

## THE REPUBLIC OF ABKHAZIA AS AN UNRECOGNIZED STATE

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*The international legal right of peoples to self-determination is an integral part of the basis for the formation of an independent state. The most acute problems are with those regions that seceded from the Soviet Union in political and military conflicts and now seek recognition of sovereign status. Until the middle of XX century, such recognition was achieved following global military conflict, and then following the struggle against colonialism. In the past three decades, it has been associated mostly with the destruction of totalitarian regimes. This study is analysis the formation of the unrecognized state and historical, political and legal processes in a changing world political environment, and the implementation of the right of peoples to self-determination. The modern search for optimal forms of self-determination subject to the ideas of external and internal forms predetermines the scientific analysis of the historical political and legal formation of statehood in the territories for which the implementation of the right of peoples to self-determination is problematic. Here we examine the example of the Republic of Abkhazia. The methodological basis of research is the systemic approach that allows a holistic view of political and legal processes in the state. We also use comparative, structural-functional and historical approaches. The current status of the Republic of Abkhazia at its present stage of development is "denied," which affects its political and legal system, characterized by a mixture of traditional and modern state and legal institutions. The state and the law in Abkhazia largely depend on the geopolitical situation in the region and the world, as well as the political systems of its neighbors and strategic allies. Quite a large role in the formation of Abkhazian statehood and its legal system is played by the Russian Federation, which has influenced power structures of the Republic of Abkhazia so as to integrate them into a single economic, political and legal space. Conclusions: The state and the legal system of the Republic of Abkhazia are in a state of transition and*

*undergoing synchronization with the state and legal system of the Russian Federation in order to establish a sovereign state. The status of an unrecognized state makes it impossible for the Republic of Abkhazia to fully participate in international processes and slows down the possible impact of international legal institutions on its state legal system.*

*Keywords: sovereignty; international institutions; the right of peoples to self-determination; historical, political and legal processes.*

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## Introduction

The problem of the legal status of a country in a state of military, national or religious conflict is now first and foremost a matter of international relations. Unrecognized states appeal to international organizations such as the UN to protect their interests in the international community and to defend their right to self-determination in accordance with international law (the UN Charter, the 1970 Declaration on Principles of International Law, General Assembly Resolution 2625 of the UN, the Helsinki Final Act of 1975, etc.) on sovereignty.

The change in the geopolitical map of the world following the velvet revolutions of 1989–1991 in Europe and the collapse of the USSR, along with its ideal of building communism, led to the development of political processes in the framework of formation of new subjects of international politics and law. This phenomenon entered in modern history as a parade of sovereignties in the former Soviet republics, which occurred without regard to the territorial and status implications of autonomous republics.<sup>1</sup> National and regional tensions, which had been building up for years within the structure of Soviet political and state system, gave rise to sectarian and ethnic conflicts (Nagorno-Karabakh, South Ossetia, Transnistria, and Abkhazia) in the post-Soviet space.

On the northern coast of the Black Sea such tensions resulted in the Georgian-Abkhazian war of 1992–1993, which ended in territorial loss for Georgia and the proclamation of independence of the Republic of Abkhazia, which was reflected in its Constitution on November 26, 1994, with the consolidation of a sovereign democratic and legal status of Abkhazian statehood.

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<sup>1</sup> See Larry J. Diamond, *Thinking about Hybrid Regimes*, 13(2) Journal of Democracy 21–35 (2002).

## 1. The Historical and Geopolitical Dimensions

### 1.1. The Historical Dimension

The question of the formation of Abkhazian statehood is a discourse for political and historical-legal research that is reflected in the monographic and dissertation works of many authors. The authors have formulated a vision of the development of the statehood of Abkhazia in the next chronological Abkhazian ethno-genesis covered from the ancient era to its becoming a part of the Russian empire in the XIX century; the revolutionary events of 1917 and the ensuing civil war of 1917–1922 allowed the Abkhaz people to announce the creation of its statehood outside the framework of other states; in 1921–1931 Abkhazia was developing in the status of a Soviet Socialist Republic within the Transcaucasian Socialist Federative Soviet Republic (TSFSR) and in 1922 in the framework of statehood of the USSR; in 1931 the Republic was included as an autonomous region within the Georgian SSR. In August 1991, the Georgian Republic declared its sovereignty and secession from the USSR, which was confirmed on December 21, 1991 in the Declaration on the dissolution of the union state. Consequently, during the XX century the Abkhaz people, in the framework of the Soviet state, both lost and gained independence to varying degrees. The ensuing ethnic and military conflicts of 1992–1993 between Georgia and Abkhazia after the collapse of the Soviet Union led to the announcement by the latter of its independence that became the basis for the international community to consider the Republic of Abkhazia as an unrecognized state.<sup>2</sup>

The August war of 2008 that ended with Russia's recognition of Abkhazia's statehood, and later in the recognition by other states (Nicaragua – September 5, 2008, Venezuela – September 10, 2009, Nauru – December 15, 2009, Vanuatu – May 23, 2011 (withdrawn on May 20, 2013), Tuvalu – September 18, 2011 (revoked on March 31, 2014)) of the independence of Abkhazia led to a radical change in the situation in the South Caucasus. The negative reaction from Western powers was immediate. The leaders of most countries, including Italy, France, Germany, Canada, Japan, USA and others made statements about violations by Russia of international law, the inadmissibility of the decision and appeals to the Russian Federation for its immediate opinion. Such a reaction is understandable as few competent experts doubted that the decision on the beginning of the war was made in Washington. Direct confirmation of this is given in the words of the former Ambassador of Georgia to Russia, E. Kitsmarishvili, who claimed that "President Bush personally gave the nod to the Georgian leadership to conduct military operations in Abkhazia and South

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<sup>2</sup> See Камкия Ф.Г. К вопросу об особенностях правовой системы Абхазии, 2 Вестник Российского университета дружбы народов. Серия: Юридические науки 197–205 (2014) [Fatima G. Kamkiya, *On the Question of the Characteristics of the Legal System of Abkhazia*, 2 Bulletin of Russian Peoples' Friendship University, Series of Legal Sciences 197–205 (2014)].

