. Nevertheless, the process of secession is *ex post* subject to examination of its legality. In international law, secession is a neutral act and does not violate the principle of territorial integrity of states since this principle is confined into relations between states and does not apply to relations between a state and its separatist entity. Therefore, secession, as a process between a separatist geopolitical unit and the parent state, does not violate the principle of territorial integrity.

However, a third state, which usually either supports or condemns secession, may violate the territorial integrity of another state. In the case of Abkhazia and South Ossetia, their secession in the early 1990s did not constitute violation of the territorial integrity of Georgia. Moreover, negotiations were taking place with Abkhazia and Ossetia until 2008, which proves that they were considered parties to the conflict. The analysis of the attempts to resolve the conflicts proves that not all options have been fully exhausted.

Having established that Abkhazia and South Ossetia are geopolitical units that have seceded from their parent state, the first criterion of the *de facto* state definition is thus met. Since the end of the hostilities in the early 1990s, they have both been exercising effective control over their territories with a degree of stability. Even though the ECHR established in 2021 that after the 2008 armed conflict effective control has been exercised by the Russian Federation, they still maintain control over certain areas of domestic policies. Undeniably, Georgia has not been exercising effective control over these territories since the early 1990s. Neither Abkhazia nor South Ossetia has been recognized as a state by the majority of the international community although both have been recognized by the Russian Federation and a few other states with close political and economic relations with Russia, namely Nauru, Nicaragua, Syria, and Venezuela. Tuvalu recognized Abkhazia and South Ossetia but later revoked its recognition, and the same happened with Vanuatu in relation to Abkhazia. Nevertheless, the majority of the international community consider Abkhazia and South Ossetia as integral parts of Georgia. With respect to the last criterion of the definition, i.e. the ability to exercise most of internal and external functions of a state, including provision of services, it can be concluded that the ability to do so has been sufficiently demonstrated in both cases. For these reasons, Abkhazia and South Ossetia do fulfill the definition of *de facto* state. Since statehood is something that geopolitical units aspire to, the attribute "de facto" in connection with the term "state" seems satisfactory in order to overcome the discrepancy between the political and the legal perception.

In most cases of secession, three actors can be distinguished: (1) a separatist group that struggles to withdraw from the parent state; (2) the central government that attempts to prevent withdrawal of a part of its territory; (3) a third state that either supports or condemns secession. The factors

causing secession may be divided into five categories: (1) cultural/perceptual, reflecting cultural differences between ethnic groups living in a common state; (2) economic, reflecting the economic situation in a state as well as the economic goals of different actors; (3) political, following the relations between an ethnic group and the central government, as well as the political situation in a third state; (4) demographic, which are connected with ethnic and demographic policies; (5) normative, reflecting the viewpoints of the actors as well as the efforts to legitimize their actions.

The Soviet ethnic policies in Abkhazia led to demographic changes, which were disadvantageous to the Abkhaz ethnic group. In 1989, Abkhazians constituted 18 per cent of the whole population of Abkhazia, thus being a minority, and a similar tendency was present within the ruling Abkhaz Communist Party. Both in Abkhazia and in South Ossetia, the ethnic policies became a tool used by the Soviet elites to counterbalance the central Georgian government. Furthermore, at the beginning of the 1990s, the central government was significantly weakened by internal struggles for power and by the collapse of the communist economy. Both entities claim to have the right to self-determination and to remedial secession, justifying these claims by armed conflicts against the central Georgian government.

In relation to the third research question, I have examined the parameters of stability and sustainability of Abkhazia and South Ossetia based on available documents and the information provided by experts from Georgia proper and from the two entities. They differ in many aspects, especially in the engagement with international organizations and in the role of the civil society. In Abkhazia, there is a relatively well-developed process of state-building and institutionalization. Besides, the civil society institutions in Abkhazia have a strong position in the society and participate in public life, even in the legislation process. In contrast, South Ossetia is much more isolated, the state institutions are far more fragile compared to Abkhazia, the civil society institutions are non-existent, and public resilience is significantly weaker than in Abkhazia. Another contrasting point is their desire to become an independent state. While Abkhazia somehow attempts to balance between Georgia and Russia and wishes to be independent, in South Ossetia a strong desire to become part of the Russian Federation is present. Consequently, Abkhazia struggles to engage

with the international community, while South Ossetia is oriented solely on the Russian Federation.

The hypothesis put forward at the beginning of the monograph has been verified in the case studies on Abkhazia and South Ossetia. In both cases, the Russian Federation played a decisive role in the creation and functioning of these *de facto* states. The Russian Federation has been providing them with various forms of support in both external and internal spheres, including political, economic, social, cultural, military and diplomatic support. Therefore, the Russian Federation undoubtedly serves as a guarantor of stability and sustainability of Abkhazia and South Ossetia. Paradoxically, Abkhazia scored higher than South Ossetia in all parameters. Therefore, the support provided by the patron state cannot be the sole indicator of the level of stability and sustainability; it is necessary to consider other factors, such as internal state-building processes, the level of identification of residents with the respective *de facto* state, the aspiration to become a fully recognized state, etc. Even though Abkhazia's proportion of direct budgetary income from the Russian Federation is lower than that of South Ossetia, it has been able to diversify its income. In addition, the state-building processes are more advanced in Abkhazia, and the support for its statehood is significantly higher. Nevertheless, both entities are able to perform basic state functions. The results have shown that Abkhazia as a de facto state is more stable and more resistant to the influence of the Russian Federation on its domestic policies.

With respect to both Abkhazia and South Ossetia, I have come to the following conclusions:

The 2008 armed conflict and the subsequent recognition granted by the Russian Federation to Abkhazia and South Ossetia in 2008 has put an insuperable obstacle to the peace process. Despite the initial enthusiasm about the recognition process in both Abkhazia and South Ossetia, the Russian diplomacy has failed to ensure wider recognition for them. The recognition by the Russian Federation in 2008 was followed by the imposition of the Law on Occupied Territories by the Georgian Government, which had a harmful effect on the peace process. Abkhazia and South Ossetia have been labelled as "occupied territories", which both of them refuse to accept. Moreover, the perception of the conflict has shifted on the Georgian side: whilst until 2008 Abkhazia and South Ossetia had been perceived as parties to the conflict,

since 2008 it has been claimed that the conflict existed solely between Georgia and Russia.

