

INDEPENDENCE OF ABKHAZIA AND PROSPECTS FOR THE CAUCASUS

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THE INTERNATIONAL LEGAL STATUS OF THE REPUBLIC OF ABKHAZIA IN THE LIGHT OF INTERNATIONAL LAW

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On the 26th of August 2008 the Russian Federation officially recognized the Republic of Abkhazia, together with the Republic of South Ossetia. Following this move, on the fifth of September 2008 the second country to recognize both South Caucasian republics was the Republic of Nicaragua. The former political act elevated Abkhazia to the level of a recognized state. The latter act, importantly, immediately took Abkhazia out of the vicious circle of the Cyprus scenario, whereby the Turkish Republic of Northern Cyprus is recognized by one state only. A year later, on the tenth of September 2009, the Bolivarian Republic of Venezuela recognized Abkhazia, and on the fifteenth of December 2009 the Republic of Nauru did as well.*

The significance of the recognition of Abkhazia by four UN member states, one of which is one of the world's great powers and a permanent member of the UN Security Council, is difficult to overestimate. After many decades of strenuous efforts and sacrifices on the part of the whole Abkhaz people, after a bloody war and harsh international blockade, Abkhazia finally managed to achieve the status of a recognized nation, which firmly secured its safety and political future.

The move by Russia caused various reactions from a number of governments across Europe, Asia, and the Americas, many of which were disapproving or strongly negative. A perusal of these reactions indicates that the main objection against the recognition of the independence of Abkhazia is legalistic: that such recognition presents a breach of international law, namely, the violation of the territorial integrity of Georgia within its internationally recognized borders.

Remarkably, this same charge of the violation of the territorial integrity of a UN member-state did not hold in the case of Kosovo, and extremely negative reactions on Abkhazia's recognition came from those governments which in the same year recognized the independence of this Serbian province. The argument they put forward in defense of their position on Kosovo and against the recognition of Abkhazia is quite arbitrary: the case of Kosovo is *sui generis* and thus cannot be applied to any other cases nor used as a precedent.

Because the main argument adduced by various governments and some international organizations (for example, by the European Union, NATO, OSCE, PACE) against the recognition of Abkhazia is legalistic, namely that it constitutes a breach of

international law, I shall comment on the legal aspects of Abkhazia's independence, drawing on major textbooks on international law and the specialized literature. I shall structure my paper in the form of questions, to which I will try to provide by necessity short answers.

1. Did Abkhazia have a history of statehood before it became a part of the Georgian SSR?

The statehood of Abkhazia, before Joseph Stalin made it a part of the Georgian SSR in 1931, is based on a long and almost uninterrupted historical tradition.

From the eighth to the tenth centuries Abkhazia was a kingdom ruled by the dynasty of the Leonides, and from the thirteenth century up to 1864 it was a principality ruled by the princely dynasty of the Chachbas, whose representative, Safarbey/Georgy, in 1810 placed the independent Abkhazian Principality under the Russian rule as a protectorate, absolutely independently of the neighboring Georgian provinces of the time. The Abkhazian Principality was abolished by Russia in 1864.

After the Russian revolution of 1917, the Abkhazians formed the Abkhazian People's Council, an autonomous body of power, which at the Congress of the Abkhaz people held on the eighth of November 1917, adopted the Declaration and Constitution. One of the goals of the Abkhazian People's Council as written in the Declaration and Constitution was to work in the direction of the self-determination of the Abkhaz people.

The Abkhazian People's Council was replaced by Soviet bodies of power when Abkhazia became a part of the Soviet Union in 1921.

2. Was Abkhazia a state during the Soviet period?

In the 20th century, within the Soviet framework, the statehood of Abkhazia is declared in all Abkhaz and in Georgian constitutions. On the 31st of March 1921 Abkhazia was proclaimed a Soviet Republic, and the Georgian Revolutionary Committee (Revkom) recognized the independence of the Soviet Socialist Republic of Abkhazia. Although in the same year Abkhazia was compelled to become associated with the Georgian SSR on the basis of a confederal "Treaty of Union", its 1925 Constitution nevertheless stipulated a very high level of political autonomy, including the right to secession from the USSR.¹ Only on the 19th of February 1931, at Stalin's behest, did Abkhazia lose its SSR status, when it was downgraded to that of an Autonomous Republic within the Georgian SSR.