Ossetia.”<sup>3</sup> In Georgia, there was growing discontent with President Saakashvili and many of his former supporters had moved to the political opposition. However, the firm position of Russia was a vivid demonstration of its ability to withstand the geo-strategic calculations of the United States regarding the use of mechanisms to weaken the influence of Russia in the Black Sea region. According to the American academic, D. Friedman, “the United States has not noticed how Russia has changed in recent years and made the mistake of continuing to look at it through the prism of the experience of the 1990s.”<sup>4</sup>

In the end, when it became clear that the return of, through military force, territories Georgia had lost was impossible, the US and the EU had to adjust their policy towards the former Soviet autonomous regions. They began establishing new approaches to the settlement of the situation in the region. Taking into account the new realities after the events of August 2008, the Georgian government and undertook a strategy approved by its Western partners of “engagement without recognition.” This strategy was based on the principles of establishing contacts with the peoples of the breakaway regions, providing the people of partially recognized republics with various kinds of humanitarian programs aimed at strengthening confidence-building measures between the parties and promoting the involvement. These include, for example, enabling medical services to be provided to the citizens of Abkhazia in Georgia. At the same time came the development of a mechanism of registration under a simplified scheme of neutral identity cards and travel documents to ensure receipt of a permit to travel to Western countries (the EU and the United States do not issue visas to residents of Abkhazia with Abkhaz Russian passports), as well as the use of existing Georgian social benefits for business and education. In the opinion of Georgian politicians, the initiative is aimed at implementing the mechanism, tested in international practice, for making isolated unrecognized republics independent. The US Secretary of State, Hillary Clinton, expressed the readiness of the US to accept these documents during her visit to Tbilisi in 2012. According to her statement, “the United States will contribute to the resolution of conflicts on the territory of our partner.” This statement was met with great enthusiasm by the Georgian administration. Saakashvili called it “unimaginable diplomatic support.”<sup>5</sup> However,

<sup>3</sup> See Соловьев В., Двали Г. Посол ва-банк. Бывший глава посольства Грузии в РФ объявил войну Михаилу Саакашвили, Коммерсантъ, 27 ноября 2008 г. [Vladimir Solovyev & Georgy Dvali, *The Ambassador Broke. The Former Head of the Georgian Embassy in Russia has Declared War on Saakashvili*, Kommersant daily, November 27, 2008] (Oct. 9, 2016), available at <http://www.kommersant.ru/doc/1081548>.

<sup>4</sup> See Грушко А. О России, ЕС и НАТО, 7 Международная жизнь (2014) [Alexander Grushko, *On Russia, the EU, and NATO*, 7 International Life (2014)].

<sup>5</sup> See Грузинская «грин-кард»: США соблазняют нейтральными паспортами абхазов и осетин, Московские новости, 7 июня 2012 г. [Georgian “Green Card”: U.S. Tempts Abkhazians and Ossetians with Neutral Passports, Moscow News, June 7, 2012] (Oct. 9, 2016), available at <http://www.mn.ru/world/ussr/20120607/319976783.html>.

the Abkhazian public approached these initiatives with great skepticism, assuming the true purpose of such ideas to be to undermine their sovereignty and stability in the region.<sup>6</sup> There is no doubt that Georgia and the West, tried to remove pro-Russian Abkhazia from Russia's sphere of influence and also tried to find instruments with which to achieve a peaceful return of Abkhazia to Georgia. EU representative Peter Semneby, who oversaw the situation in the South Caucasus, indirectly confirmed this conclusion. Semneby noted that "only by engaging... may the EU provide an alternative perspective for Abkhazia and South Ossetia."<sup>7</sup>

These steps were dictated by the need for progress in Georgia's plan to join the North Atlantic Treaty Organization. This is due to the fact that, according to some political analysts, its defeat in August 2008 reduced the likelihood of Georgia's accession to NATO. Some analysts believe that, at present, there is no agreement among NATO members on the membership of Georgia, as the main condition for joining the alliance was solving the internal problems in the country. The separation of the two autonomous regions apparently resulted in a skeptical assessment of the possibilities of Tbilisi ever meeting the membership criteria or making a contribution to NATO activities. At the same time, it is very likely that Western countries gained an understanding of the consequences of Georgia's membership of the alliance in view of the possible consequences, namely, the possibility of Georgia drawing the alliance into a direct war with Russia. While the West is has not explicitly made clear that Georgia has no chance of joining the alliance, its real prospects are still very vague. Georgia still has not received the promised action plan for membership expected after the expanded NATO summit in Newport (Wales) in 2014. Moreover, according to NATO representatives, Georgia is preparing for membership of the organization but it is not known how or when this will happen.<sup>8</sup>

This analysis allows us to summarize the following. The conceptual framework, which determines the strategy of the U.S. and Western Europe, assumed the achievement of objectives of a different nature. The priorities were set as follows. The EU was to ensure stable energy supplies in view of the unfolding economic crisis. An important role was to be played by the creation of transport corridors which would bypass Russia in order to undermine the oil sector of the Russian economy. The main aim of the U.S., which declared the southern Caucasus an area of vital U.S. interests, was to withdraw Georgia from the Russian sphere of influence and thus provide America with almost absolute supremacy in the Black Sea area of the Caucasus.

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<sup>6</sup> See *Testimony by the European Union Special Representative for the South Caucasus, Peter Semneby, U.S. Helsinki Commission Hearing on "Mitigating Inter-Ethnic Conflicts in the OSCE Region,"* Washington, D.C., May 4, 2010.

<sup>7</sup> See *id.*

<sup>8</sup> See Уэльский саммит НАТО: все, что нам нужно знать [*The Wales NATO Summit: Everything That We Need to Know*], Sputnikpogrom – Information and News Resource (Oct. 9, 2016), available at <https://sputnikpogrom.com/politics/21071/nato-summit/#.WLSBJO1SDDc>.

