

# Constitutional Framework of the Conflict Regions in Georgia and the Latest Attempts for their Regulation<sup>1</sup>

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## Abstract

There are several frozen territorial conflicts in the post-Soviet space that have intensified since the dissolution of the Soviet Union. These include: the Transnistrian conflict, Nagorno Karabakh and the breakaway regions of Georgia - *de facto* regimes in Abkhazia and in the Tskhinvali region (so-called South Ossetia). The territorial conflicts in the post-Soviet space also include, peculiarly, *de facto* regimes of the Donetsk People's Republic and Luhansk People's Republic in Ukraine. The annexation of Crimea also belongs to these categories of territorial conflicts.

The present article analyzes and revises the constitutional status of the Georgian regions - Abkhazia and Tskhinvali region, taking into account current constitutional and international law regarding the conflict regions, in terms of conflict resolution and conflict management.

Russia plays a key role in the emergence and continuation of territorial conflicts in Georgia. Russia is, in fact, a party to the conflict. However, nationalism is strong in Abkhazia in particular, and it is unlikely that the Abkhazians will agree to full assimilation with Russia and the factual annexation process that is already under way.

It is legitimate to speak of expanded autonomy within Georgia in context of the Abkhazian people's right to political self-determination (within the context of internal self-determination). This must be agreed between the Georgian and the Abkhaz people under a federal territorial agreement (in case of federation). Asymmetrical regionalism as a form of territorial division

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can also be adapted. The result will be asymmetrical federalism or regionalism. The same regional model (expanded autonomy) also applies to the Tskhinvali region (South Ossetia), which currently does not have regional status recognized in the Constitution of Georgia of 1995. This concept of conflict resolution should be part of the Georgian strategy for reintegration of the conflict regions.

**Key Words:** Territorial Conflicts, Post-soviet space, Nationalism, Self-determination, Secession, Federalism, Regionalism, Abkhazia, South Ossetia, Occupation, Annexation, Russia, Georgia.

## I. Preface

There are several frozen territorial conflicts in the post-Soviet space<sup>3</sup> that have intensified<sup>4</sup> since the dissolution of the Soviet Union.<sup>5</sup> These include: the Transnistrian conflict, Nagorno Karabakh and the breakaway regions of Georgia - *de facto* regimes in Abkhazia and in the Tskhinvali region (so-called South Ossetia).<sup>6</sup> The territorial conflicts in the post-Soviet space<sup>7</sup> also include, peculiarly, *de facto* regimes of the Donetsk People's Republic and Luhansk People's Republic in Ukraine.<sup>8</sup> The annexation of Crimea<sup>9</sup> also belongs to these categories of territorial conflicts.<sup>10</sup>

The present article analyzes and revises the constitutional status of the Georgian regions - Abkhazia and Tskhinvali region, taking into account current constitutional and international law regarding the conflict regions, in terms of conflict resolution and conflict management.

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<sup>3</sup> A. Nußberger, Völkerrecht im Kaukasus: Postsowjetische Konflikte in Russland und in Georgien, in: EuGRZ 2008, p. 457-466.

<sup>4</sup> Compare: Belarus - ein Land im Umbruch: Volksaufstand im Osten Europas, Renovabis, Solidaritätsaktion der Deutschen Katholiken mit den Menschen in Mittel- und Osteuropa [Herausgebendes Organ], Zentralkomitee der Deutschen Katholiken, Regensburg 2021.

<sup>5</sup> T. Erkvania, Verfassung und Verfassungsggerichtsbarkeit in Georgien, Diss., Nomos 2017, p. 25.

<sup>6</sup> D. Sagramoso, Russian imperialism revisited: from disengagement to hegemony, London 2020, p. 112 et seq.

<sup>7</sup> See in detail: O. Schmies (Ed.), NATO's Enlargement and Russia: a strategic challenge in the past and future; with a foreword by Vladimir Kara-Murza, Stuttgart 2021.

<sup>8</sup> See F. Slaveski, Remaking Ukraine after World War II: the clash of local and central Soviet power, Cambridge, 2021, pp. 121-146.

<sup>9</sup> See L. David G, Russia's new authoritarianism: Putin and the politics of order, Edinburgh 2020, pp 139-160.

<sup>10</sup> See Chr. Marxsen, The Crimea Crisis - An International Law Perspective, in: ZaöRV 74 (2014), 367-391.

Having won the March 22 repeat 'presidential' election,<sup>11</sup> Aslan Bzhania is now the Moscow-backed<sup>12</sup> fifth leader of separatist Abkhazia for a five-year term. Bzhania was the first presidential hopeful in Abkhazia to give an interview to the Georgian media during the election campaign. Speaking with Interpressnews on January 16<sup>13</sup> and several times afterwards,<sup>14</sup> he and the new Secretary of the Security Council of separatist Abkhazia - Sergei Shamba, declared the necessity for direct Georgian-Abkhaz dialogue,<sup>15</sup> aside from the talks occurring within the Geneva International Discussion format since 2009.

In addition, Aslan Bzhania, signed a decree in early December 2020 approving Abkhazia's "foreign policy concept". The goals include "Resolving the Georgian-Abkhazian conflict and normalizing relations with Georgia" and "Strengthening peace and stability in the Caucasus".<sup>16</sup> It is not clear what idea the proposed dialogue can have and how it should be carried out, but without a dialogue with the Abkhazians the conflict in the region cannot be resolved.

On 27 September 1993, the Head of the Council of Ministers (and Security Council) of the Autonomous Republic of Abkhazia - Zhiuli Shartava, who directed the operation for protection of the government house, was taken hostage (together with other Georgian fighters) and shot by an Abkhazian separatist group. 27 September marks the day of the fall of Sokhumi... 27 years have elapsed since then.

It is self-evident how difficult it is to talk about a dialogue with Abkhazians in this context, especially as Abkhazians also died in this war.

Apart from this and notwithstanding the direct involvement of Russia in the conflict, it is essential to establish a dialogue with the Abkhazians, for the very first phase of eliminating the preconditions of the conflict. Dialogue is necessary, first and foremost, to discuss the regional status of Abkhazia (nationalism is much stronger in Abkhazia compared to South Ossetia). This has to be an expanded autonomy, within the framework of asymmetrical regionalism or asymmetrical federalism,<sup>17</sup> despite the fact that the Abkhaz separatist government has started an illegitimate secession process. From the Georgian side, discussions offering the specific

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<sup>11</sup> See, "Aslan Bzhania Becomes New Abkhaz Leader", [www.civil.ge](http://www.civil.ge), accessed on October 30, 2020.

<sup>12</sup> T. Lundstedt, The Changing Nature of the Contemporary Russian Interpretation of the Right to Self-Determination under International Law, in: S. Morris (Ed.), Russian Discourses on International Law, sociological and philosophical phenomenon, p. 197.

<sup>13</sup> See, "Aslan Bzhania: There should be dialogue between Sokhumi and Tbilisi", [www.interpressnews.ge](http://www.interpressnews.ge), accessed on October 30, 2020.

<sup>14</sup> See, "Aslan Bzhania: We do not ask Georgia to recognise Abkhazian state, but non-use of force agreement will allow us to engage in a dialogue", [www.1tv.ge](http://www.1tv.ge), accessed on October 30, 2020.

<sup>15</sup> See, "Changes in the Separatist Abkhazian Government and Implications for Relations with Tbilisi", [www.jamestown.org](http://www.jamestown.org), accessed on October 30, 2020.

<sup>16</sup> See "Abkhazia Adopts 'Foreign Policy Concept'", [www.civil.ge](http://www.civil.ge), accessed on 6 January 2021.

<sup>17</sup> See V. J. Vanberg, Föderaler Wettbewerb, Bürgersouveränität und die zwei Rollen des Staates, in: Feld/A. Köhler/Schellenbach (Hrsg.), Föderalismus und Subsidiarität, 2016, p. 23-43.

model of autonomy need to begin. The passage of time does not favor the Abkhaz, Ossetian and Georgian peoples. These frozen conflicts only serve the interests of the Kremlin.

In this context, it is evident how relevant it is to conduct scientific research into the constitutional status of Abkhazia and Tskhinvali region.<sup>18</sup> The status of the regions<sup>19</sup> must be identified and taken into account, of course, with the challenges of current constitutional and international law.<sup>20</sup>

The article attempts to describe the extent to which constitutional instruments can be relevant to conflict resolution.<sup>21</sup>

## II. Historical retrospectives (short reminders)

The Abkhazian narrative about the Georgian-Abkhazian history and processing of political events differs considerably from the Georgian narrative. Abkhazia considers Russia a strategic ally which always extends military, financial and political assistance when Georgia plays out its chauvinistic "Kartvelisation politics".<sup>22</sup> Abkhazians also underline that Russia was not responsible for the forced resettlement of the indigenous people (including Abkhazians) of the Caucasus ("Muhajiroba"), especially to the Ottoman Empire in the 19th century. In their narrative, Abkhazians were deported to Islamic countries and Georgians were resettled in Abkhazia. Historically, statistics on Abkhazian and Georgian populations in Abkhazia have also been manipulated. In some cases, the western Georgian region of Samurzakano<sup>23</sup> is represented as a Georgian or an Abkhazian area.