¹Article 5 of the 2nd Chapter read: "The Abkhazian SSR is a sovereign state exercising state power on its territory on its own and independently from any other power. The sovereignty of the Abkhazian SSR, given its voluntary entrance into the ZSFSR and the Union of SSR, is limited only to the boundaries and on the matters designated in the Constitutions of these Unions. The citizens of the Abkhazian SSR, retaining their republican citizenship, are citizens of the ZSFSR and the Union of SSR. The Abkhazian SSR reserves for itself the right of free secession both from the ZSFSR and from the Union of SSR. The territory of the Abkhazian SSR cannot be changed without its consent".

Notwithstanding this, within the Soviet constitutional framework, the Abkhazian ASSR was regarded as a state: it had its own constitution, state symbols, a government, an elected parliament, and ministries.

3. Did the Abkhazian ASSR have the right of secession from the Georgian SSR?

The Soviet law on secession, adopted on the third of April 1990 and called "On the procedure of the settlement of questions connected with the withdrawal of a union republic from the USSR," allowed the Autonomous Republics and Autonomous Regions to decide independently whether or not to follow along with the secession of the Union Republic in which they were situated.

At the all-Union referendum held on the 17th of March 1991, 52.4% of the electorate of Abkhazia took part in the referendum, 98.6% of whom voted for the preservation of the reformed USSR. At the same time the non-Georgian population of Abkhazia did not take part in the all-Georgian referendum on independence from the USSR held on the 30th of March 1991. This means that on the results of the 1991 referendum Abkhazia had the legal right to separate from Georgia, staying in the USSR, whereas Georgia on the 9th of April 1991, on the basis of its own referendum, declared the restoration of the independent Republic of Georgia.

Thus, according to the Soviet law of 1990, Abkhazia had a legal right to secession from Georgia, although it did not have a chance to realize this because of the disbanding of the Soviet Union.

4. Did Abkhazia have any legal inter-relations with Georgia in the post-Soviet period prior to its recognition?

No, there is not a single legal document co-signed by Abkhazia and Georgia which would in any way bind these two entities within a common state framework. This fact was indirectly acknowledged in the Moscow Agreement of the fourth of April 1994 signed by Georgia, Abkhazia, Russia, the UN and OSCE called "Declaration on measures for a political settlement of the Georgian-Abkhaz Conflict", whose Article 8 reads: "A phased action program will be worked out and proposals on the reestablishment of state and legal relations will be elaborated." The Abkhazian politicians point out that the need to reestablish state and legal relations between Abkhazia and Georgia could mean only one thing: that such relations were non-existent.

5. Did Abkhazia manage to establish itself as an independent polity before its recognition by Russia and Nicaragua (later Venezuela and Nauru)?

After 1993, following the victory over the invading Georgian forces, Abkhazia constituted itself as a *de facto* independent state with a democratic form of rule. The constitution of sovereign Abkhazia was adopted in 1994 and reaffirmed in an all-Abkhazia referendum in 1999. That same year, in 1999, the "Act of State Independence of Abkhazia" was adopted.

Prior to its recognition in 2008, Abkhazia had a constitution, flag, national anthem, and other state symbols. It had an elected parliament, a president, its own independent foreign policy, a small but efficient army, interior and border control troops, a judicial system, and state-supervised social and economic institutions.

Economically, even under the conditions of a harsh embargo, Abkhazia managed to reach a level of economic activity exploiting its lucrative tourist infrastructure, subtropical agriculture, and rich natural resources (forestry, coal mining, fishery, etc.).

Politically, since the end of the war of 1992-1993, it has held three parliamentary and four presidential elections. The presidential elections in 2005 were won by the opposition. Abkhazia has a comparatively high level of political pluralism, a multiparty system, a developed civil society and a vibrant NGO community.

From the point of view of civil liberties, even before recognition Abkhazia was indexed by Freedom House as “partially free” on the same level as Georgia, and higher than quite a number of internationally recognized post-Soviet states. It has free media, guaranteed freedom of expression of religious beliefs, and state-sponsored cultural and educational institutions (e.g. schools) catering for the needs of various ethnic groups residing in the republic (Abkhazians, Armenians, Russians, Georgians).

6. Does Abkhazia meet internationally accepted criteria for qualification as a State?

From the point of view of international law, Abkhazia meets all the criteria laid down for being qualified as a state.

According to article I of the 1933 Montevideo Convention on Rights and Duties of States, “The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) a government and (d) capacity to enter into relations with other States.”²

The US State Department outlined in its statement of November 1976 its conception of statehood in the following terms: “effective control over a clearly-defined territory and population; an organized governmental administration of that territory; and a capacity to act effectively to conduct foreign relations and to fulfill international obligations.”³

Opinion No. 1 of the Badinter Arbitration Commission on Yugoslavia defines a state “as a community which consists of a territory and a population subject to an organized political authority; that such a state is characterized by sovereignty.”⁴

²Greig (1976: 93).