It is obvious that the state structure of Abkhazia, as a former autonomous region of Georgia, and its territory, located in close proximity to the state border of the Russian Federation, could be profitably used in order to meet the ambitions of the US to expand NATO in the East. Dominance over the territory of the South Caucasus has allowed the West and the United States to take full advantage of geostrategic and resource potential not only for this region. Georgia was supposed to be used for the construction of transit pipelines for Caspian oil, the volume of which, according to some estimates, would only be slightly inferior to that of the world's largest exporter, Saudi Arabia. By recognizing Abkhazia and South Ossetia as independent states, and, hence, their *de jure* separation from Georgia, Russia not only greatly influenced the course of historical events on an international level (experts included the move among the top ten most important geopolitical realities of the first decade of the XXI century) but has also thrown a serious challenge to the West and the U.S. However, according to some Russian politicians, it was a necessary response to the "political speculators" convinced of Russia's intentions to annex Abkhazia with the aim of expanding its territory. The decision of the Russian leadership fully demonstrated the readiness of the Russian Federation to defend its interests and, of course, greatly increased its diplomatic and political weight in world politics.

### **1.2. The Geopolitical Dimension**

It is important to understand the geopolitical positions of the various actors involved in this extremely complex and controversial area, i.e., in the Greater Caucasus. According to V. Tsymbursky, the Caucasus are a "Great Limitrophe" formed by the peripheries of all civilizations of the Old World. The multilevel system of the Caucasus macro-region literally mixed all the peoples living here with their religions and cultures. Therefore, in order to understand the dynamics of the relationship of the geopolitical actors in the macro-region it is important to look holistically at administrative-territorial, ethno-cultural, religious, legal, resource and other aspects. It is important to remember that the geo-ethno-political culture of the Greater Caucasus relatively homogenous. At the present stage of its geopolitical development, the Greater Caucasus consists of three clusters which are unequal but close to one another: first, the North Caucasus, which comprises the North Caucasus Federal District and part of the Southern Federal District of the Russian Federation; second, the states of the Caucasus, which gained independence after the collapse of the USSR – Azerbaijan, Armenia and Georgia; third, the newly formed states – Abkhazia, South Ossetia and Nagorno-Karabakh. R. Metreveli believes that the Caucasus does not exist, and that there is a Central Caucasus, which is adjacent to the real Southern Caucasus, uniting the Caucasian foothills of Iran and Turkey. However, in the post-Soviet space we are going to talk about the South Caucasus, referring to Georgia, Azerbaijan, Armenia, as well as a number of unrecognized states.

At the present time, two republics within the Caucasus present time are homogeneous (Armenia and Azerbaijan), while the others remain heterogeneous (Georgia

and most of the republics of the North Caucasus). Recent conflicts in the area have been between Armenians and Azeris (Nagorno-Karabakh), the Ossetians and the Ingush (Ingush-Ossetian conflict), Ossetians and Georgians (South Ossetia war), and Abkhazians and Georgians (Abkhaz conflict). The ethno-political balance in Dagestan, where Avars, Dargins, Kumyks, Lezgins, Nogais and other peoples reside, is supported on the basis of the fading traditions of the Soviet quota for the preservation of ethnic balance. Finally, it is important to emphasize that the Caucasus is home to a Russian (Christian) population, which is perceived in the region in highly contradictory ways.

Of particular importance is the fact that the Muslims of the North Caucasus come from many titular ethnic groups. The integration of Muslim ethnic groups on religious grounds is difficult because of the theological differences between Sunnism and Shi'ism and because of the wide distribution of schools of Sufi *tarikats* and *vindov* fraternities that do not recognize Islamic universalism. The desire of radicals to exploit Islam for political purposes, of course leads to very negative consequences. The debate in the press on the subject suggests that this political stance may be, under certain conditions, demanded by conservative political circles and supported by the nationalist electorate.

Despite the multi-ethnicity of the Caucasus region, however, it is accepted to speak about its cultural identity and the existence of a special "Caucasian mentality" in the "Greater Caucasus." This statement is a matter for some geopolitical ambivalence. The concept of a United Caucasus legitimizes the strengthening of Russia's strategic interests on its southern borders, the preservation of the integrity of the territories of Russia, the security of the region, forging partnerships with all Caucasian actors, wide cooperation with them in combating terrorism and illegal migration, joint development of mineral resources, and control over transportation of the extracted natural resources. During the implementation of this concept, a deeper integration of the Caucasus in the framework of supranational bodies of the CIS, EurAsEC, and CSTO. In this form, the concept refers to the paradigm of post-modern Eurasia, reflects the continental mentality and offers a "modernization without Westernization." The foundations of this philosophical approach are presented in the works of New Eurasia theorist, A.G. Dugin. The Russian leadership sees the future of this region in a geopolitical structure that embraces the Eurasian "great space" as opposed to unipolar globalization. It was with this in mind that Russian President, Vladimir Putin, established the Eurasian Economic Union. However, Russia's significant competitors would see a United Caucasus as an opportunity for the region to build a military, political and economic presence and to continue its geopolitical expansion. R. Metreveli sees such a holistic Caucasus being opposed to Russia and, as a civilization and a political region, oriented to the West. In his opinion, this means first and foremost strengthening the position of NATO in Azerbaijan and Georgia, and Armenia.

The nature of the various geopolitical positions of all the subjects of the Greater Caucasus. This occurred first in connection with the unbundling of the subjects of the



political process and secondly in connection with enlargement, as expressed in the creation of unions, alliances and blocs. Adjusted geopolitical relations are manifested on four levels: international, macro-regional, state (national) and micro-regional. The study of this factor allows us to solve the problem of the essence and implementation of mechanisms in this region of geopolitical interests of all global players. Vladimir Putin identified the recognition of the semi-recognized and unrecognized states in the CIS area as an important Russian foreign policy objective.

The essence of the value of the political process in the geopolitical context is the deterministic way human action affects the political sphere in strictly defined natural geographical, socio-political and cultural-religious terms. Types and forms of political behavior in the macro-regions represent the concretization of civilizational determination, in certain circumstances, of appropriate values, behavior and mentality. The role of the civilization factor is specified in the geopolitical determinants of political behavior of ethnic and social communities in Russia. The transformation of the models of political behavior in any society is due to its civilizational specificity, and relative independence developed on the basis of national interests. Under the influence of immanent factors specific to each civilization, each ethnic group has formed a unique mentality, national character and political culture.