The analysis has shown that both Abkhazia and South Ossetia are largely reliant on Russian financial aid although there is a significant difference between the two. In contrast to South Ossetia, which does not appear to be self-sufficient without Russian financial support, Abkhazia has been able to diversify its policies. Moreover, Abkhazia endured the severe policies of isolation imposed by Georgia and the Russian Federation in the 1990s. Nowadays, it struggles to widen its international contacts and counterbalance the growing Russian influence.

Considering the ability to act independently of foreign powers and the ability to fulfill the obligations under international law, there appear to be wellgrounded doubts whether Abkhazia and South Ossetia meet these criteria. Moreover, it has been acknowledged by different international bodies that the effective control over Abkhazia and South Ossetia has been exercised by the Russian Federation. The Russian Federation appears to have extensive influence over the external policies of the examined de facto states, i. a. controls the borders of these entities, including trade and the movement of individuals, maintains its military bases, and influences their foreign policy. However, in the case of Abkhazia, the local elites have been able to preserve a relatively broad degree of autonomy in internal affairs, which Russia does not appear to interfere with to a large extent. This does not apply to South Ossetia, where even some high-ranking officials are directly staffed by the Russian Federation. Even though de facto states are reliant on their patron in many different areas, they should not be automatically regarded as "puppet states". The level of their dependence on the external patron (the Russian Federation) could be decreased through broader and more intense engagement of international organizations, especially in supporting the civil society and easing of certain restrictions.

Finally, and perhaps most importantly, the ongoing isolation of Abkhazia and South Ossetia is perceived as a grave problem for the individuals living in those territories. Therefore, there is an urgent need for a dialogue with Georgia on both formal and informal level. Nowadays, the only platform for formal discussions between Georgia on one side and Abkhazia and South Ossetia on the other are the Geneva International Discussions. However,

no significant progress has been made since 2008, and they appear to have resulted in a stalemate. Thus, there certainly is space for cooperation and dialogue on an informal level in certain areas, such as the environment, health care, reconstruction of the sewage system, electricity supply, reestablishment of transit corridors through Abkhazia and South Ossetia, etc. The dialogue could continue among non-governmental organizations. Besides, I believe there should be more support for interpersonal contacts between Abkhazians and Georgians as well as between Ossetians and Georgians, for instance through cross-border trade or youth cooperation from both sides of the *de facto* border. For this purpose, restrictions for the residents of the Gal(i) Region in Abkhazia and the Leningor (Akhalgori) region in South Ossetia should be eased so that they can cross the *de facto* border freely.

In a broader geopolitical context, I have noted that the South Caucasus is perceived as a strategically significant area for the Russian Federation. Abkhazia has a strategic position on the Black Sea coast, while South Ossetia stretches in the proximity of central regions of Georgia. Therefore, Abkhazia and South Ossetia play an important role in the foreign policy of the Russian Federation, especially in the military sphere. The destabilization of Georgia serves as a means to prevent it from integration into Western economic and military structures.

With regard to possible solutions to the status of the *de facto* states, their reintegration into Georgia is not likely to happen in the near future due to the fact that neither the elites in Abkhazia nor those in South Ossetia are interested in pursuing such a solution. In both entities, there are deep roots of ethnic conflict, and the level of mutual distrust remains relatively high. What is more, the Russian Federation considers both entities as areas of strategic military value. Thus, it seems highly unlikely that Russia would give up on these territories unless Georgia returns to its sphere of interest. The possibility of direct annexation of the territories to the Russian Federation does not appear feasible in the nearest future since the Russian Federation has formally recognized these entities as independent states and signed a series of agreements with them. Although in South Ossetia there have been attempts at integration into Russia, there was no significant interest in pursuing this policy on the Russian side. It also appears that the public interest in annexation of Abkhazia and South Ossetia is relatively small;

therefore, the Russian political elites are not pursuing this objective. At the moment, there are no indications that the foreign policy of the Russian Federation towards Abkhazia and South Ossetia would change in the near future. Nevertheless, it is impossible to settle the conflict without direct participation of the Russian Federation due to its involvement in both entities. On the other hand, a broader international recognition of Abkhazia or South Ossetia cannot be expected in the near future. In the light of the 2021 decision of the ECHR, they are considered occupied territories over which the Russian Federation has been exercising effective control. In this context, recognition would mean legitimization of violations of international law. Thus, members of the international community are bound by the obligation not to recognize unlawful situations, which is a peremptory norm under international law.

Despite the fact that the *status quo* is most likely to persist in the years to come, even in the next decades, I remain optimistic that the strengthening of peace initiatives as well as the enhancement of personal contacts between individuals from both sides of the conflict line may bring the conflicts to an end.

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Interview 7. Tbilisi, 7 December 2018.

Interview 8. Tbilisi, 12 December 2018.

Interview 9. Tserovani, 16 January 2019.

Interview 10. Tbilisi, 17 January 2019.

Interview 11. Tbilisi, 23 January 2019.

Interview 12. Tbilisi, 23 January 2019.

Interview 13. Tbilisi, 24 January 2019.

Interview 14. Tbilisi, 1 April 2019.

Interview 15. Tbilisi, 8 April 2019.

Interview 16. Sukhum(i), 20 May 2019.

Interview 17. Sukhum(i), 20 May 2019.

Interview 18. Sukhum(i), 21 May 2019.

Interview 19. Sukhum(i), 21 May 2019.

Interview 20. Sukhum(i), 21 May 2019.

Interview 21. Tbilisi, 28 May 2019.

Interview 22. Tbilisi, 28 May 2019.