³von Glahn (1996: 69).

⁴*International Legal Materials*, 31 (1992), pp. 1494-1497.

Abkhazia meets all these conditions. It has a permanent population, a defined territory, clearly defined and undisputed borders, an elected parliament and a stable government, which solely exercises effective control and administration over the whole territory of the Republic of Abkhazia. Abkhazia is sovereign and is not controlled by any foreign power. It has its own constitution, flag, national anthem and other state symbols, as well as its own army and judicial system.

Abkhazia is capable of engaging in international relations, as enshrined in Articles 47 (8) and 53 (4) of its constitution. It has its own independent foreign policy and a Foreign Ministry, which is engaged in international contacts. Abkhazia is a signatory to politically binding international documents, agreements, and treaties.

James Crawford (1979: 70) points out that "As a matter of general principle, any territorial entity formally separate and possessing a certain degree of actual power is capable of being, and *ceteris paribus*, should be regarded as, a state for general international law purposes. The denomination *sui generis* often applied to entities which, for some reason, it is desired not to characterize as states, is of little help." He also asserts that "the criterion for statehood of seceding territories remains in substance that established in the nineteenth century: that is, the maintenance of a stable and effective government over a reasonably well defined territory, to the exclusion of the metropolitan state, in such circumstances that independence is either in fact undisputed, or manifestly indisputable" (Crawford 1979: 266).

7. What can be said about Abkhazia's (non-)recognition in the light of international law?

There are two schools of thought regarding the issue of recognition of new states. According to the more liberal, so-called declarative theory, "recognition of a new state is a political act which is in principle independent of the existence of the new state."⁵

The declarative theory is reflected in a number of authoritative judicial documents. Thus, article 3 of the Montevideo Convention, which has been set as a basis of Article 12 of the Charter of the Organization of American States (1948), reads: "The political existence of the state is independent of recognition by other states. Even before being recognized, the state has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts."⁶

The definition of a state by the American Law Institute also does not include any reference to external recognition, it being "an entity that has a defined territory, and

⁵Crawford (1979: 20).

⁶Kapteyn et al. (1984: 188).

a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in formal relations with other such entities.”⁷

The same opinion is held by quite a number of well-known specialists in international law. Thus, as noted by D.W. Greig (1976: 97, 122), recognition is more a political fact of international life than a fundamental legal principle. Gerhard von Glahn (1996: 66) also points out that “despite much reasoned argument to the effect that the recognition of new states (and new governments) is a legal matter, the majority of writers as well as the practice of states agree that it is, rather, a political act with legal consequences.”

Indeed, “[a] new state comes into existence when the community involved acquires the basic characteristics associated with the concept of a state: a defined territory, an operating and effective government, and independence from outside control, etc. Because all these aspects of statehood involve ascertainable facts, the dating of the beginning of a new state is mainly a question of fact and not law. The new state exists, regardless of whether it has been recognised by other states, when it has met the factual requirements of statehood” (von Glahn 1996: 68-69).

Furthermore, “in most cases the establishment (even the violent establishment) of a new state or government is not a breach of international law; there is no general rule of international law which forbids a group of people ... to break away and form a new state, if they have the strength to do so. In such cases the existence of a state or government is simply a question of fact, and recognition or non-recognition usually have no legal effects” (Malanczuk 1997: 84).

“If world-wide recognition does not exist, the seceding territory may still constitute a state in the light of international law, for recognition is generally not considered a *conditio sine qua non*” (Duursma 1996: 92).

Opinion 1 of the Badinter Commission reads: “the existence or disappearance of the state is a question of fact; that the effects of recognition by other states are purely declaratory.”⁸

As noted in this connection by Bart Driessen (1997: 6), “The recognition of a state by other states would seem to be no more than evidence that the four above-mentioned criteria are fulfilled; formal recognition by the Government of Georgia, the United Nations, or third states would not create the state of Abkhazia. At the same time, non-recognition may be an expression of disapproval with some aspect pertaining to the new state.”

⁷Gotlieb (1993: 131).

⁸“International Legal Materials,” 31, 1488 (1992), cited from Driessen (1997: 6, fn 12).