The geopolitical processes in Armenia, Georgia and Azerbaijan in the post-Soviet period had the traits of immanence: a permanent rise in conflicts; the gradual involvement in cross-border international relationships; and institutionalizations of the participation of foreign actors. In the 1990s, ethno-nationalism as the main principle of the nation-state gave rise to a number of problems that threaten the security of the states. Ethnic conflicts and separatist movements, ending in most cases by the formation of new states, have restricted the development of the statehood of Georgia and Azerbaijan. The territorial problems of these countries are compounded by political conflicts. Since independence, the countries of the South Caucasus have constantly striven to bridge the gap between modernism and traditionalism in the political field, and to resolve the inconsistency arising from the presence of formal democratic procedures and informal authoritarian practices. Due to the peripheral policy, the interest of the countries of the center in the orientation of political processes in the South Caucasus results in a greater level of adaptability in their political systems. Political decisions are usually made by a narrow circle of political leaders. In the regions of the Caucasus, geopolitical views of the government and opposition have certain but not fundamental differences, and they, to a certain extent, affect not only foreign policy but also the domestic political process.

Geopolitical factors are ongoing because of the current of period of geo-ethno-political of identification which seriously affect all political processes. In the conditions of systemic crisis after the collapse of the Soviet Union the impact of geopolitical factors increased dramatically from both outside and inside the country. The geopolitical disintegration of the USSR was the catalyst for the struggle



for geopolitical programs of the national authorities who had spoken earlier in opposition towards the federal center. Inside the breakaway republics there was a new schism in connection with the changed geopolitical orientation. In the former Soviet republics of the Caucasus, after the withdrawal from the USSR and formation of independent states there was a relative unity of government and opposition on the main areas of geo-strategy, while differences were maintained on tactical issues. In Azerbaijan, the authoritarian regime and the weak political opposition are in favor of the return of Nagorno-Karabakh, union with Turkey and a limited partnership with Russia. In Armenia, the democratic regime is based on a geopolitical unity of the government and opposition on maintaining the status quo of the Nagorno-Karabakh confrontation with Azerbaijan and a strong alliance with Russia. Georgia achieved geopolitical unity against Russia for the purposes of reviving its former Soviet borders under “power-opposition” conditions.<sup>9</sup>

In the newly formed small states of the Caucasus, the implementation of the right of nations to secession and the formation of an independent state have not been the subject of political controversy between the government and the opposition. The oppositions within these states began to take shape, in general, as stable allies of the regimes in the process of implementation of the overall geopolitical strategy. In Abkhazia, almost all political actors are for cooperation with Russia while maintaining independence and opposition to the aggression of Georgia. In South Ossetia, all political actors oppose returning to Georgia and want to join the Russian Federation and participate in the political struggle for power in general.

When it comes to its geo-ethno-political plan, the Caucasian macro-region is divided not only into North and South Caucasus but also contains the Christian Eurasian segment (Krasnodar and the Stavropol Region, North and South Ossetia, Georgia and Armenia) and the Islamic East (the North Caucasus republics and Azerbaijan). The government and the opposition Islamic republics of the North Caucasus direct their mainly geo-ethno-political potential in support of Putin’s political regime. The Greater South-Caucasian regions of Georgia, Armenia and Azerbaijan have formed the different approaches to the problem of geopolitical orientation and definitions of political tactics in the breakaway autonomous regions – the newly formed states of Abkhazia, South Ossetia and Nagorno-Karabakh. The geopolitical split of Georgia and geo-Americanism of its government and the opposition led it outside the Russian Eurasian civilization. During the 2008 war, the Georgian opposition expressed its willingness to refrain from criticizing Saakashvili in order not to weaken or further to exacerbate the condition of Georgia, but a few months after the war, the opposition blamed the president for making arbitrary decisions about war and peace.

<sup>9</sup> See Thomas de Waal, *Georgia’s Choices: Charting a Future in Uncertain Times*, Carnegie Endowment for International Peace (2011) (Oct. 9, 2016), available at [http://carnegieendowment.org/files/georgias\\_choices.pdf](http://carnegieendowment.org/files/georgias_choices.pdf).

The new elites of the South Caucasus states have almost unanimously agreed on the geopolitical self-determination and the choice of Russia as a strategic ally for the long period of development. In Abkhazia and South Ossetia, there is a relative unity of government and opposition on the question of the need to preserve their sovereignty and independence and to oppose Georgia, which is calling for the return of those states to its jurisdiction. Confrontations between the ruling and opposition structures are about the redistribution of power through democratic development of the country. The only difference in positions is that the Abkhaz opposition would like to maintain a distance from Russia in culture, language, etc., and the South Ossetian opposition would prefer stronger ties with Russia under certain conditions. The type of political process in Abkhazia and South Ossetia corresponds to the political relations of constituent entities of the North Caucasus, especially in North Ossetia. This situation is determined by the total geo-ethno-political culture of these peoples.

The resolution of ethno-political Karabakh, Abkhazian and South Ossetian conflicts in the Caucasus depends on the outcome of the geopolitical confrontation between the strategic partners, Russia and the U.S., as well as on tactical decisions: to establish cooperation between the warring parties before or after the decision on a conflict. The leadership of Azerbaijan and Georgia rejects any cooperation with political adversaries to resolve conflicts. The opposition in Georgia and Azerbaijan did not reject cooperation, adopting more moderate positions. For Azerbaijan, the solution to the Karabakh problem is based on the restoration of the prewar status quo in accordance with the Azerbaijani model, the essence of which is the establishment of Azerbaijan's jurisdiction over Karabakh. Armenia's ruling regime is proposing innovative approaches and creative solutions and to pave new paths, which will contribute to the solution of the Nagorno-Karabakh conflict, while maintaining the postwar status quo. The democratic opposition in Armenia suggests developing economic cooperation between the parties involved in the conflict to change the situation and create more favorable conditions for its future resolution, but the on the basis of recognition of Azerbaijan's territorial integrity.<sup>10</sup>

Political processes in the Caucasus society are directly linked to its objective geopolitical position and the aims of geopolitical development on the part of the leaders of the major ethnic groups in the region. Geopolitical ethno-politics occurs not only in the Caucasus but in the entire post-Soviet space. A vivid example, which is not considered in this article is the geo-ethno-political situation in Ukraine.