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## List of tables

Table 1: Elements of sovereignty and their assessment according to E. Berg and E. Kuusk	17
Table 2: Questionnaire form	20
Table 3: Typology of state functions	51
Table 4: Key elements of <i>de facto</i> state definitions	93
Table 5: An overview of key elements of <i>de facto</i> state definitions	94
Table 6: Factors of secession according to D. Horowitz	103
Table 7: An overview of factors and causes of secession	106
Table 8: Ethnic composition of the Sakha Republic in 1926–2002	108
Table 9: Development of the ethnic structure in Estonia in 1934–1989 (in per cent)	108
Table 10: Development of the ethnic structure in Latvia in 1935–1989 (in per cent)	109
Table 11: Relative volume of industrial output	139
Table 12: Average annual employment by sector	140
Table 13: Ethnic composition of Abkhazia	147
Table 14: Ethnic composition of the Abkhaz Communist Party	149
Table 15: Ethnic composition of Georgia	150

392 List of tables

Table 16: An overview of the factors and circumstances	
of the secession of Abkhazia	153
Table 17: Assessment of the <i>de facto</i> sovereignty of Abkhazia	168
Table 18: Assessment of criteria concerning the regime-resident relationship	169
Table 19: Assessment of the criteria concerning the internal sphere	177
Table 20: Assessment of the criteria concerning the external sphere	197
Table 21: UN Member states that recognize Abkhazia as an independent country	211
Table 22: Ethnic composition of South Ossetia	233
Table 23: An overview of the factors and circumstances of secession of South Ossetia	237
Table 24: Assessment of the <i>de facto</i> sovereignty of South Ossetia	243
Table 25: Assessment of the criteria concerning the regime-resident relationship	248
Table 26: Assessment of the criteria concerning the internal sphere	258
Table 27: Assessment of the criteria concerning the external sphere	277
Table 28: UN member states that recognize South Ossetia as an independent country	287
Table 29: Future scenarios regarding Abkhazia and South Ossetia	314
Table 30: International recognition of Abkhazia and South Ossetia	332
Table 31: Diplomatic relations of Abkhazia and South Ossetia	333

# List of figures

Figure 1: Ethnic composition of Abkhazia in 1989	151
Figure 2: Ethnic composition of Abkhazia in 2016	151
Figure 3: Comparison of Abkhazia's budget between 2009 and 2019 (in billions of rubles)	186
Figure 4: Comparison of GDP of Georgia and Abkhazia in 2016	187
Figure 5: Import partners of Abkhazia	201
Figure 6: Ethnic composition of South Ossetia in 1989	233
Figure 7: Ethnic composition of South Ossetia in 2016	234
Figure 8: Comparison of South Ossetia's state budget between 2018 and 2020 (in billions of rubles)	268
Figure 9: Comparison of GDP per capita in Georgia and South Ossetia in 2015 (in USD)	268
Figure 10: Level of identification of residents as citizens of the respective <i>de facto</i> states	318
Figure 11: Participation of the population in national elections ( $de\ facto$ )	318
Figure 12: Participation of the population in national referenda (de facto)	318

Figure 13: Participation of the population in local civic activities, community initiatives and communal elections	319
Figure 14: Activity of civil society institutions (NGOs) in the territories of the respective <i>de facto</i> states	319
Figure 15: Defense capability and border control (fighting of illegal trespassing and smuggling)	325
Figure 16: Internal security (protection of people's rights and freedoms, possession, public order, fighting of organized crime, etc.)	325
Figure 17: Effectiveness of the judicial system	325
Figure 18: Governance (relation between the central and the local government; level of decentralization)	326
Figure 19: Economic situation (GDP per capita; average income; employment rate; inflation rate)	326
Figure 20: Level of development of the private economy sector (rate of economic activity)	326
Figure 21: Social welfare system (unemployment; pensions; family policy; social programs)	327
Figure 22: Healthcare system (accessibility; facilities; health insurance)	327
Figure 23: Education system (structure; accessibility; educational programs)	327
Figure 24: Transport and infrastructure (roads, railway system, air transport, pipelines, hydroelectric system, etc.)	328
Figure 25: Cooperation with international organizations and UN member states	331
Figure 26: Abidance by international law standards for human rights	331
Figure 27: Foreign trade and foreign investment	331
Figure 28: International civic, cultural, sports, and educational cooperation	332
Figure 29: Future aspirations to become a fully recognized state	332

## List of illustrations

Map 1: The territory of Abkhazia	123
Map 2: Administrative division of the Caucasus in the USSR (1957–1991)	131
Map 3: Division of Abkhazia according to I. Khaindrava's plan	156
Map 4: Map of South Ossetia	218
Map 5: Zugdidi–Sukhum(i)–Sochi rail and road corridor through Abkhazia	324
Map 6: Tbilisi–Tskhinval(i)–Vladikavkaz road corridor through South Ossetia	324
Picture 1: Liberty Square in Sukhum(i), the abandoned building of the Supreme Soviet covered with a banner reading "25 [years of] Victory"	138
Picture 2: National flag of the Republic of Abkhazia	166
Picture 3: National emblem of the Republic of Abkhazia	166
Picture 4: Checkpoint on the Ingur(i) bridge on the way to Abkhazia from Zugdidi	180
Picture 5: The Black Sea coast in Gagra	189
Picture 6: Sukhum(i) central market	190

396 List of illustrations

Picture 7: Sukhum(i) train station	197
Picture 8: National flag of the Republic of South Ossetia	244
Picture 9: Coat of arms of the Republic of South Ossetia	245

# Streszczenie

Przedmiotem niniejszej monografii są państwa *de facto* na obszarze postsowieckim. Od początku lat dziewięćdziesiątych XX w. jednostki geopolityczne takie jak: Abchazja, Osetia Południowa, Górski Karabach i Naddniestrze, funkcjonują niezależnie od państw macierzystych, aczkolwiek państwa macierzyste utrzymują, że owe jednostki geopolityczne nadal pozostają ich integralnymi częściami. Problematyka powstawania i upadku państw, ich uznanie lub nieuznanie przez inne państwa, oraz funkcjonowanie państw nieuznanych, stanowią aktualne wyzwanie dla społeczności międzynarodowej. Kwestia państw nieuznanych i częściowo uznanych jest niewątpliwie zagadnieniem interdyscyplinarnym, ponieważ dotyczy nie tylko nauk o polityce, ale także stosunków międzynarodowych, szeroko rozumianego prawa międzynarodowego publicznego oraz nauk o bezpieczeństwie.

Celem monografii jest analiza procesu powstawania i funkcjonowania państw *de facto* oraz czynników zewnętrznych i wewnętrznych, które przyczyniają się do ich stabilności. Niniejsza praca dąży do rozwiązania następujących zagadnień badawczych:

- Czym jest państwo de facto i jakie są kluczowe elementy definicji tego pojęcia?
- 2. W jaki sposób można zdefiniować secesję i w jaki sposób secesja znajduje odzwierciedlenie w procesie powstawania państw *de facto*?

398 Streszczenie

3. Co przyczyniło się do tego, że Abchazja i Osetia Południowa były w stanie przetrwać jako państwa *de facto* kilka dekad? Jakie są elementy ich stabilności?