Another dominant theory of recognition, the so-called constitutive theory, considers recognition as an important trait of a state; according to it, “the rights and duties pertaining to statehood derive from recognition only” (Crawford 1979: 4).

The constitutive theory does not specify how many states should recognize the country to be qualified as a state. Therefore, even according to this more conservative and restrictive theory, Abkhazia, having been recognized by two UN member states, must be regarded as a state under international law, as it fulfils all the formal criteria needed for statehood, including diplomatic recognition by other states.

However, irrespective of the choice of theory, be it declarative or constitutive, any objective analysis of the current internal and international position of Abkhazia will ascertain the fact that it is a sovereign polity, which, as it is, meets all formal requirements needed for its recognition as a state.

The current non-recognition *de jure* of the independence of Abkhazia by all the major world powers except Russia is used by them as a form of disapproval of, or objection to, the existence of an independent Abkhaz state. It can be suggested that this disapproval is not based on international law, but rather on political and/or geopolitical considerations, despite the fact that the arguments drawn against the recognition of Abkhazia and the characterization of its statehood as “illegitimate” are expressed by them in juridical terms.

Thus, in the second volume of the detailed report of the *Independent International Fact-Finding Mission on the Conflict in Georgia* (September, 2009) its authors claim: “South Ossetia should not be recognised because the preconditions for statehood are not met. Neither should Abkhazia be recognised. Although it shows the characteristics of statehood, the process of state-building as such is not legitimate, as Abkhazia never had a right to secession” (p. 135).

Such arguments, however, cannot be regarded as convincing or well substantiated. As I pointed out earlier, in fact the Soviet law of the third of April 1990 “On the procedure of the settlement of questions connected with the withdrawal of a union republic from the USSR” did allow the Autonomous Republics and Autonomous Regions the right to secede from a Union Republic in which they were situated in case of the latter’s secession from the USSR. On the basis of this law and on the results of the referendum of 1991 Abkhazia had the right to secede from Georgia.

The arguments adduced by the authors of this report differ also from opinions on these issues held by quite a number of specialists on international law. Thus, Georges Abi-Saab (2006: 474) argues that “[t]here is no international norm prohibiting secession and therefore it is difficult to see an actual need for such a norm. [...] still it would not make much sense to speak about a ‘right to secession’ ”⁹ (see more on this in the next chapter).

⁹Gazzini (2009).

On the question of “legitimacy” and “illegitimacy” of a state, cf., the opinion of D. Anzilotti (1929: 169), the author of a textbook on international law: “There are no legitimate States [sic] or illegitimate States; the legitimacy of a State resides on the very fact of its existence”¹⁰ (in Gazzini 2009).

The legitimacy of the statehood of Abkhazia is being rejected not only by the authors of the cited report¹¹, but also by quite a number of governments, who object to the existence of an independent Abkhazia.¹² Despite this, there is no doubt that the most important source of the legitimacy of a state is the recognition of its legitimacy first of all by its people, and not some external factors, including the diplomatic recognition by other states or the declarations made by some governments.

The only and most important source of legitimacy of the state of Abkhazia is its people, who chose the path of independent development and who proved that they were ready, if needed, to endure sacrifices in order to defend their independence. The non-recognition by some countries or organizations cannot be a factor which in any way seriously affects the legitimacy of the Republic of Abkhazia in the eyes of its people.

It is quite obvious that the current (temporary) non-recognition of the statehood of Abkhazia by the majority of countries of the world cannot possibly either deprive it of its legitimacy, or nullify the existence of the Abkhaz state, inasmuch as *de jure* recognition by Georgia or by any other government will not create the Abkhaz state or give it any additional legitimacy: *it exists independently of these factors*.¹³

8. Is the international position of Abkhazia undermined because of its violent secession from Georgia?

The UN Secretariat, at least in the past, maintained the following position on Abkhazia’s recognition, as expressed in the words of the then Secretary-General Boutros Boutros-Ghali: “It has been made clear to the Abkhaz side in the negotiations

¹⁰“il n’y a pas d’Etats légitimes et d’Etat illégitime; la légitimation de l’Etat réside dans son existence même,” in Gazzini (2009).

¹¹It is interesting that one of the experts who participated in the work on the report of the Mission, the German professor of Law, Otto Luchterhandt, thinks that the recognition of Abkhazia by European countries, unlike the policy they pursue currently, “would contribute to the reducing of tension and would make possible reconciliation with the Georgians.” This testifies to the substantial differences in opinions between the members of the Mission on the issue of the recognition of Abkhazia. See Luchterhandt’s interview on: <http://derstandard.at/fs/1254310467832/derStandardat-Interview-Anerkennung-Abchasiens-wuerde-zur-Entspannung-beitragen>.