During the centuries (including Middle Ages) the Abkhazians, Georgians and Mingrelians had local identities, and the western part of Georgia the Nation was not ethnically homogeneous. In 1918, peasant uprisings, of a more social character, took place in Georgia (in Abkhazia and in

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<sup>18</sup> See P. Malanczuk, *Region und unitarische Struktur in Großbritannien*, 1984, p. 7-25.

<sup>19</sup> See P. Huber, *Selbstbestimmung in Europa*, in: Feld/A. Köhler/Schellenbach (Hrsg.), *Föderalismus und Subsidiarität*, 2016, p. 23-43.

<sup>20</sup> See R. Vaubel, *Sezessionen in der Europäischen Union*, in: Feld/A. Köhler/Schellenbach (Hrsg.), *Föderalismus und Subsidiarität*, 2016, p. 43-65.

<sup>21</sup> "Constitutional issues lie at the heart of many intra-state conflicts. In widely differing circumstances, constitutional issues played a dominant role in peace processes in Bosnia and Herzegovina, Burundi, the Central African Republic, El Salvador, Guatemala, Nepal and South Africa, among many other parts of the world." See description of "Constitutions and peace processes", Event on 28 January 2021, Berghof Foundation: [www.berghof-foundation.org](http://www.berghof-foundation.org).

<sup>22</sup> G. Hewitt, *Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts*, Leiden – Boston 2013, p. 28-29.

<sup>23</sup> Historic site in western Georgia, on the territory of modern Abkhazia.

Shida Kartli in modern South Ossetia). Apart from that, the Georgian army fought against them. Russia tries to portray these as national uprisings against Georgia...

After the 1917 Russian Revolution and the end of the First World War, many Eastern European countries<sup>24</sup> declared themselves independent, founding democratic republics and passing their first constitutions. Among them were the following: the first Constitution of Estonia of 1920, the first Constitution of Latvia of 1922<sup>25</sup>, the first Constitution of the Republic of Lithuania of 1922, and the first Constitution of the Georgian Democratic Republic of 1921.<sup>26</sup>

To elaborate: after the events of the Russian Revolution of 1917, Georgia proclaimed independence on 26 May, 1918.<sup>27</sup> In 1920, Russia itself recognized Georgia's independence *de jure*. This happened after the signing of the treaty of May 7, 1920, between the two countries, which contributed to the increase in respect for the sovereignty of the young state. By extending *de jure* recognition to the Georgian republic not only did Russia relinquish all sovereign rights over it, but it also affirmed both Abkhazia and Tskhinvali Region/South Ossetia (of which the latter, prior to 1922, was not an administrative district in any form) as parts of Georgia.<sup>28</sup>

On February 21, 1921, facing the onset of Soviet aggression, the Constituent Assembly adopted a constitution of the Democratic Republic of Georgia, the first modern fundamental law in the nation's history. The Constitution of 1921 belongs to the first threshold of the constitutional

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<sup>24</sup> Among the Eastern European states here are the so-called Baltic States, the countries of the Eastern Partnership (EaP) of the EU and Russia.

<sup>25</sup> This is the oldest Eastern or Central European constitution still in force and the sixth oldest still-functioning republican basic law in the world.

<sup>26</sup> Other Eastern European states declared themselves independent, but had no capacity to pass first democratic constitutions: Armenian National Council declared the independence of Armenia on 28 May 1918; Azerbaijan Democratic Republic was founded by the Azerbaijani National Council in Tbilisi on 28 May 1918 after the collapse of the Russian Empire; Ukrainian People's Republic, or Ukrainian National Republic, a predecessor of modern Ukraine, declared independence on 10 June 1917 following the February Revolution in Russia. It initially formed part of the Russian Republic, but proclaimed its independence on 25 January 1918; in February 1918, the Moldavian Democratic Republic declared independence and then integrated into Romania later that year following a vote of its assembly; in the aftermath of the 1917 Russian Revolution, Belarus declared independence as the Belarusian People's Republic. All these states were occupied and Sovietized by Russia in the 1920s or 1940s. They declared themselves independent again after the collapse of the Soviet Union. The majority of these states passed new constitutions in the 1990s, with the exception of Latvia. On May 4, 1990 the Supreme Council of the Republic of Latvia passed the declaration on the Restoration of Independence of the Republic of Latvia, declaring the 1940 Soviet annexation of Latvia illegal (due to the 1922 Constitution of Latvia being ignored), and therefore the Constitution of Latvia of 1922 and Republic of Latvia have been restored *de jure*.

<sup>27</sup> See in detail: F. Liszt, *Die Völkerrechtliche Stellung der Republik Georgien*, ein Gutachten, 8. August 1918; G. Matschabelli/M. Tseretheli, *Einführung in das kaukasische Problem*, Berlin 1915; M. Tseretheli, *Les droits du peuple géorgien*, 1916; M. Tseretheli, *Die Rechte Georgiens*, Berlin 1917; the same, *Georgien und der Weltkrieg*, Zürich 1925; I. Tsérételli, *Séparation de la Transcaucasie et de la Russie et indépendance de la Géorgie*, Paris 1919, p. 31; Z. Avalishvili, *Independence of Georgia in international Politics 1918 – 1921*, London 1981; K. Kautsky, *Georgia: A Social-Democratic Peasant Republic – Impressions And Observations*, 1921; J. Braunthal, *Vom Kommunismus zum Imperialismus, Bilder aus dem bolschewistischen Georgien*, Wien 1922 etc.

<sup>28</sup> G. Kandelaki, "100 Years Ago Today Soviet Russia Recognized Georgia. That Agreement Still Matters", available at: [www.civil.ge](http://www.civil.ge), [last accessed 11 January 2021].

process, which spread in Europe after the First World War (Weimar Republic, Austria, Baltic States, etc.).<sup>29</sup>

According to Art. 107 of the Georgian Constitution of 1921, the regions of Georgia - Abkhazia (Sokhumi district), Batumi district and Zaqatala<sup>30</sup> district enjoyed autonomous status.

Interestingly, Georgian Social Democrats communicated with the Abkhaz elite in the years 1918-1921 during which discussions about the autonomous status of Abkhazia ensued. It should be emphasized that the Georgian security services in Abkhazia in the years 1920-1921 were headed by the Abkhazian named Taraskhan Eshba<sup>31</sup>. Abkhazian MPs, elected to the Georgian Constituent Assembly from the cadre of the Social Democratic Party, also worked on the commission set up to determine the type of government in Abkhazia. On the other hand, there was the Bolshevik group of Abkhazians led by Nestor Lakoba<sup>32</sup>, who fought for the integration of Abkhazia into the Soviet Union.

The Leninist policy of "back in the roots", which professed that Marxism should be understandable in all languages in the Soviet Union, is noticeable in the 1920s. This period also saw a clear attempt to use the Abkhaz language as a literary language. Several elementary schools (up to the fourth grade, the Abkhaz language was not highly developed for other grades) were founded in the Abkhaz language. However, Russian remained the dominant language because the Abkhaz language was not highly developed at the time.

On February 25, 1921, during the Russian Civil War, the Red Army advanced into Georgia and brought the local Bolsheviks to power. The Georgian army was defeated and the Social Democratic government fled the country.

After the occupation of the First Georgian Republic, the creation of the Soviet Socialist Republic of Abkhazia was announced on March 31, 1921.<sup>33</sup> On December 16, 1921, an alliance

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<sup>29</sup> Influenced by the social democratic political elites, the constitution includes a majority of the norms concerning the socio-economic guarantees of individual citizens. In this respect, the Constitution of 1921 provides an interesting source of social democratic motivated constitutions and is one of the first constitutional texts to standardize fundamental social rights at the constitutional level.

<sup>30</sup> Zaqatala district was part of the Transcaucasian Democratic Federative Republic between 1917 and 1918 and the Georgian Democratic Republic between 1918 and 1921 before passing to Azerbaijan in March 1922.

<sup>31</sup> Taraskhan Eshba (1886-1923), a key official in the Georgian security services in Abkhazia during the First Republic. From 1920-21 he was the head of a special unit of the Abkhaz commissariat. Eshba was shot by the Bolsheviks in 1923.

<sup>32</sup> See G. Hewitt, *Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts*, Leiden – Boston 2013, p. 42 et seq.