A geopolitical understanding of the processes is required to ensure the security of the region, the establishment of the equal partnership of all Caucasian subjects, a wide cooperation in the fight against terrorism and illegal migration, joint development of mineral resources, and control over transportation of extracted natural resources. During the implementation of this concept, it is possible a deeper integration of the

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<sup>10</sup> See Jozef Batora et al., *Newly Generated Small States: Taking Stock*, European Forum Alpbach (Oct. 9, 2016), available at <https://www.alpbach.org/de/session/newly-generated-small-states-taking-a-stock/>.

Caucasus will take place in the framework of supranational bodies of the CIS, EurAsEC, CSTO. In this form, the concept refers to the paradigm of post-modern Eurasia, reflects the continental mentality and offers “modernization without Westernization.”

Developed after “the five-day war” of August 2008, the new situation in the South Caucasus has created new potential opportunities and prospects, but also produced new threats and challenges to regional security. It may be noted that, in the medium-term geopolitical perspective, Russia has greatly strengthened its position and presence in the South Caucasus, justified by the results of the confrontation with Georgia and recognition of Abkhazia and South Ossetia and the deployment of Russian military bases in the former Georgian autonomous regions. But, in the long term, this has led to the deterioration of relations with the West, to the development of the sanctions regime and new, serious problems in the implementation of Russian policy in the South Caucasus.<sup>11</sup>

The EU’s position appeared consistent during the August crisis and today Europe is trying to find its niche in regional politics and is looking for new ways of institutionalizing its presence in the South Caucasus. Placing European observers in the buffer zones around the borders of South Ossetia and Abkhazia has been the first serious independent initiative of the European Union by projecting its political potential in peacekeeping operations outside its borders and without the direct support of the NATO structures or the U.S. Moreover, a number of key members of Western European NATO are strongly opposed to Georgia’s accelerated membership in this organization.

The U.S. has traditionally adhered to the doctrine of “limited understanding of the recognition of new states” (“the Tobar doctrine of international recognition”). The Tobar doctrine as international custom is widely used in the international practice of states’ recognition of states and governments. It establishes that a state may be recognized as a subject of international law if it recognizes another subject of international law. Its counterweight in international law is the Mexican “Pop Doctrine,” which states that if a new government comes to power “through unconstitutional means” but is recognized by the people, it needs no special act of recognition by foreign states. That doctrine was directed against U.S. interference in the internal affairs of other states struggling for independence and was supported widely by Soviet foreign policy.<sup>12</sup>

Currently, in international law there are several theories of recognition, the most popular of which is constitutive and declarative, reflecting the two forms of conduct

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<sup>11</sup> See Коппитерс Б. Оттенки серого. Намерения, мотивы и моральная ответственность в грузино-абхазском конфликте [Bruno Coppieters, *The Shades of Gray. Intentions, Motives and Moral Responsibility in the Georgian-Abkhaz Conflict*] (Oct. 9, 2016), available at [http://poli.vub.ac.be/publi/Georgians/russian/pdf/08\\_Coppieters.pdf](http://poli.vub.ac.be/publi/Georgians/russian/pdf/08_Coppieters.pdf).

<sup>12</sup> See *Statehood and Security: Georgia after the “Rose Revolution”* (B. Coppieters & R. Legvold, eds., London: MIT Press, 2005).

of states in the international arena regarding recognition of international actors. According to supporters of the constitutive theory, recognition of law-making has value when it creates new subjects of international law. Without recognition by the group of leading states, a new state cannot be considered a subject of international law. From the point of view of the representatives of the declarative theory, the recognition only confirms the legitimacy of any particular international legal actions and events, i.e., recognition is declaratory in nature and aims to establish stable international relations. The main problem is that the institution of recognition is not codified in international law, creating precedents of paradoxical transformations. On the one hand, large areas with millions of indigenous people claiming their sovereign rights are seen as separatists and, on the other, Western countries easily recognize a small compact area that is not actually state as a subject of international law (e.g., Kosovo).

Western theories often are declarative and one-sided, being based on the “benefit” of nations fighting for sovereignty.

## **2. The Statehood of the Republic of Abkhazia: Problems of Formation**

After the events of “five-day war” in 2008 and the activation of the foreign policy of the Russian Federation, the problem of independence of the Republic of Abkhazia requires a new approach to address the problem of unrecognized states.<sup>13</sup> The Republic of Abkhazia had considered the support of the political leadership of the Russian Federation, as a position of non-interference in the affairs of sovereign states and the influence of Russia on its political reforms was reflected in the Constitution of Abkhazia of 1994.<sup>14</sup>

### **2.1. Russia's Influence on Attempts to Register Abkhazian Statehood**

When, on August 26, 2008, President Medvedev signed a decree on recognition of the independence of South Ossetia and Abkhazia, it seemed that this was an exception – a response to the West's recognition of Kosovo's independence without the consent of Russia.<sup>15</sup> The last two years have shown that Moscow is ready to continue

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<sup>13</sup> See Mikhail Barabanov, *The August War between Russia and Georgia*, 3(13) Moscow Defense Brief (2008). See also Richard Giragosian, *Georgia Planning Flaws Led to Campaign Failure*, Jane's Defense Weekly, August 15, 2008 (Oct. 9, 2016), available at [http://www.armenian.ch/fileadmin/user\\_upload/saa/Docs/2008/20080815-JDW-Georgie-Ossetie.pdf](http://www.armenian.ch/fileadmin/user_upload/saa/Docs/2008/20080815-JDW-Georgie-Ossetie.pdf).

<sup>14</sup> See Peter Semneby, *The EU, Russia and the South Caucasus – Building Confidence*, 1 Russia in Global Affairs (2012) (Dec. 13, 2016), available at <http://eng.globalaffairs.ru/number/The-EU-Russia-and-the-South-Caucasus--Building-Confidence-15507>.