¹²See the eloquent collection of international reactions on the recognition of Abkhazia by various countries on http://en.wikipedia.org/wiki/International_recognition_of_Abkhazia_and_South_Ossetia.

¹³Of course, nobody would challenge the importance of external recognition for the normal functioning of a state. In certain cases, recognition can consolidate the independence of a new state, especially in doubtful, controversial, or unstable situations, whereas non-recognition can sometimes lead to the proclaimed state’s failure to establish itself.

that independence achieved by force of arms is unacceptable to the international community.”¹⁴ Yet, despite this position, one can argue that the independence of Abkhazia cannot be undermined by the fact that its secession from Georgia was the result of a military conflict with the armed forces of the former metropolis. At least three arguments can be adduced in support of this view.

Firstly, the secession of Abkhazia can be justified by “the oppression theory,” according to which “the severity of a state’s treatment of its minorities ... may finally involve an international legitimation of a right to secessionist self-determination, as a self-help remedy by the aggrieved group.”¹⁵

There is undisputed and abundantly documented evidence which testifies to the harshness of Georgia’s treatment of the Abkhazians both during the Soviet and in the early post-Soviet periods.

In the Soviet period, especially between 1936 and 1953, the Abkhazian population was subjected by the Georgian government under Lavrenty Beria and then by his successors to forced assimilation policies. The Abkhazian language was forbidden in schools and official use, and, instead, the Georgian language, unknown to the majority of the Abkhazians, was imposed.¹⁶ A large-scale resettlement policy was carried out, moving tens of thousands of Georgians from Georgia proper to Abkhazia, in order to shift the demographic balance in Abkhazia in favor of ethnic Georgians. Many place-names in Abkhazia were Georgianized or replaced by newly coined Georgian ones.

A large majority of the Abkhaz intellectuals, politicians, and public figures were killed on fabricated accusations. In 1941-42 and again in 1949-51 there existed plans to exile the entire Abkhaz nation to Siberia, following the Chechens and Ingush, though these were never realized.¹⁷ A special “theory” was designed in Tbilisi to substantiate the claim that Abkhazians were not native to Abkhazia, which would justify their deportation. To sum up, in the words of the American historian Darrel Slider (1985: 53), “Beria launched a campaign apparently designed to obliterate the Abkhaz as a cultural entity.”

After the collapse of the Soviet Union, the ultra-nationalist government led by Zviad Gamsakhurdia proclaimed the slogan of “Georgia for the Georgians.” The leaders of the State Council of Georgia, which came to power in Tbilisi after the violent deposition of President Gamsakhurdia in a military coup, declared that there would be no autonomies in Georgia. Despite the Abkhaz proposals to establish federal relations

¹⁴UN document S/1994/253, p. 6.

¹⁵Buchheit (1978: 222).

¹⁶The Georgian First Secretary of the Abkhaz Regional Party Committee A. Mgeladze asserted that “Such a language as Abkhazian does not exist. The Abkhazians are speaking a corrupt Georgian, and energetic measures are currently being taken to correct it” (quoted from: *Juridic@eskaja gazeta*, No. 3, Sukhum, 1996, p. 4).

¹⁷Nekrich (1978: 42, 104-105).

with Georgia, the State Council headed by Eduard Shevardnadze started on the 14th of August 1992 a full-scale war against Abkhazia. In the course of this war four per cent of the entire Abkhaz population, among whom were many civilians, were killed. Abkhaz cultural institutions, museums and libraries, were pillaged and destroyed, and Abkhazia's National Archive and the Institute of Language, Literature and History were deliberately burned to the ground.¹⁸

The Georgian top military commander and the head of the Georgian civilian administration of the occupied part of the territory of Abkhazia publicly threatened the Abkhaz nation with genocide.¹⁹ All this, in the eyes of the Abkhaz people, represents a consistent policy designed at the destruction of their nation in order to render unchallenged the Georgian possession of Abkhazia.

Secondly, from the Abkhaz perspective, neither the Georgian government of President Gamsakhurdia nor the government of the State Council of Georgia, which replaced the government of Gamsakhurdia, represented the Abkhaz people (and indeed the other non-Georgian communities of Abkhazia). Under the Georgian election law of 1990, the participation of Abkhaz or South Ossetian political parties in the pan-Georgian elections was forbidden with the argument that they represented "regional," rather than pan-Georgian parties. At the 17th of March 1991 all-Union referendum, 98.6% of the population of Abkhazia who took part in the referendum voted in favor of remaining in a reformed Soviet Union. The Abkhaz and large sections of the remaining non-Georgian population of Abkhazia did not participate in the all-Georgian referendum on independence from the Soviet Union held on 31 March 1991.