<sup>33</sup> About the past: in the 8<sup>th</sup> century, the principality of Abkhazia was founded, which united all of western Georgia. The new political entity was called the "Kingdom of Abkhazia" and had its capital in Kutaisi. According to the Abkhazian narrative, the Abkhazian Kingdom united the Abkhazians and was by no means a Georgian kingdom. The Georgian historians claim that the Abkhazian king Leon II was Georgian, the Abkhazian historians - against: claim that Leon II was an Abkhazian king. In the 9<sup>th</sup>-10<sup>th</sup> centuries, Abkhazia was part of the unified Georgian Kingdom in the form of a principality.<sup>33</sup> After Georgia divided into kingdoms, an independent principality of Abkhazia was established at the beginning of the 17<sup>th</sup> century, which was formally part of the

agreement was signed between Georgia and the Soviet Socialist Republic of Abkhazia, after which Abkhazia became part of Georgia. In February 1922, the first Congress of the Abkhaz Soviets ratified the treaty with the Georgian Soviet Socialist Republic. Abkhazia joined the Transcaucasian Soviet Socialist Republic in March 1922 as part of the Georgian Soviet Socialist Republic. In the Constitution of the Soviet Union of 1924, Abkhazia was designated as an autonomous republic. On July 5, 1926, the Constitution of the Soviet Socialist Republic of Georgia was passed, which provided that the Soviet Socialist Republic of Abkhazia was part of the Soviet Socialist Republic of Georgia on the basis of the alliance treaty. Some nine months later, a new Soviet constitution was passed on April 23, 1927. On February 11, 1931 by the resolution of the VI. Congress of the Abkhazian and Georgian Soviets, Abkhazia became part of the Soviet Republic of Georgia, as an autonomous Soviet Socialist Republic.

Modern-day interpretation of the status of Abkhazia in the years 1921-1931 is different: portraying Abkhazia as an independent republic. Abkhazians underline that Abkhazia has always been an independent state and remained independent in 1921-1931.

In 1931, Lavrenti Beria (Georgian Bolshevik and Soviet politician) joined the Bolshevik government, giving Abkhazia an autonomous status. However, Beria could not control Abkhazian politician Nestor Lakoba (communist leader). Lakoba was close to Stalin, and there is speculation that he tried to wrest Abkhazia out of Soviet Georgia and join Russia. Furthermore, Lakoba stopped the collectivization process in Abkhazia (fearing a loss of social basis among the Abkhazian population). In 1931, the Nestor Lakoba started to lose his political power.

During the Soviet Union and even before Sovietization, nationalism was potent in Abkhazia. Soviet Russia took advantage of this to exacerbate the situation in the Caucasus. Relations between Georgians and Abkhazians deteriorated, especially after the death of Nestor Lakoba in 1936.<sup>34</sup> His death is the subject of speculation to this day. According to the Abkhazian version, he was poisoned by Lavrenti Beria and thus murdered. After Lakoba's death, Soviet security forces arrested his wife Saria and their 14-year-old son Rauf. Over a period of several months, Saria was summoned for questioning, arrested, tortured, and finally shot in 1939 for membership of right-wing counter-revolutionary organizations. And Rauf was sentenced to death in 1940... Lakoba was counted as an 'enemy of the nation'. His supporters were arrested and repressed...

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Kingdom of Imeretia in the 17<sup>th</sup> and 18<sup>th</sup> centuries. In 1810, the chief of Abkhazia received Russian patronage. In 1864, the Russian government abolished the Abkhaz principality and established the Sukhumi Military Division.

<sup>34</sup> See in detail: T. K. Blauvelt, Clientelism and Nationality in an Early Soviet Fiefdom - The Trials of Nestor Lakoba, 2021.

The facts speak for themselves, but these events were brought about by the Georgian Bolsheviks who also fought against Georgian sovereignty (against the first Democratic Republic of Georgia in the 1920s and after). Moreover, the Abkhazians' perception is that the Georgians did it all... The process of homogenization of the Georgian nation in Abkhazia began in the 1930s: Abkhaz schools were closed, the Abkhaz alphabet was abolished and replaced by the Georgian alphabet. However, Beria and Stalin did not come to represent the Georgian nation and its democratic will. Being Bolsheviks they represented the Russian Bolshevik government and the occupying regime...

In 1954 the hypothesis of Pavle Ingorokva<sup>35</sup> was published<sup>36</sup>, which claimed that Abkhazians were not indigenous to the area. Instead, it classified Abkhazians as a people who came through the North Caucasus in the Middle Ages. The book caused great polarization between the Abkhazians and Georgians and provided a theoretical basis for the founding of Georgian nationalism. In the 1950s, an opposite sentiment also emerged: that Abkhazia is exclusively the country of Abkhazians.

In 1978, movements began in Abkhazia demanding the protection of the Abkhazian language and for the establishment of the Abkhaz sector. This period saw the formation of the the Abkhaz national identity. The repression of Beria in the 1930s<sup>37</sup> and Pavle Ingorokva's 1954 theory contributed significantly to the formation of the Abkhazian national identity.

Abkhaz nationalism and Russia have become situational allies,<sup>38</sup> and over time, as a result of Georgia's foreign policy, the alliance between Abkhazia and Russia has grown more and more. In November 1988, the draft state program for the Georgian language (approved in August 1989) was published, which provided for the protection of the constitutional status of the Georgian language throughout the Georgian SSR, including the Abkhaz ASSR and the Autonomous South Ossetia region. The deliberations about this project in the Georgian SSR became the occasion for the establishment of socio-political organizations in November-December 1988 in the South Ossetian autonomous region "Adamon Nikhas" and in Abkhazia - "Aidgilara". It is in this period that modern Abkhaz nationalism begins to take shape.<sup>39</sup>

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<sup>35</sup> Pavle Ingorokva (1893-1983) was a Georgian historian, philologist, and public benefactor.

<sup>36</sup> See Pavle Ingorokva, chapter 4 in: „Giorgi Merchule“, 1954.

<sup>37</sup> Compare M. Junge/B. Bonwetsch (Hrsg.), *Bolschewistische Ordnung in Georgien, Der Große Terror in einer kleiner kaukasischen Republik*, Berlin 2015, p. 157 et seq.

<sup>38</sup> See T. K. Blauvelt, "From words to action!" Nationality policy in Soviet Abkhazia (1921-38), in: St. F. Jones (Ed.), *The Making of Modern Georgia, 1918-2012, The first Georgian Republic and its successors*, p. 232 et seq.

<sup>39</sup> According to the official position of Abkhazians today: "Abkhaz is North-West Caucasian language; Speakers of Proto-North-West Caucasians came from the south, and Abkhaz probably developed on the territory of Abkhazia, just as the sister languages (Ubykh and Circassian) developed in situ once their ancestral speakers had continued moving north over the Caucasian mountain-range, and it was only after the great migrations in the closing decades of the 19th century that non-Abkhazians first appeared in Abkhazian soil (though the precise



Following the collapse of the Soviet Union, nationalist movements of both Georgians and Abkhazians, started to gain momentum. The collective memory of Abkhazians is built on the repression of Beria in the 1930s and the war in the early 1990s.

In 1991, a referendum was held in Georgia, in which the entire population living on the territory of Georgia took part, including Abkhazia and South Ossetia. A large majority of the population took part in the referendum and 90% of the participants voted for Georgia's independence.

On March 18, 1989 in the village of Likhni in Gudauta district, 30,000 Abkhazians, constituting a third of the population of the Abkhaz ASSR, gathered and demanded the secession of Abkhazia from the Georgian SSR and the restoration of the status of an allied republic that had existed in Abkhazia in 1921. The meeting's decision was published in the form of "Likhni's Appeal". This led to violent clashes between Abkhazians and Georgians during the April protests in Tbilisi and to calls for the abolition of Abkhazian autonomy. In this context, the Abkhazians were ready to declare independence in the early 1990s.

Then the events of April 9, 1989, the declaration of independence on April 9, 1991, the coup of Zviad Gamsakhurdia and his death in unknown circumstances (most likely murder), then the arrival of Eduard Shevardnadze on March 7, 1992. Shevardnadze is in Tbilisi, but by 1992 the real power belongs to Tengiz Kitovani and Jaba Ioseliani. Meanwhile, due to the frequent thefts on the railway, Georgian troops enter Abkhazia<sup>40</sup> and start a war that lasted 13 months...

Interestingly, this war was not adequately covered by the Western press which was preoccupied with the Balkan war. The West did not want to confront Russia because of Georgia and its national "excitements".

Following the war in Abkhazia, the Georgian side attempted a normalization of relations with Russia. After the collapse of the Soviet Union, 12 former union republics, with the exception of the Baltic states, were to join the Commonwealth of Independent States (CIS). In the first years, under Gamsakhurdia's leadership, Georgia refused to join the CIS. Following this, the civil war broke out and both sides (Georgians and Abkhazians) were provided weapons by Russia.

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demarcation between Abkhazia and Mingrelia will have fluctuated, depending on the comparative power of these two princedoms at different times in history); Abkhazia suffered political repression to the advantage of Georgia in years 1918-1921 and again under Stalin and Beria, when falsification of Abkhazian history reached its apogee in the work of Ingoroq'va; whereas the Kremlin recognized these errors after Stalin's death, took steps to see that Tbilisi made amends, and allowed the publication of scholarly works presenting an accurate history of Abkhazia and the Abkhazians, it failed to rectify Stalin's major decision of 1931 to subordinate Abkhazia to Tbilisi and refused to remove Abkhazia from Georgian jurisdiction for fear of the consequences that would stem from an enraged Tbilisi." Quoted from G. Hewitt, *Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts*, Leiden – Boston 2013, p. 68.

<sup>40</sup> Later in his interviews (e.g. in 1998), Shevardnadze underlined that the Georgian Army entered in Sokhumi against his will.