<sup>15</sup> See Jan Cieski, *Tbilisi Admits Misjudging Russia*, Financial Times, August 21, 2008 (Oct. 9, 2016), available at <https://www.ft.com>.

to use the theme of self-determination: the annexation of Crimea, support for the self-proclaimed Lugansk and Donetsk national republics, and the intensification of formal contacts with Transnistria and Georgia. Recent activity has concerned states outside the former Soviet Union. On September 20, 2016, Moscow hosted the international conference “Dialogue of Nations. The Right of Peoples to Self-Determination and Building a Multipolar World,” which was attended by representatives of separatist movements from the countries of Western Europe and America.

Moscow is trying to demonstrate that it can be the alternative to the West as a center of gravity, offering fighters for self-determination what is necessary – political, financial or military support, and promoting their interests in the regions. However, the experience of the first two, South Ossetia and Abkhazia, indicates that a long-term partnership to build will turn bad.

Russia initially provided the two republics with what they needed: security, financial and political support, taking advantage of the opportunity to establish its military presence in the region in response to the strengthening of NATO’s cooperation with Georgia. Today, while remaining grateful to Russia, the residents of the two republics are increasingly critical of Moscow’s policy, which relies on the loyalty of the elites and often ignores the needs of the population.<sup>16</sup>

In Sukhumi on October 21, 2016, the block of opposition forces of Abkhazia gathered several thousand people and called on President Raul Khajimba to resign, accusing him of increasing dependence on Russia, “the Republic of Abkhazia is losing its sovereignty.”

Abkhazia and South Ossetia fully supported the policy of Russia at the moment of recognition. In their view, the West had taken Georgia, and Russia was the only one which could protect and guarantee socio-economic stability. Russia then really took over the functions of political representation, safety (by locating military bases and border guards in the republics) and financing (the level of budgetary support for the republics is higher than for the neighboring North Caucasus regions: more than 90% for South Ossetia and 70% for Abkhazia). The conduct of foreign policy and their own power structures is fundamentally different from the republics of the Russian regions. However, many officials in Moscow have begun to perceive them as additional regions of the Russian Federation.

## **2.2. The Intention to Achieve the Status of a Sovereign State**

In August of 2008, when Russia recognized the independence of two breakaway republics, their leaders were people whose relations with Moscow had not been easy. Politicians Eduard Kokoity and Sergey Bagapsh could not be called anti-Russian

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<sup>16</sup> See Коппитерс Б. Этнофедерализм и политика в области строительства гражданского государства. Идея общего государства в грузино-абхазском конфликте [Bruno Coppieters, *Ethno-Federalism and Policy of Building a Civil State. The Idea of a Common State in the Georgian-Abkhaz Conflict*] (Dec. 13, 2016), available at [http://poli.vub.ac.be/publi/orderbooks/federal\\_r/14coppieters.pdf](http://poli.vub.ac.be/publi/orderbooks/federal_r/14coppieters.pdf).

politicians – good relations with Russia were the guarantee of the survival of the republics in conflict with Georgia. But Kokoity's statements and actions often irritated Moscow, and Bagapsh was elected in 2004 against the will of Russia, which then supported the candidacy of the current President Raul Khajimba. The situation did not become easier with the coming to power of Alexander Ankvab, who again came to power in spite of the support of the Kremlin. Ankvab reportedly refused to sign a new cooperation agreement with Russia in 2014 which would have qualitatively strengthened the dependence of the republic on Russia.

The current presidents of South Ossetia and Abkhazia came to power with the support of Moscow. Now you can talk about an elite not just loyal to the Kremlin, but largely integrated into the Russian power vertical, serving Moscow more than their own people. Although in Abkhazia and South Ossetia the degree of such dependence varies greatly, the formula of "loyalty in exchange for funding" works everywhere.

Moscow's approach to the disputed territories in these two republics resulted in the mass protests that preceded the election of the present leaders. Moscow's chief aim, apparently, was not determining the policy of the street, but the absolute loyalty to the Kremlin.

During the political crisis of May – June of 2014 in Abkhazia, the Moscow high-ranking representatives Vladislav Surkov and Rashid Nurgaliyev did not prevent the opposition protests or the ousting of president Ankvab, since candidates for the office of president had agreed to sign a new treaty with Russia which "would allow Moscow to consolidate its allies and to strengthen its position and influence in the new geopolitical situation after the annexation of Crimea." However, last autumn the text of the agreement on cooperation and strategic partnership caused outrage in Abkhazia and was perceived as a threat to its sovereignty, primarily due to it significantly increasing Russian control of local power structures, and aiming to harmonize external policies. The treaty implied that socio-economic support would be provided to the republic, and the final version took into account many comments from the Abkhaz side, but its implementation was no less problematic. The conclusion of interdepartmental agreements between the law enforcement agencies of Russia and Abkhazia stalled: the parliamentary opposition was against agreements that had restricted sovereignty in that area. The money promised by Moscow for socio-economic development was not received. Furthermore, the authorities consistently fail to pay salaries. The republic had gained the support of Russia but had now become hostage to the policy of Moscow. Responding to criticism of the opposition, Khajimba said, "In Russia and around it today is a complicated situation because of the known circumstances. And it can't affect our position."

An agreement between Russia and Abkhazia about a united group of troops was signed on November 21, 2015 in Moscow. As noted in the explanatory note to the document, the grouping was intended to respond to an armed attack and other threats to military security in respect of any of the parties.

The composition of the group included a joint Russian military base stationed on the territory of Abkhazia, two mechanized battalions, artillery and aviation groups and a special forces detachment. In the event of a threat of aggression in wartime, the group is subordinate to the commander of the Ministry of Defense of Russia. The decision to deploy the troops was adopted by the military departments of the two countries.

In January 2015, the State Duma ratified the agreement between Russia and Abkhazia on alliance and strategic partnership. The document provides for joint actions for the protection of the Georgian-Abkhaz border and maritime areas subject to the sovereignty of the Republic of Abkhazia.

U.S. Department of State spokesperson John Kirby stated that, "The United States strongly opposed Russia's ratification of the agreement with the *de facto* leaders of the breakaway Georgian region of Abkhazia on the joint group of troops. We do not recognize the legitimacy of this so-called treaty, which does not constitute a contractually binding international agreement."