W pracy została sformułowana następująca hipoteza: W procesie powstawania i funkcjonowania państw *de facto* na obszarze postsowieckim, czynnik zewnętrzny w postaci państwa trzeciego odgrywa decydującą rolę, ponieważ państwo–gwarant zapewnia stabilność i trwałość państwa *de facto*. Im większe jest wsparcie ze strony państwa–gwaranta, tym wyższy jest poziom stabilności państw *de facto*.

Powyższa hipoteza została zweryfikowana za pomocą metody analizy zjawiska funkcjonowania państw de facto jako systemów zależnych od siebie czynników zewnętrznych i wewnętrznych. Metoda ta była istotna dla analizy współzależności pomiędzy secesją jako procesem państwotwórczym a jednostkami geopolitycznymi określanymi jako państwa de facto. Metodę instytucjonalno-prawną wykorzystano w celu analizy formalnej strony powstawania i funkcjonowania państw de facto, przy czym przeanalizowano szereg aktów prawa międzynarodowego oraz prawa wewnętrznego, a także orzecznictwa międzynarodowego. Metoda porównawcza pozwoliła zaś na wskazanie zbieżności i różnic w wybranych wskaźnikach stabilności w odniesieniu do Abchazji i Osetii Południowej. Tym samym wykryto specyfikę funkcjonowania tych jednostek geopolitycznych. W celu zanalizowania genezy zjawiska państw de facto pomocniczo została zastosowana także metoda historyczno-genetyczna. Takie podejście metodologiczne wynikało z interdyscyplinarnego charakteru obiektu badań i pozwoliło na kompleksowe ujęcie badanej problematyki. Rozważania w niniejszej monografii, a przede wszystkim w Rozdziale V, mieszczą się w paradygmacie realizmu strukturalnego, stosując regionalne podejście analityczne do podmiotu badań według teorii B. Buzana.

W pracy zastosowano także porównawcze studium przypadków Abchazji i Osetii Południowej jako państw *de facto* na obszarze postsowieckim. Wybór tych jednostek geopolitycznych wynika z następujących czynników:

- Lokalizacja (obydwie jednostki oderwały się od tego samego państwa macierzystego);
- Wymiar geopolityczny (obydwie jednostki znajdują się na przestrzeni postsowieckiej oraz należą do tzw. pierwszej generacji państw de facto na tym obszarze);

• Stopień uznania międzynarodowego (obydwie jednostki jako jedyne państwa *de facto* na obszarze postsowieckim zostały uznane przez Federację Rosyjską oraz kilka innych państw);

 Wzajemna współpraca (Abchazja i Osetia Południowa uznają się nawzajem i w przeszłości aktywnie współpracowały w ramach Wspólnoty na rzecz Demokracji i Praw Narodów).

Szczególnie ważne dla niniejszej monografii było przeprowadzenie badań jakościowych. Autor prowadził badania terenowe podczas pobytu na Uniwersytecie im. Ilii Czawczawadze w Tbilisi (październik 2018–lipiec 2019) w ramach stypendium Międzynarodowego Funduszu Wyszehradzkiego oraz na Suchumskim Państwowym Uniwersytecie w Tbilisi (wrzesień 2021–październik 2021) w ramach stypendium Narodowej Agencji Wymiany Akademickiej. Podczas ww. pobytów przeprowadzono kwerendy biblioteczne i archiwalne. Z technik badawczych wykorzystano ankietę oraz ustrukturyzowane pogłębione wywiady eksperckie, w których wzięło udział 25 przedstawicieli władz Gruzji, Abchazji i Osetii Południowej; podmiotów biorących udział w procesie pokojowym oraz ośrodków naukowych. Na potrzeby ankiety i wywiadów zidentyfikowano 20 wskaźników stabilności państw *de facto*, które podzielono na trzy grupy.

Pierwsza grupa dotyczyła relacji między reżimem a ludnością:

- Poziom identyfikacji ludności jako obywateli państw de facto;
- Udział ludności w ogólnopaństwowych wyborach;
- Udział ludności w ogólnopaństwowych referendach;
- Udział ludności w lokalnych inicjatywach obywatelskich i w wyborach lokalnych;
- Aktywność instytucji społeczeństwa obywatelskiego (NGO) na obszarze państw *de facto*.

Druga grupa odnosiła się do wewnętrznej sfery funkcjonowania państw *de facto*:

- Zdolność obronna (zwalczanie nielegalnego przekraczania granicy i przemytu);
- Bezpieczeństwo wewnętrzne (ochrona praw obywateli, porządku publicznego, zwalczanie przestępczości zorganizowanej);
- Efektywność systemu sądownictwa;
- System zarządzania (stosunki pomiędzy władzą centralną i lokalną, stopień decentralizacji);

- Sytuacja ekonomiczna (PKB na obywatela, przeciętny dochód, wskaźnik zatrudnienia, wskaźnik inflacji);
- Poziom rozwoju sektora prywatnego (wskaźnik aktywności gospodarczej);
- System zabezpieczenia społecznego (programy społeczne zasiłki dla bezrobotnych, emerytury, polityka rodzinna, programy społeczne);
- System opieki zdrowotnej (dostępność, wyposażenie obiektów opieki zdrowotnej, ubezpieczenie zdrowotne);
- System edukacji (struktura, dostępność, programy kształcenia);
- Transport i infrastruktura (drogi, kolej, transport powietrzny, rurociągi, elektrownie wodne, itd.).

Trzecia grupa dotyczyła sfery zewnętrznej:

- Współpraca z organizacjami międzynarodowymi i państwami członkowskimi ONZ;
- Przestrzeganie międzynarodowych standardów praw człowieka;
- Handel zagraniczny i inwestycje zagraniczne;
- Międzynarodowa współpraca w zakresie kultury, sportu i edukacji;
- Aspiracje do pełnego uznania międzynarodowego.

Powyższe wskaźniki zostały ocenione w ankiecie przez ekspertów w skali 0-10 (przy czym 0 oznacza najniższą ocenę, a 10 najwyższą ocenę). Po wypełnieniu ankiety przeprowadzono z ekspertami ustrukturyzowane wywiady pogłębione, w których szczegółowo omówiono ocenę wskaźników stabilności państw *de facto*. Każdy z wywiadów trwał od 40 do 90 minut. Abchazja we wszystkich wskaźnikach osiągnęła wyższą ocenę niż Osetia Południowa.