Georgia joined the CIS during Shevardnadze's tenure in 1993 and officially left the CIS on August 18, 2009. Shevardnadze made multiple concessions to Russia including the appointment of pro-Russians Igor Giorgadze and Vardiko Nadibaidze to head the state security and defense ministries. However, Shevardnadze became the target of terrorist attacks. Realizing that a policy of favouring Russia cannot solve domestic political problems, he adopted a pro-Western policy in 1995, which remains in place to date.

On October 12, 1999, based on the 1999 referendum, the Act of Independence of the Republic of Abkhazia was adopted. Accordingly, till 1999, separatist Abkhazia considered itself officially as a part of Georgia citing this as the legal basis.

After the Rose Revolution in 2003, the chances that the Georgian government could find a common language with Abkhazia became apparent: Sergei Shamba<sup>41</sup> was in Tbilisi and was walking through the capital. Later, he was with the Georgian politician David Bakradze (who belonged to the United National Movement (UNM), the party of Mikheil Saakashvili<sup>42</sup>) in Italy, in South Tyrol and tried to get acquainted with the autonomy of South Tyrol.

Meanwhile, the recognition of Kosovo as an independent state began to gain importance. At the same time, at a security conference in Munich, Russian president Vladimir Putin promises Abkhazians and Ossetians that if Georgia joins NATO, Russia would recognize their independence... Relations with Abkhazians and Ossetians came to be further neglected by the military rhetoric of Mikheil Saakashvili.

Today, the occupation of Abkhazia and South Ossetia is being replaced by annexation: Military cooperation and alliance agreements are signed with Russia and a large part of the funding comes directly from Russia.

From an Abkhazian perspective, the efforts of the Georgian authorities to portray the Abkhaz-Georgian conflict as a Russian-Georgian conflict are unfounded and represent an attempt to shirk criminal responsibility. According to the official position of the Abkhazian separatist government, Georgia bears full responsibility for the outbreak of war in Abkhazia in 1992 and the tragic events in South Ossetia in 2008. Additionally, it considers Georgia's demand from Russia — to revoke the recognition of Abkhazian independence and end the occupation of Georgia — as unrealistic.

The preamble of the second and current constitution of the Democratic Republic of Georgia from 1995, which was adopted after the declaration of independence on 9 April 1991 (shortly before the collapse of the Soviet Union in 1991), declares "the historical and legal legacy of the

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<sup>41</sup> Events in Tbilisi, on April 9, 1989, when an anti-Soviet, pro-independence demonstration was brutally suppressed by the Soviet Army, killing 21 people and injuring hundreds.

<sup>42</sup> Third President of Georgia – 2004-2007, 2008-2013.

constitution of 1921". Accordingly, regarding the state succession practice to the Soviet Union, Georgia has chosen the way characterized by the Baltic states.<sup>43</sup>

Today Abkhazia is an autonomous republic in Georgia. Since 1993, the entire region of Abkhazia (with the exception of the Kodori Gorge until 2008) has been under the control of the separatist regime.<sup>44</sup>

And in relation to the Ossetians: there are different views on the ethnogenesis of the Ossetians, their political history and migration. The stages of Ossetian settlement and establishment in Georgia are the subject of particularly heated controversy. Georgian historians claim that the South Ossetians are a people who came to Georgia a few centuries ago. In contrast to the Abkhazians, the Ossetians never had a principality in Georgia during the feudal period.<sup>45</sup>

The Georgian Kingdom of Kartli-Kakheti, part of which included the major territory of modern South Ossetia, was annexed by the Russian Empire in 1801. Following the Russian Revolution, the area of modern South Ossetia became part of the Democratic Republic of Georgia.

For the first time in the 19th century, an Ossetian administrative unit appeared in Georgia (Ossetian Mazra). The term "South Ossetia" first appeared in the press in the 1830s. The situation in Ossetia is less homogeneous. Lowland Ossetians had much more in common with the Georgians than with the North Ossetians. Interestingly, the young independent government of Georgia had to quell the Ossetian uprising three times in 1918-21. These social uprisings, which resulted in some casualties, are perceived by pro-Russian Ossetians as the national genocide of Ossetians... The contribution of the events of the 1920s to the demonization of Georgians is significant. It must be noted that these were not spontaneous uprisings. On April 27, 1920, Azerbaijan was occupied by Red Russia, at a time when there was a Bolshevik uprising in Mountain Ossetia. The so-called South Ossetia Autonomous District was a result of these events. There were more Ossetians living in Georgia outside this district, but pursuant to the orders of an imperialist Kremlin, an autonomous district was created.

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<sup>43</sup> See K. Korkelia, *State Succession in Respect of International Treaties in Post-Independent Soviet Union: Some Reflections of the Status of Georgia*; (in co-authorship), *Journal of International Law*, Tbilisi State University, III, NI-II, 1998.

<sup>44</sup> See L. Broers, *Unpacking the meta-conflict: claims to sovereignty, self-determination and territorial integrity in the Georgian-Abkhazian conflict*, in: Jones, Stephen F.(Ed.), *The Making of Modern Georgia, 1918-2012, The first Georgian Republic and its successors*, p. 263 et seq.

<sup>45</sup> M. Sterio, *The Right to Self-determination under International Law, "Selfistans", secession, and the rule of the great powers*, NY 2013, P. 143 et seq.

On April 22, 1922, after the occupation of the first Democratic Republic of Georgia, the Autonomous Region of South Ossetia was founded. South Ossetia was part of Georgia within the Soviet Union. The situation changed in the 1990s and the following events unfolded:<sup>46</sup>

- On August 10, 1990, the Council of People's Deputies of South Ossetia passed the "Declaration of Sovereignty" declaring South Ossetia a Soviet Republic (i.e. *de facto* secession from the Soviet Republic of Georgia).
- At the next meeting on September 20, 1990, the Council of People's Deputies of South Ossetia officially declared the sovereignty of South Ossetia.
- After unsuccessful protests on November 22, 1990, the Supreme Council of the Republic of Georgia revoked the decision to increase the sovereignty/status of South Ossetia.
- On December 9, 1990, despite protests by the Georgian central government in South Ossetia, elections for a new Supreme Council took place, with “Adamon Nikhas” (“People's Assembly” in Ossetian) holding a majority in the council.
- On December 11, 1990, four months after the adoption of South Ossetia's declaration of sovereignty, the newly elected Georgian Supreme Council decided to abolish the autonomy of South Ossetia.
- On December 21, 1991, the Supreme Soviet of the Republic of South Ossetia adopted the Declaration of Independence of South Ossetia.

Nationalism was never as strong in South Ossetia as it was in Abkhazia. The abolition of the autonomous status of South Ossetia by the Georgian Supreme Council in 1990 was, maybe, a mistake of the Georgian government at the time, notwithstanding the fact that the Ossetians never had a principality in the Kingdom of Georgia and the creation of an autonomous area was an unconstitutional intervention on the part of the Bolshevik Russian government.

During the Soviet era, the integration of the Ossetians in Georgia was well underway. The Ossetian nation is one of the most integrated nations in Georgia. But in the late 1980s there were orchestrated gatherings of around 200-300 individuals in South Ossetia. Holding Soviet flags (instead of South or North Ossetian flags), the demonstrators claimed that Ossetia was always Soviet. It was a small isolated group not representing the express will of Ossetians. In 1990, Georgians arrived in Tskhinvali by bus to hold a counter-demonstration. It was a mistake to bring more attention to the small group people and legitimize them as yet another “side”. The ethno-nationalist rhetoric of a part of the Georgians at the time is well known: that

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<sup>46</sup> 10 August 1990. Protocol of the thirteenth session of the District Council of People's Deputies of the XX convocation of South Ossetia. Newspaper "Soviet Union", 13 August 1990.

Ossetians had to be expelled to where they originated from... This period left a deep mark on the collective memory of the Ossetian people...

It is common knowledge that boundaries are formed by geographical indication. The so-called South Ossetian Autonomous District had one geographical boundary — the ridge divided the Ksani and Aragvi valleys. It was a logical boundary. The border is nowhere else, it was superficially drawn on the map by Soviet Russia. The current reality is as follows: a few years after the August war<sup>47</sup>, the occupying forces continue to use the so-called Borderization process (creeping occupation).

It should be underlined, that the Government of Abkhazia, the Supreme Council of Abkhazia, and the Administration of South Ossetia are continuing their activities in displacement. Not much has changed within the government-in-exile over the years; there have been no new elections and no fundamental structural reforms. At the same time, the average age of the members is increasing from year to year, which calls into question the long-term existence of these institutions.<sup>48</sup>

After the August<sup>49</sup> war<sup>50</sup> in 2008, Russia recognized<sup>51</sup> Abkhazia and South Ossetia as independent states.

Despite all the above, the reality today is that there is a conflict, but that conflict is not between Abkhazia and Georgia, South Ossetia and Georgia, it is between Russia and Georgia. The *de facto* government of Abkhazia and the *de facto* government of South Ossetia are puppet regimes and, from the point of view of international law, cannot be viewed as subjects (not only subjects of international law, but also subjects of the conflict) because they are subordinate to Russia.