The military coup in Tbilisi, which coincided with the dissolution of the Soviet Union, deposed President Gamsakhurdia. The junta dissolved the Georgian parliament and established a Military Council, which soon gave over power to a State Council headed by Eduard Shevardnadze.

All these new structures, which had no legal basis whatsoever in the Georgian constitution, were non-representative for the population of Abkhazia. The war against Abkhazia was initiated by these political forces.

Thirdly, as a people, the Abkhazians are entitled to the right of self-determination, including external self-determination.

One can argue that these three considerations (oppression by the majority; illegitimate authority of the Georgian leadership in 1992; right to self-determination) over-

¹⁸Both National Archives of Abkhazia and Institute of Language, Literature and History were burned by the Georgian security forces and army on the 22nd of October 1992,

¹⁹*Cf.*, on the threats of genocide made by the commander of the Georgian army in Abkhazia G. Karkarashvili and the Head of the Georgian civilian administration on the occupied part of Abkhazia G. Khaindrava in Amkuab, Ilarionova (1992:127-128) and Chirikba (1998: 50, fn 1).

ride the principle of “non–use of force” adduced by the UN against recognition of Abkhazia.

Moreover, the secession, even violent secession (that is, by the use of force) of a part of the territory of a state aiming at establishing another state, is not prohibited by international law. The UN International Law Commission limited the principle of non–recognition of territorial acquisition by illegal force to acquisition “by another state,” but did not consider it as a valid principle in the case of secession (Crawford 1979: 267). One can cite as an example the violent secession in March 1971 of East Pakistan and its unilateral declaration of independence under the name of Bangladesh, which was soon recognized by many states (see more on this case also below).

Both international law and practice prove that secession “is a domestic matter, and therefore a legally neutral act in international law.” (Musgrave 1997: 210) “An ethnic group in one state is at liberty, from the standpoint of international law, to secede and form its own nation–state” (ibid., 211).

This position is shared by a wide range of scholars. Thus, Hersch Lauterpacht (1948: 8) emphasized that “international law does not condemn rebellion or secession aiming at the acquisition of independence.” Michael Akehurst (1987: 53) asserts that “there is no rule of international law which forbids secession from an existing state; nor is there any rule which forbids the mother–state to crush the secessionary movement, if it can. Whatever the outcome of the struggle, it will be accepted as legal in the eyes of the international law.”

Jorri Duursma (1996: 99–100) points out that “Contrary to what some distinguished writers have maintained, international state practice does accept a right of secession. Secession is inherent in the right of self–determination.”

Some authors point out that the international acceptance of secession is more easily obtainable if the seceding group constitutes a people, who occupy a territory already delimited by internal administrative borders. Thus, according to Duursma (1996: 99–100), “It is not prohibited by international law to seek secession if one constitutes a people and/or fraction of a people and if in addition one inhabits a certain territory delimited by international and/or internal administrative borders.”

Paradoxically, in the absence of any rules of international law managing the balance between the right of self–determination and the principle of territorial integrity, “the present international legal situation encourages the use of force in order to make demands for secession successful.” Furthermore, “if the state authorities are the first to use violence, breaching fundamental human rights or even the prohibition of genocide, then the secessionists may offer armed resistance. In the absence of international recognition of the seceding state, the civil war, once started, will continue until a de facto solution has been imposed by force. Either the metropolitan state has regained control over the seceding territory, or the secessionists have stabilized their

authority and have managed to secure the exercise of all elements of statehood, that is, they have created an independent state” (Duursma 1996: 104, 426).

9. *Is Abkhazia a subject of international law?*

Even before its recognition, following its establishment as an independent state, Abkhazia acquired a separate international legal personality. The international legal status of Abkhazia is proclaimed in its 1994 Constitution. The non-recognition of Abkhazia *de jure* has not changed this situation. As stated by the American Law Institute, “An entity not recognized as a state but meeting the requirements for recognition has the rights of a state under international law in relation to a non-recognizing state.”²⁰

Crawford also points out that “[s]tates do not in practice regard unrecognized states as exempt from international law, and they in fact do carry on a certain, often quite considerable amount of, informal intercourse.” He suggested that “[t]he tentative conclusion is that the international status of a state ‘subject to international law’ is, in principle, independent of recognition.” (Crawford 1979: 24) Moreover, as asserted by Duursma (1996: 101), “If the secessionists have vanquished the central state authorities ..., the seceded territory will have acquired an international status.”