Przedmiotem pierwszego rozdziału są teoretyczne aspekty państwowości. Poruszono zagadnienia dotyczące pojęcia państwa oraz procesów państwotwórczych. Przedstawiona została analiza elementów państwowości według teorii G. Jellineka. Przyjęto tezę, że problem powstawania państw jest związany z prawem do samostanowienia narodów, które stanowi jedną z podstawowych przesłanek dla oceny legalności procesu kreacji państwa.

Celem drugiego rozdziału jest analiza następujących pojęć: secesja, państwo de facto, reżim de facto, quasi-państwo, jednostka sui generis. W tym też rozdziale poruszono kwestię oceny legalności secesji jako procesu państwotwórczego oraz czynników, które prowadzą do secesji. Z analizy

przedstawionych źródeł wynika, że państwo *de facto* można zdefiniować jako jednostkę geopolityczną, która spełnia łącznie następujące przesłanki:

- 1. Powstała w wyniku secesji;
- 2. Sprawuje efektywną kontrolę nad swoim terytorium oraz posiada pewien stopień stabilności (pomijając tymczasową kontrolę nad terytorium podczas konfliktu zbrojnego przez powstańców lub stronę wojującą ang. *insurgencies* i *belligerencies*);
- 3. Nie została uznana przez większość społeczności międzynarodowej (przez żadne państwo członkowskie ONZ lub uznanie przez kilka pojedynczych państw);
- 4. Posiada zdolność do pełnienia większości funkcji wewnętrznych i zewnętrznych, w tym także zdolność do dostarczania usług publicznych.

Zasada samostanowienia narodów należy do norm bezwzględnie obowiązujących (*jus cogens*), dlatego proces powstania państwa musi być zgodny z powyższą zasadą. Secesja części terytorium państwa nie stanowi naruszenia zasady integralności terytorialnej państwa, ponieważ zasada ta odnosi się do stosunków między państwami i nie znajduje zastosowania w stosunkach pomiędzy państwem macierzystym a jednostką separatystyczną dążącą do secesji.

Wnioski teoretyczne z rozdziału pierwszego i drugiego zostały zastosowane w studiach przypadków Abchazji i Osetii Południowej. W odniesieniu do drugiego pytania badawczego, ustalono poniższe cztery elementy definicji secesji:

- 1. Jednostronne oderwanie się integralnej części terytorium istniejącego państwa poprzez ludność państwa macierzystego. Abchazja jednostronnie ogłosiła niepodległość w 1994 r. a następnie znowu po przeprowadzeniu referendum w 1999 r. Ogłoszenie niepodległości Osetii Południowej miało miejsce w 1992 r. W przypadku obydwu jednostek geopolitycznych aktom niepodległości towarzyszył konflikt zbrojny.
- 2. *Brak konsensusu bądź zgody państwa macierzystego*. Konstytucja Gruzji nie przewidywała możliwości odłączenia się części terytorium. Abchazja i Osetia Południowa do dziś pozostają traktowane przez gruzińskie ustawodawstwo jako integralne części Gruzji.
- 3. Stworzenie jednostki geopolitycznej, nad którą państwo macierzyste nie wykonuje efektywnej kontroli i która dąży do bycia niepodległym

państwem lub do dołączenia do innego już istniejącego państwa. W obu przypadkach doszło do stworzenia jednostek geopolitycznych ze strukturami podobnymi do państwa, nad którymi Gruzja od wczesnych lat dziewięćdziesiątych XX w. nie sprawuje efektywnej kontroli (z wyjątkiem górnej części Doliny Kodori w Abchazji do 2008 r.). Dążenia Abchazji do bycia niepodległym państwem oraz do uznania międzynarodowego są zdecydowanie mocniejsze niż w przypadku Osetii Południowej, w której wciąż toczy się publiczna debata na temat przyłączenia do Federacji Rosyjskiej.

4. Kontynuacja istnienia państwa macierzystego jako podmiotu prawa międzynarodowego. Gruzja nadal istnieje jako podmiot prawa międzynarodowego, i chociaż nie sprawuje efektywnej kontroli nad Abchazją i Osetią Południową, to utrzymuje, że pozostają one integralnymi częściami Gruzji.

Na podstawie rozważań zawartych w monografii można dojść do konkluzji, że Abchazja i Osetia Południowa są państwami *de facto*. W obydwu przypadkach decydującą rolę w procesie ich powstawania i funkcjonowania odgrywała Federacja Rosyjska, która udziela tym jednostkom różnych form wsparcia (m.in. polityczne, ekonomiczne, społeczne, kulturalne, militarne i dyplomatyczne). Nie ulega więc wątpliwości, że Federacja Rosyjska jest gwarantem stabilności Abchazji i Osetii Południowej.

Jak wynika z ewaluacji przeprowadzonych ankiet i wywiadów eksperckich, Abchazja we wszystkich wskaźnikach uzyskała wyższą ocenę niż Osetia Południowa. Na podstawie przeprowadzonej analizy można przyjąć, że wsparcie udzielone przez państwo trzecie nie może być jedynym wyznacznikiem stabilności, a więc pod uwagę należy brać także inne wyznaczniki, w szczególności: wewnętrzne procesy budowania państwowości, poziom autoidentyfikacji ludności z państwem *de facto*, dążenia do powszechnego uznania przez społeczność międzynarodową. Pod tym względem Abchazję cechuje bardziej zaawansowany stopień budowania instytucji, większe poparcie społeczne dla idei państwowości oraz większy stopień odporności wobec wpływu Federacji Rosyjskiej na wewnętrzne procesy polityczne.

Z analizy wskaźników stabilności jednocześnie wynikają poważne wątpliwości co do zdolności Abchazji i Osetii Południowej do podejmowania działań niezależnie od państw trzecich oraz do wypełniania zobowiązań

wynikających z prawa międzynarodowego, przede wszystkim w obszarze ochrony praw człowieka. Istotnym, do dziś nierozwiązanym problemem pozostaje kwestia powrotu osób wewnętrznie przesiedlonych z terytoriów Abchazji i Osetii Południowej, w szczególności ludności gruzińskiej. W opinii instytucji międzynarodowych (Europejski Trybunał Praw Człowieka, Zgromadzenie Parlamentarne Rady Europy), efektywna kontrola nad Abchazją i Osetią Południową pozostaje sprawowana przez Federację Rosyjską, ponieważ wywiera ona bezpośredni wpływ na działania zewnętrzne i wewnętrzne państw *de facto*, sprawuje kontrolę nad ich granicami oraz utrzymuje bazy wojskowe na terytorium tych jednostek.