In 2017, the Committee of Ministers of the Council of Europe adopted a document<sup>52</sup> which, for the first time in Georgian history, established that Georgia and Russia are parties to the conflict. The document states that there is a conflict between the member states of the Council of Europe. The member states do not include Abkhazia and South Ossetia, so we are talking about Georgia

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<sup>47</sup> There were many casualties and tragic events during the 2008 war, which are hard to forget. For instance, during the 2008 Russia-Georgia war, a Georgian military official, Giorgi Antsukhelidze, was captured and tortured to death by Ossetian separatists, ostensibly because he refused step on the Georgian flag.

<sup>48</sup> T. Zurabashvili, Governmental Entities of Abkhazia and the Former Autonomous District of South Ossetia in Tbilisi: Power and Legitimacy in Exile, Working Paper, Georgian Institute of Politics (GIP), March 2021/#12.

<sup>49</sup> See D. Batashvili, August 7: How Russia Prepared and Launched the 2008 Invasion of Georgia, Georgian Foundation for Strategic and International Studies, Opinion Paper, 2018 available at: <https://www.gfsis.org/publications/view-opinion-paper/103>, [last accessed 3 January 2021].

<sup>50</sup> See J. Kranz, Der Kampf um den Frieden und sein besonderer Facilitator, in: Archiv des Völkerrechts, Bd. 46 (2008), p. 481-501; L. McConnell, Extraction Accountability from Non-State Actors in International Law: Assessing the scope for direct regulation, 2017, p. 72.

<sup>51</sup> See O. Luchterhandt, Völkerrechtliche Aspekte des Georgien-Krieges, in: Archiv des Völkerrechts, Bd. 46 (2008), p. 435-480.

<sup>52</sup> CM/Del/Dec(2017)1285/2.1.

and Russia. Despite these developments, some Georgian experts are proposing to recognize Abkhazia and South Ossetia as parties to the conflict.

The UN recognizes the Georgian authorities as the legitimate government of Abkhazia and the Tskhinvali region. These regions are widely considered as occupied territories by scholars,<sup>53</sup> various international organizations (e.g. EU,<sup>54</sup> CoE) and NGOs.

### **III. Constitutional status of Abkhazia and South Ossetia within Georgia – the relevant Georgian legislation at a glance**

#### **1. Law of Georgia on Occupied Territories from 2008**

After the restoration of independence on April 9, 1991, Georgia passed the second constitution on August 24, 1995. This last and current constitution of Georgia from 1995 was amended several times. Substantial constitutional reforms were implemented in 2004, 2010 and 2017-2018. The most extensive of these three constitutional reforms was the last, the constitutional reform of 2017-2018.<sup>55</sup>

Abkhazia, along with the Tskhinvali region, was given the status of occupied territory under Georgian law in 2008.<sup>56</sup>

According to the preamble, Art. 1, Art. 2 and Art. 3 of the Law of Georgia on Occupied Territories from 2008, “Georgia is a sovereign, unified, and indivisible state, and the presence of the armed forces of any other state on its territory without explicit and voluntary consent of the State of Georgia is an illegal military occupation of the territory of a sovereign state according to the Hague Regulations of 1907, Fourth Geneva Convention of 1949 and the norms of customary international law; This Law aims to define the status of territories that have been

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<sup>53</sup> E. Benvenisti, *The International Law of Occupation*, Second edition, 2012, 61; Y. Dinstein, *The International Law of Belligerent Occupation*, 2019, xiii,13; N. Kalandarishvili-Mueller, *Occupation and Control in International Humanitarian Law*, 2020, 70-74 etc.

<sup>54</sup> European Parliament resolution of 14 June 2018 on Georgian occupied territories 10 years after the Russian invasion (2018/2741(RSP)).

<sup>55</sup> The current constitution of Georgia, renovated by the last constitutional reform, has been the best version since 1995. Apart from that, the legitimacy of the 2017-2018 constitutional reform is, unfortunately, deficient. Only the ruling party has mostly participated in the drafting and passing of the constitution. Again, the opportunity was not taken to put the 1921 constitution into effect (to bring a modified and modernized version of this constitution into effect, similar to what happened in Latvia). The most problematic issues according to the constitutional changes are: introduction of the proportional electoral system only since 2024 and not for the parliamentary elections in 2020; introduction of the standards of the Parliamentary Republic with a monocameral parliament, without reforming the territorial division system in Georgia (vertical separation of powers).

<sup>56</sup> Compare L. Bültermann, *Das Völkerrecht als Mittel zur Lösung ethnischer Konflikte*, Diss., 2017.

occupied as a result of military aggression by the Russian Federation, and to establish a special legal regime for these territories. For the purpose of this Law, the occupied territories and maritime zones ('the occupied territories') shall be:

- a) the territories of the Autonomous Republic of Abkhazia;
- b) Tskhinvali region (the territories of the former South Ossetian Autonomous Region);
- c) on the Black Sea: the inland waters and the territorial sea of Georgia, their bed and subsoil falling within the water area along the state border with the Russian Federation, to the South of the Psou River up to the administrative border at the influx of the Enguri River into the Black Sea, over which Georgia exercises its sovereignty, as well as the following maritime zones: the adjacent zone, the special economic zone, and the continental shelf, where, according to the norms of the legislation of Georgia and the international law, in particular the UN Convention on the Law of the Sea of 1982, Georgia exercises fiscal, sanitary, immigration and taxation rights in the adjacent zone, and sovereign rights and jurisdiction – within the special economic zone and on the continental shelf;
- d) the air space over the territories provided for in paragraphs (a-c) of this article.”

According to Art. 4 of the Law of Georgia on Occupied Territories from 2008, “The emergency rule and special legal regime shall apply to the occupied territories for the validity period of this Law. This implies restrictions on free movement, conducting economic activities, and concluding transactions regarding real property in the occupied territories and with respect to other issues defined under this Law.”

The Law contains the provisions on property rights in the occupied regions of Georgia: according to the Art. 5 of the Law, “Any transaction regarding real property that is concluded within the occupied territories in violation of the legislation of Georgia shall be deemed void from the time of its conclusion and shall have no legal implications. The right of property within the occupied territories shall be protected and shall be regulated under the legislation of Georgia.”

The Law also restricts economic activities in the occupied territories (Art. 6)<sup>57</sup> and contains norms about cultural heritage and human rights (Art. 7) in the occupied areas.<sup>58</sup>

The Law on Occupied Territories from 2008 also includes regulations about illegal bodies ((officials) Art. 8): “A body (official) shall be illegal if it is not established (appointed/elected) under the procedures determined by the legislation of Georgia, and/or if in any form it actually

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<sup>57</sup> See Art. 6 of the Law on Occupied Territories from 2008 here: [www.matsne.gov.ge](http://www.matsne.gov.ge).

<sup>58</sup> Compare H.-J. Heintze, Are De Facto Regimes Bound by Human Rights? In: OSCE Yearbook 2009, Vol. 15, 2009, p. 267.

performs legislative, executive, or judicial functions or other activity in the occupied territories that fall within functions of the State or local self-government bodies of Georgia. Any act issued by the bodies defined in the first paragraph of this article shall be deemed void and shall have no legal implications, except when the act is used to issue a neutral identity card and/or neutral travel document as determined by the legislation of Georgia. The possibility of establishing facts of civil significance in the occupied territories shall be ensured under the Law of Georgia on Civil Acts.”

According to the regulations described, the Law of Georgia on Occupied Territories from 2008 has the purpose of recognizing the areas as occupied areas and does not contain any norms in the context of the political autonomy of either region.

## **2. Constitutional status of the Autonomous Republic of Abkhazia**

According to the Georgian Constitution of 1995, Abkhazia has the status of an autonomous republic. According to Art. 7, para. 3 of the Georgian Constitution, “the state territorial arrangement of Georgia shall be revised by a constitutional law of Georgia on the basis of the principle of the separation of powers after the complete restoration of the jurisdiction of Georgia over the entire territory of the country.”

According to Art. 7, para 6 of the Georgian Constitution, “The powers of the Autonomous Republic of Abkhazia and the Autonomous Republic of Ajara, and procedures for exercising such powers, shall be determined by the constitutional laws of Georgia that are an integral part of the Constitution of Georgia.”

Therefore, the constitutional law on the Abkhaz Autonomous Republic does not exist and the territorial arrangement has not yet been revised since Georgia gained independence in 1991. In this context, it is necessary to define which form of territorial arrangement is acceptable for Georgia given the status of the conflict regions. Georgia is currently a unitary state with regional autonomies.<sup>59</sup>

The constitutional status of the Abkhazian Autonomous Republic is regulated by the Constitution of the Abkhazian Autonomous Republic of 1978, which was adopted by the Supreme Council of the Abkhazian Autonomous Republic.