As pointed out while discussing the question of the legitimacy of the independence of Abkhazia by Tarcisio Gazzini (2009), “An entity becomes a subject of international law through an incremental process leading to the creation of an effective and independent government. However difficult it is to establish when the process is completed, the existence of the international subject is a question of fact.”

After the recognition of Abkhazia by four UN member-states, its international legal personality is now beyond any doubt, and any assertions to the contrary can be argued against on the legal arguments adduced above.

10. *Did Russia violate international law by recognizing the independence of Abkhazia?*

In the preceding paragraphs I showed that after the war of 1992-93 Abkhazia was not tied to Georgia within one state structure by any legally binding document.

In the post-war period, Abkhazia evolved as a fully fledged state with all state structures and institutions, with democratic presidential and parliamentary elections, a stable political system and a viable economy.

Georgia, though it claimed the territory of Abkhazia, was not in a position to recover it by political or military means. There was thus a situation of political impasse,

²⁰Crawford (1979: 74).

which could have been perpetuated indefinitely, as the situation in cases like Taiwan or Northern Cyprus proves. The recognition of Abkhazia and South Ossetia by the Russian Federation came after Georgia's military assault on South Ossetia and a threat to attack Abkhazia. This recognition came as a political means to save these two small nations from military attacks and oppression by Georgia.

Thus, the need to save the oppressed minority justifies the political act of Russia, just as the Western powers justified their recognition of the independence of the former Serbian province of Kosovo by the necessity of protecting its Albanian population.

The most important factor is that the territorial integrity of Georgia within its Soviet borders could not be maintained and was in practice unattainable by either political or military means.

The separation of Abkhazia and South Ossetia was a *fait accompli* long before their formal recognition by Russia. By the time of the recognition of Abkhazia and South Ossetia by Russia, Georgia effectively represented a disintegrated state.

11. What can serve as legal precedents for the recognition of Abkhazia?

There are at least four cases in modern history which can be considered similar to the situation obtaining with regard to the recognition of Abkhazia: Bangladesh, Slovenia, Croatia, and Kosovo.

Bangladesh, formerly the province of Eastern Pakistan, separated from Pakistan in March 1971 and declared its independence under the name of Bangladesh. Its independence was recognized as of February 1972 by 47 countries, despite the fact that this separation was reached "by force of arms" and with foreign military help, and despite the protests of Pakistan (a UN member since 1947), which insisted that Eastern Pakistan/Bangladesh was its inalienable territory. Among the reasons for the recognition of Bangladesh were the failure of Pakistan to suppress the secessionist movement (largely due to military assistance given to the rebels by India) and, on the diplomatic level, the lobbying activity of such influential sponsors of Bangladesh's independence as India and the Soviet Union (Dugard 1987: 75-76).

Similar situations can be seen in the recognition of Slovenia and Croatia. After the Communist Party of Yugoslavia collapsed in 1990, the US and European states publicly supported the preservation of the Yugoslav federation. However, at the end of June 1991, Slovenia and Croatia unilaterally declared their independence. In December 1991, Germany unilaterally recognized the independence of the two separatist republics. The states of the European Community (predecessor of the European Union) had no option but to follow. This stimulated the speedy disintegration of the Yugoslav Federation.

The European Community-negotiated Brioni agreement, of July 1991, and acceptance, in December 1991, of the German policy of "preventative recogni-

tion” together ended the effective sovereignty and territorial integrity of the Yugoslav state. The European Community had abandoned its previous support for the federal government. The EC established the framework for the disintegration of the federal state, calling into existence new states along the lines of the republican boundaries.²¹

The freshest case is that of the Serbian province of Kosovo, populated by the Albanian majority, whose separation from Serbia, aided by NATO bombardments of this former Yugoslav republic, ended on 17 February 2008 with a declaration of independence. This declaration was met, despite the Serbian government’s energetic protests against the violation of its territorial integrity, with speedy recognition, starting from 18 February 2008, by the USA and many European and other countries, 64 at the latest count. This was the last accord in the drama of the dismemberment of Yugoslavia.