According to him, "the U.S. position on Abkhazia and South Ossetia remains clear: these regions are integral parts of Georgia and the United States continues to support Georgia's independence, sovereignty and territorial integrity... Russia should fulfill all its obligations under the agreement on a cease-fire of 2008." He urged Moscow to return its troops to the positions they had occupied before the conflict, "to reverse its recognition of the Georgian regions of South Ossetia and Abkhazia as independent states," and to ensure that residents in these regions have access to humanitarian assistance.

On November 16, 2016, at a plenary meeting, the Federation Council ratified the agreement on a unified group of troops of Russia and Abkhazia. A document defining the purpose, formation, deployment and use of the joint group of forces of the Armed Forces (AF) of Russia and Abkhazia was signed in Moscow on November 21, 2015. The Russian part of the group is made up of the Russian military base stationed in Abkhazia, and the Abkhaz part of the group is made up of two separate motorized rifle battalions, one artillery and aviation group, as well as a separate special forces detachment.

The group is designed to "adequately respond to an armed attack (aggression), as well as other threats to the military security in respect of any of the parties," read the accompanying documents. It is assumed that the organization and conduct of joint activities will be carried out on the basis of the joint directive of the headquarters of the armed forces of both countries. Interaction between the military units in peacetime involves members of the joint group meeting in an operational group consisting of representatives of the parties. The chair of this group should be the commander of the Russian military base.

The agreement was concluded until November 24, 2024 for the period of validity of the agreement between the Russian Federation and the Republic of Abkhazia



on alliance and strategic partnership, with the possibility of automatic renewal. The agreement is explicitly not directed against third countries. On November 22, 2016, the law on ratification of the agreement was signed by the President of the Russian Federation.

Thus, that the political factor is the dominant factor in the development of the legal system of the country is most clearly evident in constitutional reform. This trend is generally characteristic of states in the process of formation of national political and legal institutions.

### **3. The Legal System of the Republic of Abkhazia and Its Features**

The Constitution of the Republic of Abkhazia of 1994 established a democratic model of organization of state relations based on the principle of separation of powers in the classical sense. Many academics have noted<sup>17</sup> that proclaiming the achievement of key political and legal purposes in the process of building a democratic state where the rights and freedoms of man and their guarantees determine the activity of the state, and the existence of a constitutional and legal ideology. The social development of Abkhazia is traditionally prone to conflict because of, as has been noted earlier, the specific aspects of its political and ethnic development. Therefore, academic and political circles of Abkhazia increasingly address the issue of the need to strengthen the political capacity of the parliament, the independence of the judiciary, the municipal authorities, to improve the power vertical and to strengthen civil society institutions.

The Republic of Abkhazia, while it has the status of an “unrecognized state” and constantly correlates its activities with the political, economic and media influence, and is forced to maneuver between different political forces wishing to establish geopolitical dominance in the region. The only appropriate way to resist these processes is the formation of the ideology of constitutional patriotism, which involves the creation of models of law in its most perfect form, able to withstand the presence of destructive tendencies. Thus, you need to understand that the greater the threat to the stability in the Republic of Abkhazia, the greater should be the motivation to confront threats and challenges to security and stability through developed constitutional and legal norms and institutions, dating back to the recognized international standards.

#### **3.1. The “Constitutional Patriotism” Model**

In the development of statehood of peoples with a complex historical past forced to respond to the challenges and threats of the world, the status of sovereignty

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<sup>17</sup> See Барциц И.Н. Государственное (конституционное) право Республики Абхазия [Igor N. Bartsits, *State (Constitutional) Law of the Republic of Abkhazia*] (Moscow: RACS, 2009).

becomes a fundamental idea that includes traditional and contemporary ideas about national and state rights.

The Republic of Abkhazia is going down the path of integration of people into a single state (it has done this *de facto* and aims at international recognition in order for the same to become *de jure*). The constitutionalism of the Abkhazian state is an expression of patriotism when the constitution is interpreted as the guarantor of peace, prosperity and justice through protection of the values of democracy and civil rights. "Constitutional patriotism" gives meaning to the rule of law, but often each nation-state tries to find its own approaches to social and political life. However, the Abkhazian state has some serious problems in developing as a result of the opposition of traditional and innovative variants of development of a society that has used a variety of political forces and selfish means to legitimize their presence in power.

The lack of significant progress in public life and in the lives of most ordinary citizens in the Republic of Abkhazia is often due not only to the political and economic situation in the country and the state of its natural resources, but also to gaps and imperfections in certain provisions of the Constitution of Abkhazia. The main problem is not that constitutional mechanism is imperfect, but the fact that the political elite of the "new states" of the post-Soviet world use their constitutions not in the literal interpretation of their individual provisions but apply them in their own interests according to the principle of political expediency.

Even before 2008, there were ideas in the Republic of Abkhazia on the need for amendments to the Basic Law, especially the constitutional court. In 2005 the Commission on Constitutional Reform established a republican constitutional court. In particular, there were marked individual professional requirements for candidates for positions of judges and their competence. Among the majority of the citizens of the republic and in the environment of professional lawyers, the dominant idea was that the establishment of a constitutional court would radically change the situation since it would be easier to monitor the implementation of constitutional norms (if the constitution fails, it is an imperfect constitution and should therefore be changed).

The Constitution of Abkhazia is a modern legal instrument that provides opportunities for progressive development in the process of formation of democratic rights and freedoms, and their substantial protection. For example, Art. 11 of the Constitution (on the recognition and guaranteeing of the rights and freedoms of the person) implies openness to modern standards in the field of human rights.

It seems increasingly likely that improvement in the social, political and economic system of the state is possible without major constitutional reform, limited only by the adoption of laws and regulations aimed at the implementation of the constitution. These measures can lead to a positive impact on governance and the perception of the legal system in society.

Naturally, the main problem of the legal system of the Republic of Abkhazia, as in the whole post-Soviet space, is to ensure the effectiveness of the Basic Law. When it comes

to current democratic states, there is a clear system of measures that does not allow the change of the constitution in favor of political interests (state-controlled society, the separation of powers with a clear mechanism of checks and balances, independent courts, etc.). In order to avoid enshrining partisan interests in law, many scholars and lawyers have proposed that constitutional changes should enter into force at least five years after their adoption. This provision may limit non-legal factors of influence on the constitutional process and the adoption of amendments without reference to current political conditions. Thus, the modification will only become possible if the amendments to the constitution are indeed socially significant in character.