At the same time, there is the constitution of the Abkhaz separatist regime from 1994, which Georgia does not recognize. On October 9, Moscow-backed Abkhaz leader Aslan Bzhania

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<sup>59</sup> Compare R. Wolfrum, Nation- and State-Building: Gleichlaufende oder möglicherweise auch gegenläufige Prinzipien am Beispiel des Südsudan, in: Feld/A. Köhler/Schellenbach (Hrsg.), Föderalismus und Subsidiarität, 2016, p. 143-150.



signed a decree on the formation of a constitutional reform commission, aimed to develop amendments to the Abkhaz “constitution,” involving reform of the state power and governance system.<sup>60</sup>

According to Art. 2 of the Constitution of the Abkhazian Autonomous Republic, “The Autonomous Republic of Abkhazia independently solves problems within its administration in accordance with Georgian legislation. The powers of the Autonomous Republic of Abkhazia are set out in the Constitution of Georgia, this Constitution and other legal acts. The Autonomous Republic of Abkhazia exercises powers which, under Georgian law, are not part of the special powers of the state authorities and the exercise of which is not excluded from the powers of the Autonomous Republic of Abkhazia under Georgian law.”

The rights of the region and the way to demonstrate these rights are set out by decree issued by the Parliament of Georgia on February 24, 1995 “on the Supreme Authority of the Autonomous Republic of Abkhazia”. The decree states that the Supreme Council of Abkhazia “carries out its activities in accordance with the Abkhazian Constitution”.

The decree of the Georgian parliament of March 10, 1994 gives the Abkhazian Council of Ministers the status of “temporarily displaced” and recognizes it as the highest organ in the region until new elections are held.<sup>61</sup> This is the only document approved by the Georgian parliament on the subject of the Council of Ministers of Abkhazia. Detailed responsibilities and rules for carrying out its activities are set out in the laws and legal acts of the Council of Ministers itself.

Apart from these statements, the Constitution of the Abkhazian Autonomous Republic of 1978 does not specify which powers are included under Abkhazian autonomy. By comparing the Georgian Constitution and Georgian legislation in general, the conclusion to be drawn is that the autonomy of Abkhazia is very weak and can almost be equated with the functions of local self-government.

After the 2008 war, the Georgian government managed to include representatives of the displaced government of Abkhazia in the international Geneva discussions. The same practice continued during the rule of the “Georgian Dream”, and representatives of the displaced government units continue to participate in the Geneva negotiations.<sup>62</sup>

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<sup>60</sup> See, “Constitutional Reform Commission Formed in Abkhazia”, [www.civil.ge](http://www.civil.ge), accessed on December 28, 2020.

<sup>61</sup> T. Zurabashvili, Governmental Entities of Abkhazia and the Former Autonomous District of South Ossetia in Tbilisi: Power and Legitimacy in Exile, Working Paper, Georgian Institute of Politics (GIP), March 2021/#12.

<sup>62</sup> Ibid.

### **3. Constitutional status of the Tskhinvali Region (so-called South Ossetia)**

Today Tskhinvali region does not enjoy autonomous status in Georgia. The status of South Ossetia is regulated by the law "on the Creation of Suitable Conditions for the Peaceful Settlement of the Conflict in the Former Autonomous Region of South Ossetia" (Parliament of Georgia, 2007). According to Art. 1 of this law, "This law defines the form and the procedure for the implementation of temporary state governance in the territory of the former Autonomous Region of South Ossetia until the Georgian jurisdiction over this area is fully restored. The aim of this law is the peaceful settlement of the conflict, the restoration of constitutional order in the territory of the former Autonomous Region of South Ossetia and the protection of the rights and freedoms of people and ethnic groups living in the former Autonomous Region of South Ossetia, to promote and create appropriate conditions."

A temporary administrative and territorial unit on the territory of the former Autonomous Region of South Ossetia will be established and abolished by the Georgian Parliament upon submission of a resolution of the Georgian government.

In order to exercise governance in the area of the temporary administrative-territorial unit, the administration of the temporary administrative-territorial unit is established, the rules and scope of its activities are laid down by this law and a resolution of the Government of Georgia.

The rights and powers of the region are contained also in the Ordinance of the President of Georgia of May 10, 2007 "On the establishment, functions and limits of the provisional administrative-territorial unit in the territory of the former Autonomous District of South Ossetia". The legal status of the administration of South Ossetia continues to be based solely on legislation and is not supported by the Georgian Constitution.

In relation to the Tskhinvali region, a law also applies "on the return of property and compensation to victims of the conflict in the former Autonomous Region of South Ossetia on the territory of Georgia" (Parliament of Georgia, 2006). The aim of this law is to restructure the property of people affected by the conflict in the former Autonomous Region of South Ossetia on the territory of Georgia, to provide adequate (replacement) real estate or to compensate for property damage.

According to the regulations described, South Ossetia has no autonomous status and the temporary administrative unit is only temporarily set up for conflict management.

The administration of South Ossetia participates in the Geneva international discussions.

## **IV. Georgia before the international courts: ICJ, ECtHR, ICC**

### **1. Georgia before the ICJ: Georgia versus Russia**

On August 12, 2008, the Georgian government filed an application against Russia with the International Court of Justice (ICJ) in The Hague.<sup>63</sup> The application concerns the facts of ethnic cleansing committed by Russia in 1999-2008 on the territory of Georgia. The lawsuit was based on the 1965 United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD). Before the factual hearing of the ICJ, the Russian Federation filed preliminary objections, the main purpose of which was to prove that the jurisdiction of the Court did not include the Georgian case - first, there was no dispute between Tbilisi and Moscow, and Russia was not a party; secondly, in accordance with the procedures set out in Art. 22 of the CERD, Georgia had to negotiate the matter directly with Moscow prior to filing a complaint with the ICJ.

The ICJ did not examine Russia's first objection and recognized Russia as a party to the dispute, but it did grant its second objection. The Court stated that prior to filing a lawsuit in bilateral negotiations with Russia, the Georgian side should consider issues related to the CERD that are directly related to the violated articles of the Convention before referring again to the ICJ. The Court set the procedures for Georgia and stated that after negotiations have been completed with Russia over the CERD articles, which the Georgian side considers violated, Georgia can continue the dispute before the ICJ.<sup>64</sup>

The previous government commenced these procedures and the responsibility for pursuing them rests with the current government and continues.

### **2. Georgia before the ECtHR (inter-state cases): Georgia versus Russia I and II**

#### **a) Georgia versus Russia I**

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<sup>63</sup> Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation) Preliminary Objections, Judgment, 1 April 2011, available at: <https://www.icj-cij.org/en/case/140>. [last accessed 2 January 2021].

<sup>64</sup> See P. Okowa, The International Court of Justice and the Georgia/Russia Dispute, in: Human Rights Law Review 11:4 (2011), 739-757; N. Lucak, Georgia v. Russia Federation: A Question of the Jurisdiction of the International Court of Justice, 27 Md. J. Int'l L. 323 (2012).

On March 26, 2007, the Georgian government filed an inter-state application against Russia in the Strasbourg Court alleging that Russia had persecuted and deported ethnic Georgians living in the Russian Federation in autumn 2006. The complaint illustrated up to 130 individual cases. On July 3, 2014, the dispute essentially ended with Georgia's victory and procedures to compensate the victims were initiated.<sup>65</sup>

The Court found that in the fall of 2006, the Russian Federation implemented a coordinated policy of arrest, detention and deportation of Georgian citizens, which was an administrative practice. The Court also found that Georgian citizens had been illegally detained and deported in violation of Art. 3 and 5, para. 1 and 4 of the ECHR. An effective remedy was not available to the victims of the above-mentioned violations, resulting in a contravention of Art.13 read in conjunction with Art. 3, 5 (1), (4) and Art. 4 of Protocol IV.<sup>66</sup>

By noting these violations, Russia is legally required to compensate Georgia for contravening the rights listed above. The Justice Ministries of Georgia and Russia had 12 months to agree on the amount of compensation, and if an agreement could not be reached, the parties were instructed to provide written comments on the matter. The proceedings for the enforcement of the decision of the Grand Chamber of the Strasbourg Court continues in the Committee of Ministers of the Council of Europe.

## **b) Georgia versus Russia II**

On December 19, 2011, the European Court of Human Rights (ECtHR) declared Georgia v. Russian Federation (II)<sup>67</sup> admissible and handed it over to the Grand Chamber for examination. The statement alleges violations of the European Convention on Human Rights (ECHR) in the area under the effective control of the Russian Federation by Russian soldiers and members of the puppet regime during the hostilities and subsequent occupation in August 2008.

Georgia applied to the ECtHR on August 11, 2008, one day before the signing of the ceasefire agreement with Russia and submitted a complete application on February 6, 2009 with accompanying documents and up to 700 pieces of evidence.

The last oral hearing before the Grand Chamber of the ECtHR was held on May 23, 2018. The Court heard a total of 33 witnesses in the case, 16 of whom were summoned by the Georgian

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<sup>65</sup> Case of Georgia v. Russia (I), Application Nr.13255/07.

<sup>66</sup> See Y. Ioffe, Case of Georgia v. Russia (I) (Just Satisfaction), in: American Journal of International Law, Volume 113, Issue 3 (2019), 581 - 586.

<sup>67</sup> Case of Georgia v. Russia (II), Application no. 32863/08.

government, 11 by the government of the Russian Federation and six witnesses directly by the Court.