Trwająca od początku lat dziewięćdziesiątych XX w. izolacja Abchazji i Osetii Południowej niewątpliwie stwarza barierę dla osób żyjących na tych terytoriach. Problematyczne jest również postrzeganie konfliktu przez stronę gruzińską, która utrzymuje, że spór istnieje tylko pomiędzy Gruzją a Rosją, a nie pomiędzy Gruzją a jednostkami separatystycznymi. Wojna gruzińskorosyjska z 2008 r., następne uznanie Abchazji i Osetii Południowej przez Federację Rosyjską oraz wprowadzenie przez Gruzję Ustawy o terytoriach okupowanych, stworzyły poważne przeszkody dla uregulowania konfliktu. Reintegracja Abchazji i Osetii Południowej w ramach Gruzji w najbliższej przyszłości nie jest prawdopodobna, natomiast w opinii autora konieczne jest wznowienie dialogu pomiędzy Tbilisi i Suchumi/Cchinwali zarówno na nieoficjalnym, jak i na oficjalnym szczeblu.

### Α

Alborova Dina 256, 282 Ardzinba Vladislav 181, 188, 194 Ascherson Neal 256

### B

Bagapsh Sergei 173, 302
Berezowski Cezary 111
Berg Eiki 17, 167
Bgazhba Oleg 126
Bibilov Anatoly 251, 257, 266, 283, 303
Blakkisrud Helge 18
Bliev Mark 220, 231
Boden Dieter 156-158, 164
Bokeria Giga 287
Brown Michael 23, 100, 101
Brownlie Ian 38
Bush George 288
Buzan Barry 23, 291, 293-295, 297, 298, 398
Bzhania Aslan 296, 308

# $\mathbf{C}$

Canning George 112 Caspersen Nina 83, 93 Cassesse Antonio 94 Castellino Joshua 76 Charaia Vakhtang 269 Chazan Naomi 70 Chervonnaya Svetlana 135 Chibirov Lyudvig 220, 239 Chugaenko Iurii 232 Closson Stacy 181 Comai Giorgio 191 Cooley Alexander 163, 185 Coppieters Bruno 141, 308 Cornell Svante 230 Crawford James 37, 43, 48, 58, 62, 67, 68, 72, 74, 111 Cristescu Aureliu 58 Czapliński Władysław 120 Czubocha Krzysztof 30

### D

de Waal Thomas 231, 234 deLisle Jacques 92 Donisthorpe Wordsworth 50 Deutsch Karl W. 49, 50 Dördelmann Gabriele 64 Dubrovin Nikolay 219, 220 Dzhjoeya Alla 251

#### E Ţ Eberhardt Adam 301 **Jackson Robert 88** Ehrlich Ludwik 24 Jankuv Juraj 84 Jellinek Georg 16, 27, 34, 400 F Joseliani Jaba 144 Falkowski Maciej 87 K Florea Adrian 83, 93 Frowein Jochen 85, 112 Karski Karol 69 Kelekhsaeva Irina 257, 263 G Kelsen Hans 115 Gabelia Neno 294, 307 Kermach Ruslan 18 Gakheladze Zaza 320 Khaindrava Ivliane 155, 156 Gamakharia Jemal 134 Khajimba Raul 172, 173, 182, 198, 296, 302 Gamsakhurdia Zviad 133, 134, 141-144, 210, Kitovani Tengiz 144 228, 229, 231, 296, 301 Klafkowski Alfons 48 Gaprindashvili Paata 309 **Knorring Karl 218** Gaprindashvili Vazha 320 Kohen Marcelo 62, 74 Kokoity Eduard 241, 252, 282, 286 Geldenhuys Deon 91, 93 George Julie 137 Kolossov Vladimir 89 Giorgi the Glorious 217 Kolstø Pål 18, 89, 93 Górecki Wojciech 128 Kopeček Vincent 178, 185 Grono Magdalena 181, 192 Kosienkowski Marcin 90, 311 Grotius Hugo 28 Kutashvili Levan 278 Gurashi Romina 294, 307 Kuusk Ene 17, 167 Gventsadze Roman 133 Kvarchelia Liana 176 Η L Hailbronner Kay 75 Lakoba Stanislav 126, 141 Hale Henry 101 Lauterpacht Hersch 73, 113 Hammarberg Thomas 181, 192 Lenin Vladimir 30, 221 Haverland Christine 61, 114 Lordkipanidze Vazha 232 Hegel Georg W. F. 29 Lynch Dov 81, 82 Heintze Hans J. 62, 72 Heywood Andrew 28 M Higgins Rosalyn 120 Makowski Wacław 49 Hobe Stephan 63, 86 Malanczuk Peter 112 Hoch Tomáš 231 Malenovský Jiří 66 Horowitz Donald 23, 101-104, 140, 235 Margiev Vladimir 221 Markedonov Sergei 300 Mc Garry John 82 Ingorokva Pavle 135 Medvedev Dmitry 210, 303, 312, 314 Melnikov Aleksei 314 Ipsen Knut 73

Merakishvili Tamara 257 Schaller Christian 76 Merkel Angela 214 Shamba Sergei 204, 300 Mihalkanin Edward 139 Shanava Timur 128 Mik Cezary 48 Shevardnadze Eduard 133, 135, 144, 209, Mironov Sergey 312, 314 237, 239, 295, 301 Mitchell Lincoln 163, 185 Sigua Tengiz 144 Muszyński Mariusz 79 Simonovich Fiodor 218 Siroky David 23, 99 Skakov Aleksandr 300 Navalny Alexei 313, 314 Skubiszewski Krzysztof 119 Smith David 28 Sotieva Larisa 256 0 O'Loughlin John 89 Souleimanov Emil 231, 236 Oeter Stefan 87 Spears Ian 87, 93 Ondřej Jan 56 Stalin Joseph 130, 135, 159, 227 Oppenheim Lassa 30, 34, 36, 74, 109, 110, Stansfield Gareth 83, 93 Staszczyk Artur 50 Otkhozoria Giga 320 Steinmeier Frank 161 Stimson Henry 117 p Strachota Krzysztof 87 Papaskiri Zurab 129 Strekalov Stepan 219 Paskevich Ivan 219 Surkov Vladislav 296 Pavković Aleksandar 65 Svaček Ondřej 68 Pavliashvili Ioseb 278 Pegg Scott 80, 81, 93 Tamar the Great 216 Pełczyńska-Nałęcz Katarzyna 87 Tatunashvili Archil 278, 279, 320 Pennock Roland J. 28 Petrażycki Leon 28 Tomuschat Christian 58 Toomla Raul 84, 85, 95 Pieńkowski Jakub 131 Pliev Aleksandr 272 Totadze Anzor 232 Podgorzańska Renata 50 Turowski Jan 29  $\mathbf{v}$ R Raap Christian 86 van Evera Stephen 23, 98 Radan Peter 63, 65 Voronov Yuri 136 Rohoziński Jerzy 125 W Rywkin Michael 89 Weber Max 29 S Weeramantry Christopher 119 Saakashvili Mihkeil 160, 226, 239, 240, Wittke Cindy 298 285, 303 Wojtaszczyk Konstanty 51