At the present stage of its development, the Republic of Abkhazia is faced with many challenges that hinder full implementation of the constitution such as corruption, a low level of legal awareness among citizens, lagging economic indicators, and the low status and professionalism of law enforcement officers and court employees. Without stabilization of this situation there is a risk that all the reforms will remain on paper.

Constitutional reform according to this principle should not be to amend the constitution and the constitutional modernization of the state mechanism.

As a result of this, constitutional reform has occurred not only in the amendment of the constitution but in the adoption of the constitutional law of the Republic of Abkhazia on judicial power, which will come into force on January 1, 2017. Discussion of amendments occurred from 2010 to 2014, recent amendments were made to the constitution in 2016.

The legal system of the Republic of Abkhazia consists of the Basic Law, which establishes a presidential-parliamentary republican form of government under the declaration of a democratic regime. The constitutional order is also regulated in the laws "On Elections of the President of the Republic of Abkhazia," "On Citizenship of the Republic of Abkhazia" and "On the Cabinet of Ministers." The legal system consists of industry codes: criminal, civil, family, criminal procedure, civil procedure, etc.

Consequently, on the one, the legal system of the Republic of Abkhazia hand historically cooperates with the Russian legal system, and, on the other, is developing in the framework of continental law system, but with influences of customary law and non-institutional forms of political life characteristic of the traditional political system (citizens' assemblies). In these conditions, a peculiar paradigm can be observed according to which tradition and morality is the dominant source of law in law enforcement practice.

In its development, the legal system of the Republic of Abkhazia actively unified with the Russian legal system and the legal systems of the country-participants of EurAsEC, therefore, challenges in the political, economic and social natures create very difficult conditions for its progress. Sometimes, this can be the basis for social conflicts and disagreements. Currently, the state and political systems in the Republic of Abkhazia, as in many other post-Soviet States, prevail over the legal system and this occasionally leads to outbursts of public indignation, as mentioned

earlier. For the Abkhazian government, the most important task is the elimination of the misalignment of the foundations of national law with the predominance of customary law and modern standards of law and democracy. Whether the modern law model fits into Abkhazian society, its culture and history is a question that has not lost its relevance.

Around the Republic of Abkhazia and today there are difficult geopolitical processes and the situation is affected by two major circumstances: on the one hand, the historical gravitation towards Russia and its legal system, and, on the other, the training of a large number of lawyers on the basis of Russian law schools which focus on an appropriate model law. It has been noted that, in the formative years of the statehood of Abkhazia, it adopted a number of serious regulations, a brief analysis of which suggests that, to a large extent, they are the result of harmonization with the legislation of the Russian Federation.

### ***3.2. The Role of Customary Law in the Legal System***

However, simultaneously with these processes there is still a place for the development of customary law, which still has a significant influence on legal consciousness and legal behavior.

This is most clearly seen during periods of acute security threats and intensified social and political conflicts. So, during the fighting of 1991–1993 a custom entered into force, according to which one son was allowed not to go to the front in order to save the future generations of the nation. The leader and ideologist of the struggle for independence, V.G. Ardzinba, has always appealed on behalf of the people and often asked for blessings the elders to fight. It is important to note the development in Abkhazia of the institution known as the Council of Elders, which has its own structure and includes a wide variety of local coalitions – tribal, rural, regional and national. This institution has strict rules for the election of its members based on prescribed imperatives. The decisions of the Council of Elders are regulated by the customary rules of structure. There is usually an introductory, a descriptive, and a motivational part and a resolution. They are rather difficult to identify with modern regulations and are complicated by the specific language of the court of appeals to eternal values and traditions, which are evident in the argumentation of the decisions of the Council of Elders.

In our time, legal pluralism in the interpretation of the law and its application may also be found. We are talking about the interpretation of the law from the standpoint of spiritual ideals: respect for elders, sanctity of the memory of ancestors, honor and dignity, the priority of the interests of the Abkhazian ethnos, etc. For example, legislators are not yet willing to liberalize land legislation, not allowing the sale of land to those who are not citizens of the Republic of Abkhazia.

Thus, we can say that the legal system of the Republic of Abkhazia today remains in a fairly unstable state. In these conditions, the state faces a clear alternative, either

the prevalence of a unique value, invested in state-legal form, expressed in the existence of a private law traditions and the creation of a separate legal system, or legal development in the Russian system of law with the emergence of more and more standardized features.

### **Conclusion**

The study of the legal and political status of the Republic of Abkhazia as an unrecognized state in the contemporary international system can come to the following conclusions:

1. The leading factor in the recognition of the statehood of Abkhazia is the Russian Federation, whose aim is to defend its geopolitical interests in the region by supporting with the republic with humanitarian, socio-economic, cultural and of course political connections.

2. The duration of the conflict and the change of its political component suggest the possibility of a final recognition of the Republic of Abkhazia in conditions of international conjecture, even taking into consideration the negative attitude of NATO to this process.

3. The Republic of Abkhazia, as its domestic and foreign policy sustainable development is ready to prove in the framework of international integration, is focused on the right of the Abkhazian people to self-determination.

4. The current situation in the Republic of Abkhazia is characterized by selective application of the constitution and the absence of absolute rule of law in different spheres of society. As a consequence, there are constant attempts to reform the constitution and the obvious lack of a clearly defined national legal ideology.

5. The Republic of Abkhazia began the process of forming its own legal system at the end of XX century. This process has not been completed, therefore, the legal system of the Republic of Abkhazia is characterized by fragmentation and instability.

6. The current legal system of the Republic of Abkhazia can be described as a transitional one which is in the process of synchronization with the law of the Russian Federation which will bring it closer to the Roman-Germanic legal family within the framework of its aspirations to build a sovereign state with its subsequent recognition by the international community.

7. Its unrecognized status prevents Abkhazia from becoming a full participant in the international political system and slows down the process of the impact of international law on the legal system of the Republic of Abkhazia. Only in case of strengthening of the international legal status of the Republic of Abkhazia and its subsequent recognition will there a possibility of changes in legislation and their implementation in practical enforcement activities.

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