The ECtHR published its decision on this case on January 21st.<sup>68</sup> The court hearings ended with victory for Georgia. In this regard, the most notable consequence of this decision is the confirmation of the occupation of the regions of Georgia (South Ossetia and Abkhazia) by Russia after the conflict of 2008 and the ethnic cleansing carried out there.<sup>69</sup> The ECtHR has ruled that Russia continues to exercise "effective control" over these regions since 12 August 2008. The most important question concerns the part of the court decision that excluded the legal assessment of the period August 8-12, whether the Court had the opportunity to avoid it and assess it. This is a matter for future research.

Accordingly, under international law, Georgia can contest Russia as an occupying state for failure to fulfill international obligations and address the question of Russia's responsibility. This decision set a precedent in imposing such a responsibility on Russia, and at the same time serves as a practicable instrument to achieve the desired outcome.

Apart from the legal leverage, this decision sends a clear political message, that the normalization of the ongoing secession process is practically excluded.<sup>70</sup>

### **c) Georgia before the ICC**

On October 13, 2015, Prosecutor of the International Criminal Court (ICC), Fatou Bensouda, appealed to judges to open an investigation into the crimes committed in Georgia in August 2008 during the conflict between the country's armed forces, the separatist South Ossetian militia and Russian armed forces.<sup>71</sup>

Shortly after the week-long armed conflict ended on August 15, 2008, an investigation into alleged crimes committed during the war was launched as part of a so-called "preliminary investigation". At the time of the investigation, the prosecution did not have the authority to conduct a thorough investigation. It therefore relied on materials received from governments, including the Georgian and Russian authorities, as well as information provided by intergovernmental and non-governmental organizations.

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<sup>68</sup> Georgia v. Russia (II) [GC] - 38263/08, Judgment 21.1.2021 [GC].

<sup>69</sup> See Press Release issued by the Registrar of the Court: Judgment in the case concerning the armed conflict between Georgia and the Russian Federation in August 2008 and its consequences, ECHR 028 (2021), 21.01.2021.

<sup>70</sup> See M.N. Shaw, *International Law*, Eighth Edition, 2017, 189 et seq.

<sup>71</sup> No.: ICC-01/15 Date: 13 October 2015, PRE-TRIAL CHAMBER I, Request for authorisation of an investigation pursuant to article 15 (ICC-01/15-4 13-10-2015 2/160 EO PT).

Georgia ratified the Rome Statute on September 5, 2003. Accordingly, the jurisdiction of the Court extends to the territory of Georgia or to criminal offenses committed against Georgian citizens since September 5, 2003.

Article 15 of the Rome Statute enables the prosecutor to initiate a preliminary investigation (*proprio motu*) into alleged crimes committed under the jurisdiction of the Court.

The time of the alleged criminal offenses from July 1 to October 10, 2008, is specified on the prosecutor's application for approval. Georgia, especially South Ossetia and the surrounding area, has been identified as a crime scene.

It should be noted that on January 27, 2016, the First Pre-Trial Chamber of the ICC granted the prosecution's request to open an investigation into alleged war crimes and crimes against humanity that were taking place on the territory of Georgia, in particular, from July 1 to October 10, 2008, in South Ossetia and the surrounding area.<sup>72</sup> It should be noted that the terms "Tskhinvali Region" or "South Ossetia Region/Tskhinvali Region" are not used by the Court to indicate the relevant location, although the decision clearly recognizes that South Ossetia is considered a Georgian Territory and not an independent state.

The Russian Federation is not a member of the ICC. Not only did Russia fail to ratify the Rome Statute, it also withdrew from signing the Statute in 2016, sending a clear signal to the Court that it has no plans to deal with it in the current situation in Ukraine or in Georgia or to collaborate.

It should be noted that under the Rome Statute, the principle of complementarity applies, which means that the state investigates the case first and the ICC is not involved in that investigation. At the same time, the ICC regularly receives information on the conduct of investigations by a Member State.

The Ministry of Justice of Georgia sent a letter to the ICC in 2016 and handed over the investigation into the principle of complementarity. This made it clear that Georgia could not conduct the investigation because it had no access to the occupied territories. This act of the state is incomprehensible and wrong for two reasons. First, even if the ICC is investigating the delegated issues, the Court is usually only interested in high-ranking officials, and these are individuals. Under the complementarity principle, the Court's policy is precisely aimed at assisting the state in carrying out internal investigations and even in prosecuting the remaining individuals. The second reason is that the ICC is interested in a particular situation, factual circumstances and cases as it moves to the investigation. Whatever information the Court

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<sup>72</sup> No.: ICC-01/15, Date: 27 January 2016, PRE-TRIAL CHAMBER I, Situation in Georgia, Decision on the Prosecutor's request for authorization of an investigation (ICC-01/15-12 27-01-2016, 2/26 EO PT).

gathers and includes in the investigation phase is solely a matter of its interest. Hence too many circumstances remain uninvestigated.

These are the conditions under which the ICC's investigation into the August war in Georgia is ongoing.

## **V. People's right to political self-determination and its internal dimension**

It is obvious that the aspirations of the Abkhazians<sup>73</sup> should have a legitimate basis and the status of Abkhazia must be determined within the framework of current international law/constitutional law.

As such, it is important to understand the right of peoples<sup>74</sup> to political self-determination<sup>75</sup> and the prerequisites for exercising this right.<sup>76</sup> The notion of expanded autonomy for Abkhazia and the Tskhinvali region should be seen as a result of the implementation of this right.

The right of peoples to political self-determination in the modern sense developed in the 20th century. In the early 1900s, the right of all peoples to political self-determination gained international support, followed by successful secessionist movements during the First and Second World Wars and the period of decolonization in the 1960s.

The right of peoples to political self-determination as a political principle in the early stages of development encompassed the doctrine of nationalism, which was implemented in the French and American revolutions.<sup>77</sup> During the First World War, the Allies viewed the right to political self-determination as the goal of peace. As part of his 14-point program, US President Woodrow Wilson saw the right of peoples to political self-determination as an important goal for the period after World War II. The result was the collapse of the Austro-Hungarian and Ottoman empires and the formation of the Baltic States. The United Nations' predecessor, the League of Nations, also recognized this principle, but the United Nations is the organization that has relatively fully defined this right.

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<sup>73</sup> See B. Harzl, *Der Georgisch-abchasische Konflikt, eine rechtliche und politische Analyse*, Baden-Baden 2016, p. 346 ff.

<sup>74</sup> See J. Castellino, *International Law and Self-Determination, Peoples, Indigenous People and Minorities*, in: *Self-Determination and Secession in International Law*, Edited by Chr. Walter, A. v. Ungern-Sternberg and K. Abushov, Oxford 2014, p. 27-44.

<sup>75</sup> M. Melandri, *Self-Determination, International Law and Post-Conflict Reconstruction, A Right in Abeyance*, 2019, p. 110.

<sup>76</sup> Compare J. Eichler, *Reconciling Indigenous People's Individual and Collective Rights: Participation, Prior Consultation and Self-Determination in Latin America*, 2019, p. 13.

<sup>77</sup> M.N. Shaw, *International Law, Eighth Edition*, 2017, 198 et seq.

The right of peoples to self-determination emphasizes the legal right of the people to determine their own political fate<sup>78</sup> according to international law. The right of peoples to political self-determination is an important principle of international law, which is derived from customary international law, but is also recognized as an essential legal principle and is defined at the level of international treaties. For example, the right to political self-determination is recognized in the United Nations Charter and in Art. 1 of the two Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966). Furthermore, the Friendly Relations Declaration of the UN General Assembly (1970)<sup>79</sup> recognizes the right to self-determination, which entails the right of all peoples “freely to determine, without external interference, their political status and to pursue their economic, social and cultural development” (Principle 5). The modern perception of this right includes the "internal" and "external" dimensions.<sup>80</sup> The "internal" context of political self-determination focuses on the social and political rights of the state (the question of granting so-called expanded autonomy for Abkhazia can only be discussed in this context), while the "external" context focuses on the possibility of achieving state independence in general.

Accordingly, the UN Charter recognizes two types of peoples' political self-determination.<sup>81</sup> First, people have the right to political self-determination, including the right to choose the political system in a political, economic, social and cultural context. Secondly, the right to political self-determination is defined as the right of peoples to constitute themselves within the existing state or to realize it in any other form based on free choice, which is statistically linked to the existing state. Both versions have their roots in the United Nations Charter (Article 2.1; Article 55.1).

Although the ICJ has recognized peoples' right to political self-determination as part of *ius cogens*, there is still no definitive political consensus on what the right to self-determination should mean in post-colonial realities, such as the case of Kosovo or Crimea.

Peoples' right to political self-determination can be exercised without secession.<sup>82</sup>

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<sup>78</sup> Compare J. M. Welsh, Turning Words into Deeds? The Implementation of the “Responsibility to Protect”, in: A. J. Bellamy/S. E. Davies,(Ed.), Global Responsibility to Protect, Vol. 2, No. 1-2, 2010, p. 149-154.

<sup>79</sup> See for more Chr. Walter/A. v. Ungern-Sternberg, Self-Determination and Secession in International Law – Perspectives and Trends with Particular Focus on the Commonwealth of Independent States, in: Walter/v. Ungern-Sternberg/Abushov (Ed.), Self-Determination and Secession in International Law, Oxford 2014, p. 2.