Wood John 23, 97

Sanakoev Dmitry 241, 303

# Y

Yeltsin Boris 237, 295

 $\mathbf{Z}$ 

Zenderowski Radosław 131 Zhirinovsky Vladimir 312, 313, 314 Zieliński Eugeniusz 51 Zourabichvili Salome 213, 299 Zyuganov Gennady 312, 313, 314

# Index of geographic names

### Azerbaijan 12, 129, 130, 196, 207, 293, 295, 297, 302, 315 Abkhazia 9, 11-13, 16, 18, 20, 23-25, 46, 86, 89, 90, 123-130, 132-196, 198-214, 222,229, 231, 234, 238, 240, 242, 248, Bangladesh 63, 64, 67, 74, 99 256, 267, 270, 272, 274, 276, 277, 281, Basque Country 102 282, 284, 286-289, 291, 293, 294, 295, Belarus 207, 293, 314, 315 296, 298-340, 342-349 Berula 279 Adjaria (Adjarian Autonomous SSR) 129, Biafra 73, 97, 99, 104, 113, 114 130, 132, 222 Black Sea 82, 123, 124, 125, 134, 188, 189, Adler 11, 188 307, 323, 348, Adygea 127, 198, 293 Bophuthatswana 57 Afghanistan 86, 90 Borjomi 239 Africa 41, 55, 57, 119, 120 Bosnia and Herzegovina 37, 48, 64, 90, 104 Akhalgori (Leningor) 249, 250, 257, 258, Bulgaria 112, 127 262, 263, 273, 275, 278, 279, 317, 322, Burundi (Urundi) 48, 112 348 Bzyp River 155 Albania 35, 74 Aragvi 218 C Argvitsi 279 Catalonia 85, 100, 102 Armenia 12, 99, 129, 196, 207, 243, 293, 297, Central African Republic 112 315, 316, 335, Central Asia 278, 292, 295, 304, Asia 55, 278, 292, 293, 295, 304 Chechnya 54, 73, 90, 145, 198, 207, 293, 295, Austria 45 296, 302, 307

China (People's Republic of China) 9, 86, 260, 262, 263, 268, 270, 272, 273, 275-99, 107, 117, 295 -281, 284-289, 292, 293, 297, 299-302, Ciskei 57 304-312, 314-317, 320-323, 329, 330, 333-339, 342-348 Comoros 112 Crimea 10, 56, 72, 77, 78, 126, 185, 204, 217, German Democratic Republic (GDR) 45, 256, 283, 293, 296, 309, 312, 313, 336 116, 117 Ghana 112 Croatia 37, 63, 64 Cyprus (Republic of Cyprus) 45, 46, 121 Gori 221, 276, 287, 323 Czech Republic 47, 65 Great Britain 9, 61, 112, 113 Czechoslovakia 35, 65, 141 Greater Liakhvi 218, 219 Grenada 112 D Gudauta 126, 134, 179, 184, 187 Dominica 112 Gulripsh 155, 184 Donbas 336 Gumista River 155 Donetsk 281 Donetsk People's Republic 10, 47, 72, 203, Η 294, 309 Haiti 104, 113 Dzaur Region 262 Dzaurikau 323 I Iasochka 136 E Imereti 228 Egypt 45 India 33, 74 Eredvi 241, 279 Ingur(i) 179, 180, Ergneti 239, 264, 270, 330 Ingur(i) River 123, 125, 144, 196, 329, 337 Estonia 47, 108, 292 Iran 297, 298 Iraq 31, 101 F Israel 112, 113 Federal Republic of Germany 45, 116 Italy 27, 97, 99, 200 Finland 36 Ivory Coast 104, 113 France 9, 112, 113 J G Japan 117 Gabon 104 Java 239, 250, 261 Gagra 11, 124, 184, 187-189 Javakheti Region 99 Jerusalem 119 Gal(i) 24, 146, 148, 159, 161, 171, 173, 175, 176, 180, 181, 184, 187, 193, 199, 206, 317, K 322, 337, 348 Gambia 45 Kabardino-Balkaria 199, 293 Georgia 9, 11, 14, 16, 18, 22-25, 46, 47, 99, Karachay-Cherkessia 199, 293 Katanga 72, 97, 99, 102 123-125, 127-165, 167-171, 173, 176, 177, 179, 180, 182-184, 186-188, 192-196, 198, Kazakhstan 207, 295 199, 202-232, 234-243, 247-249, 259, Kazbegi 243