Conclusions

The main conclusions that can be drawn from this discussion are:

1. Abkhazia has a long history of statehood, either independent or autonomous, before it became in 1931 a part of the Georgian SSR within the framework of the Soviet Union.
2. During the Soviet period, Abkhazia maintained its statehood: first (between 1921 and 1931) as a union republic on an equal footing with Georgia, and from 1931 until 1991 – as an Autonomous Republic within the Georgian SSR.

Within the Soviet constitutional system an Autonomous Republic was regarded as an autonomous state. Thus, according to the article 79 of Chapter 8 of the Constitution of the Georgian SSR of 1978, “The Autonomous Republic is a Soviet socialist state, which is in the composition of the Georgian Soviet Socialist Republic.” Article 81 of the same Chapter stipulates that the territory of the Abkhazian ASSR could not be changed without its consent.

The Abkhazian ASSR should thus not be regarded as a regular Georgian province populated by an ethnic minority, as holds with Megrelia, Svanetia or Dzhavakheti, but rather as an autonomous state, having such state symbols as a constitution, flag and state emblem, as well as an elected parliament, cabinet of ministers, police force and courts.

3. According to the Soviet law on secession of April 1990, Abkhazia had a legal right to secede from Georgia in case the latter wanted to secede from the

²¹Chandler (2000: 19-30).

USSR, and it was only the sudden dissolution of the Soviet Union that prevented this right from being exercised.

4. Given that during the last years of the USSR Georgia abolished all Soviet laws, including those by which Abkhazia was attached to it, Georgia lost any legal basis for its possession of Abkhazia. In the post-Soviet period prior to Abkhazia's recognition, there has been not a single legal document co-signed by Abkhazia and Georgia which would in any way bind these two entities within a common state framework. The virtual lack of any such legal document was implicitly indicated by the 1994 Moscow agreement, which spoke of the future plans on the reintegration of these two state entities.
5. In the light of international law, already in the post-war period (1993-2008), before its recognition by Russia and Nicaragua in 2008, Abkhazia met all internationally accepted criteria to be qualified as a state. Even under the conditions of non-recognition and blockade, over a period of 15 years it was effectively a self-governed independent polity and subject of international law.
6. The recognition by Russia, Nicaragua, Venezuela and Nauru of Abkhazia cannot be regarded as a breach of international law, contrary to what has been asserted by many governments.

Firstly, this recognition can be justified by the oppressive policy of Tbilisi against the South Ossetian and Abkhazian peoples, which manifested itself in the Georgian treatment of Abkhazians and South Ossetians during the Soviet period and in the wars waged by Tbilisi in 1991-3 against South Ossetia and Abkhazia, and most recently, in 2008, against South Ossetia.

Secondly, since 1993 Georgia has lost any control whatsoever over Abkhazia's territory. Politically, negotiations under the UN aegis aimed at the reintegration of both states in a single state structure initiated in 1993 and continued over 16 years completely failed and were deadlocked.

Militarily, several attempts by Georgian military forces to invade Abkhazia and re-establish its control there, in 1998 and 2006, also failed.

Economically, the harsh embargo imposed in 1996 on Abkhazia by the CIS countries at Georgia's insistence and maintained essentially by Russia and Georgia, also did not produce any political fruits. On the contrary, this inhuman blockade against war-ravaged Abkhazia, which added to the human sufferings of the population of Abkhazia, even further separated Abkhaz and Georgian societies.

It is quite obvious that by August 2008 Georgia represented a de facto disintegrated state, and its territorial integrity within the former borders of the Georgian SSR

was not attainable by political, economic or military means. The recognition of Abkhazia and South Ossetia by Russia, Nicaragua, Venezuela and Nauru only formalized the factual disintegration of the former Georgian SSR.

7. In view of the declarative theory of statehood, at the moment of its recognition Abkhazia had already been for a period of 15 years a self-governed independent polity outside of any Georgian jurisdiction and control. In the view of the constitutive theory, Abkhazia became a fully-fledged state from the date of its recognition by the Russian Federation on 26 August 2008. This recognition only formalized and acknowledged the fact of the effective existence of this independent polity.
8. There are serious reasons to believe that the non-recognition of Abkhazia by other states, despite their declarations, is not based on international law, but rather on political and geopolitical considerations.
9. In the light of international law, after its recognition by four UN member-states, Abkhazia can be regarded as a fully-fledged independent state and subject of international law. Its broad international recognition, which, in my view, is imminent, will undoubtedly serve to achieve political stability in western Transcaucasia and will create more favorable conditions for the economic and social development of this part of Europe.

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*Editor’s note: V. Chirikba re-edited his article in 2010, so that the names of four countries are mentioned in this article.