Khelchua 262	N
Khetagurovo 266 Kodori Valley 160, 161, 343	Nagorno-Karabakh 9, 12, 90, 203, 281, 293-295, 297, 298, 315, 316, 328
Kongo 102 Kosovo 9, 10, 23, 37, 46, 55, 56, 68, 73, 77,	Nauru 112, 198, 211, 247, 277, 285, 287, 322, 339, 344
78, 89, 90, 95, 112-114, 304 Krasnodar 192	Nicaragua 198, 211, 247, 250, 277, 285, 287, 332, 339, 344
Krasnodar Krai 228, 322	Nigeria 73, 102, 104, 113, 114
Ksani 219	Nizhny Zaramag 19, 262
Kudarovskoye 219	North Ossetia-Alania 198
Kutaisi 124, 222	Northern Cyprus (Turkish Republic of
Kvaisi 266	Northern Cyprus/ TRNC) 69, 86, 90,
Kvemo Svaneti 228	118 Novy Afon 124, 188
Kyrgyzstan 207, 295	NOV y A1011 124, 100
L	O
Latin America 32, 114	Ochamchira 126, 161, 179, 184, 195
Latvia 47, 108, 109, 292	_
Leningor (Akhalgori) region 249, 250,	P. D. Linton, C2, C4, 74
257, 258, 262, 263, 273, 275, 278, 317, 322, 348	Pakistan 63, 64, 74 Palau 112
Lesotho 112	Palestine 90, 95, 119
Liberia 43, 48	Pankisi 264
Lithuania 47, 292	Papua New Guinea 112
Little Liakhvi 218, 219, 243	Patsi 218
Lugansk 281	Perevi 262
Luhansk People's Republic 10, 47, 72, 203,	Pitsunda 188
294, 309	Poland 35, 214, 289
Lykhny 133, 141	Psou 123, 179, 187
M	Q
Macedonia 64	Quebec 23, 61, 66
Madagascar 112	
Malaysia 46,66	R
Manchuria 86	Racha-Lekhumi 228
Mingrelia 126, 127, 133, 148, 171-173, 180, 317, 337	Razdakhan (Mosabruni) 262, 263 Rehula 219
Moldova 200, 207, 292, 293, 310	Republic of China (Taiwan) 86
Montenegro 112	Republika Srpska 90, 104
Moscow 154, 160, 173, 192, 195, 207, 213, 222,	Ritsa Lake 188
238, 247, 251, 259, 277, 283, 294, 300, 303 Mtskheta-Mtiateni 228	Roki Tunnel 226, 270, 275, 276 Romania 112
ivitakiitta-ivitiattiii 220	KUIIIaIIIa IIZ

Rome 27, 61 Russia 9-12, 14, 16, 19, 47, 54, 56, 69, 77, 78, 89, 107, 108, 123, 124, 126-128, 130, 134, 140, 142, 145, 153, 154, 156, 158, 160-163, 165, 168-170, 178, 179, 185, 186, 188-192, 194-200, 202, 204-215, 218, 220, 221, 222, 224, 226-228, 230, 231, 235, 237, 238, 240-243, 246-248, 250-252, 255, 257, 259-265, 267, 269-271, 273, 274, 276-289, 291-317, 319, 321-323, 328-330, 332-340, 343-349 Rwanda 37, 48	Spain 38, 42, 102, 114 Sri Lanka 102 St. Petersburg 195 Stepanakert 281 Sudan 46 Sukhum(i) 11, 19, 24, 123, 125, 126, 132, 134, 136-138, 143, 144, 154, 155, 157, 158, 160, 164, 165, 172, 176, 182, 184, 185, 187, 188, 190, 191, 194, 195, 197, 199, 200, 209, 210, 213, 241, 296, 305, 307, 312, 323, 324 Syria 45, 46, 65, 66, 198, 211, 247, 277, 281, 285, 287, 328, 332, 333, 339, 344
S	
Sakha Republic (Yakutia) 107, 108	T
Samara 195	Tajikistan 207, 295
Scotland 97, 100, 101, 103	Tamarasheni 279
Senegal 45	Tanganyika 45
Serbia 46, 112	Tanzania 45, 104, 113
Shida Kartli 217, 228, 237	Tbilisi 19, 132, 136, 143, 144, 157, 158, 160,
Siberia 107, 126	164, 173, 176, 194, 199, 200, 213, 214,
Sierra Leone 113	221, 230, 241, 251, 263, 273, 280, 284,
Sinaguri 262, 263	285, 286, 296, 301, 305, 311, 312, 322,
Singapore 46, 66	324
Slovak Republic 47, 65	Tibet 99
Slovenia 64, 99	Tiraspol 310
Sochi 11, 188, 192, 195, 238, 242, 323, 324	Tkuarchal (Tkvarcheli) 138, 148, 152, 184,
Solomon Islands 112	195, 337
Somaliland 90	Togo 112
South Africa 57, 119, 120	Transcaucasia 129, 130, 220, 276, 294, 304
South America 30	Transkei 57
South Ossetia 9, 11-13, 16, 18-20, 23-25, 47,	Transnistria (Pridnestrovian Moldovan
86, 89, 129, 132, 145, 161-165, 192, 193,	Republic) 9, 18, 89, 90, 293, 294, 328
198, 211, 213, 215-289, 291, 293-296,	Tskhinval(i) 24, 161-163, 210, 213, 215, 222,
298-319, 321-340, 342-349	223, 225-228, 236, 241, 245, 250, 251,
South Rhodesia 72	261, 262, 270, 273-276, 278, 279, 286,
South Sudan 46, 97, 99, 101	287, 289, 305, 307, 312, 320, 323, 324,
Soviet Union (USSR) 9, 36, 47, 69, 100, 104,	334 Turkey 121 127 106 200 203 205 209 205
108, 114, 116, 127-133, 135, 138, 139, 140,	Turkey 121, 127, 196, 200, 203, 205, 208, 295,
142, 143, 144, 146, 153, 174, 188, 221-227,	297, 298, 323, 328, 329 Tucheti 221
232, 235, 237, 246, 252, 291, 292, 297,	Tusheti 221 Tuyolu 25 211 248 277 285 287 332 344
298, 307, 311, 312, 313	Tuvalu 35, 211, 248, 277, 285, 287, 332, 344

U
Uganda 102
Ukraine 10, 12, 47, 56, 72, 77, 156, 207, 292, 293, 296
United Arab Republic 45, 46, 65, 66
United Kingdom 33, 40, 103
United States 9, 30, 43, 113, 117, 119, 162, 165, 242
Uzbek SSR 130
Uzbekistan 207, 295

### $\mathbf{V}$

Vanuatu 35, 211, 277, 332, 344 Vatican City 35, 36 Vendaland 57 Venezuela 198, 211, 247, 277, 285, 287, 328, 332, 333, 339, 344 Verkhny Lars 243 Verkhny Ruk 262 Vladikavkaz 19, 220, 239, 273, 275, 276, 281, 303, 323, 324

# W

Wales 103

Western Sahara 38, 42

# $\mathbf{X}$

Xinjang 99, 107

# Y

Yemen 45

Yugoslavia (SFRY) 33, 47, 48, 63, 64, 99, 104, 117

### $\mathbf{Z}$

Zambia 104, 113 Zanzibar 45 Zar 230

Zugdidi 133, 180, 212, 323, 324