<sup>80</sup> F. Duncan (Ed.), Statehood and self-determination: reconciling tradition and modernity in international law, Cambridge 2013, pp. 229-249.

<sup>81</sup> See G. Anderson, Unilateral Non-Colonial Secession and Internal Self-Determination: a right of newly seceded peoples to democracy? - Arizona Journal of International and Comparative Law, Vol. 34, Nr. 1, 2017, p. 1-64.

<sup>82</sup> G. Khubua, "Yes" - self-determination, "No" – secession (in Georgian), 28.10.2014, [www.interpressnews.ge](http://www.interpressnews.ge), accessed on February 22, 2021. See also G. Khubua, Federalism (in Georgian), 2000, 423 et seq.



After the decolonization processes, international law has not yet agreed on the extent to which the right of peoples to political self-determination (see also Article 1 of the 1966 International Covenant on Civil and Political Rights) can include the possibility of secession.

The origins of secession as a legal category have historically been associated with an era of decolonization, in which territorial boundaries were often reconsidered during the liberation movements in conquered countries as part of the right of the people to political self-determination. In other cases, secession is a response to serious domestic human rights violations. Secessionists often appeal to cases of violence that can occur in the context of an armed conflict (remedial secession).<sup>83</sup> In the case of Georgia, there were no similar cases by the Georgian central government to legitimize the secession of Abkhazia and the Tskhinvali region.<sup>84</sup>

Most constitutions are silent or do not recognize the possibility of secession. This standard applies equally to unitary and federal states. This is the case with the Constitution of Georgia of 1995. An example of secession being regulated under a constitutional mandate is the separation of Montenegro from the Union of Serbia and Montenegro in 2006. This became possible because in this case Article 60 of the Constitutional Charter of the Union of Serbia and Montenegro of 2003 provided for the possibility of secession.<sup>85</sup>

The question of the relationship between the right to political self-determination and the right to secession is relevant to the example of separatist movements in the world.

A noteworthy case is, maybe, Kosovo, whose independence has been legally recognized by the United Nations Court of Justice (Kosovo, Advisory Opinion, 2010), but without mentioning the question of secession and in what context it relates to political self-determination. Serbia's actions against Kosovo have lost their legitimacy on the territory of Kosovo due to ethnic cleansing, genocide and crimes against humanity. The situation is very different for Abkhazia and the Tskhinvali region. On the contrary, in the case of Abkhazia, ethnic cleansing of Georgians has taken place and a large number of Georgian citizens have been displaced from both regions. In addition, the 1974 Socialist Federal Constitution of Yugoslavia included the

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<sup>83</sup> "It is increasingly suggested in literature that a right to unilateral secession, stemming from the right to self-determination of peoples, may arise as *ultimum remedium* in case of serious injustices suffered by a people." Quoted from S. F. van den Driest, *Remedial secession: a right to external self-determination as a remedy to serious injustices?* Cambridge [u.a.]: Intersentia, 2013; About the remedial secession see also D. Lefkowitz, *Philosophy and international law: a critical introduction*, Cambridge 2020, pp. 213-214.

<sup>84</sup> See G. Bolton, *International responses to the secession attempts of Kosovo, Abkhazia and South Ossetia 1989–2009*, In D. French (Ed.), *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge 2013, pp. 109-138.

<sup>85</sup> Chr. Tomuschat, *Secession and Self-Determination*, in: M. G. Kohen (Ed.) *Secession – International Law Perspectives*, 2006, 23 et seq.

possibility of secession. For these and many other reasons, the case of Kosovo is considered *sui generis* in international law, which cannot be applied to other separatist movements, including Abkhazia and the Tskhinvali region, in terms of results and legal precedent.

The question of secession, despite its clear international legal context, remains clearly a constitutional issue. Secession is directly related to the legal basis on which the current state is based, not only on territorial borders, but also on constitutional and functioning state institutional structures. The same context includes peoples' right to political self-determination. The status of Abkhazia and the Tskhinvali region should therefore be discussed in this context. This is logical, even in a constitutional context.

Regarding the federalization perspective of Georgia, G. Hewitt writes: "... the offer of a confederal arrangement for Abkhazia would almost certainly have avoided war there. Whether a tighter federative relationship would have been acceptable to the Abkhazians in the conditions existing in the summer of 1992 is less clear and poses a tantalising question that can probably never be definitely answered."<sup>86</sup> In this context, it was key to have worked on this question in Georgia and conceptualize future federalization.

## **VI. The latest attempts of the conflict regulations - a broad concept of autonomy**

In the 1990s and beyond, in Georgia (first attempts initially in 1991, then in 2001 within the so-called "Boden Plan",<sup>87</sup> the most comprehensive project in 2004 and in 2005 with the economically determined project of Irakli Alasania<sup>88</sup>) different politicians and social groups attempted to discuss the issue of granting Abkhazia a special status (expanded autonomy, to some degree), but all attempts at dialogue ended in failure. Among them there were cases where the Abkhaz side agreed to the conditions while the Georgian side did not. Unlike Abkhazia, the Tskhinvali region has never been offered anything similar.

It should be emphasized that, with the joint efforts of the Georgian and Abkhaz sides, the meeting of the Supreme Council of Abkhazia on July 9, 1991 passed a new electoral law — the Law on the Election of Deputies of the Supreme Council of the Abkhaz ASSR. On August 27,

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<sup>86</sup> G. Hewitt, *Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts*, Leiden – Boston 2013, p. 115

<sup>87</sup> "The principles for division of competences between Tbilisi and Sokhumi", a document developed by Dieter Boden, Special Representative of the Secretary General of the United Nations for Georgia, 20 November 2001. The Boden Plan is available at: [http://www.iccn.ge/files/boden\\_document\\_2002.pdf](http://www.iccn.ge/files/boden_document_2002.pdf). [last accessed 14 January 2021].

<sup>88</sup> Between 2005-2006 Alasania was chairman of the Tbilisi- based Abkhazian government-in-exile. On February 15, 2005, Saakashvili also made him his aide in the Georgian-Abkhaz peace talks.

1991, the Supreme Council of Abkhazia passed constitutional amendments (the so-called Gamsakhurdia-Aleksidze Law<sup>89</sup>, „28-26-11“). With this, the 65 seats in the Supreme Council were distributed among ethnically elected constituencies. Abkhazians (17% of the population) won 28 seats, Georgians (47% of the population) 26, other nationalities — 11. This distribution ensured that neither side could achieve a qualified majority and resolve constitutional issues, including that of the status of Abkhazia. Without the consent of the Georgians and Abkhazians, it was not only impossible to resolve the status issue legitimately, but also to hold a referendum and appoint members of the government. These steps required the decision of a qualified majority of the Board of Governors. The two seats on the Board of Governors and other senior positions were distributed according to ethnicity. In particular, an Abkhazian should have been elected chairman of the Supreme Council and a Georgian as the first deputy. Similarly a Georgian is supposed to be the chairman of the government of Abkhazia, operating with an Abkhazian as the first deputy.

Abkhazia also implemented significant constitutional changes. In the Abkhazian constitution, for example, the term “Georgian SSR” has been replaced by the term “Republic of Georgia”, a major compromise. With this change, Abkhazia constitutionally confirmed that if it was previously part of Georgia that was part of the Soviet Union, it was now part of the independent Republic of Georgia.

These constitutional changes and quotas have sparked protests among the Georgian population in the 90s. People questioned why the Georgian majority population in Abkhazia were granted fewer quotas compared to their Abkhazian counterparts. Another contentious issue was the categorization of individuals as "Abkhazian" "Georgian"? Such ethnic connotations could prove problematic legal implications. However on December 22nd, 1991, the tense situation in Tbilisi turned into an armed confrontation and a coup d'état and the aforementioned changes never came to be materialised.

The Boden Plan (2001) was supported by Nr. 1393 resolution of the United Nations Security Council (UNSC). The plan was not accepted by either side (Abkhazian and Georgian people), because neither side was ready for that.

The most comprehensive project was essentially the "Concept on the Special Status of Abkhazia in the Georgian State",<sup>90</sup> which was published on June 30, 2004, in the Georgian newspaper

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<sup>89</sup> After Levan Aleksidze (1926-2019), an internationally renowned Georgian lawyer.

<sup>90</sup> A public version is available at: [http://iccn.ge/files/concept\\_abkhazia\\_in\\_georgia\\_state\\_2004\\_eng.pdf](http://iccn.ge/files/concept_abkhazia_in_georgia_state_2004_eng.pdf) [last accessed 8 January 2021].

"24 Hours".<sup>91</sup> The concept was elaborated over several months by a group of Georgian experts<sup>92</sup> with extensive experience in the issues of the Georgian-Abkhaz conflict, who also had to work with international experts<sup>93</sup> on a number of issues.

According to the authors, this document was drawn up for a year, but takes into account three years of experience with Abkhazians. It is a political rather than a legal document, but it also has a legal context and is based on the principle of federalism. This is not an official document from the state. The Georgian state has not expressed its position on this document and has not made it the subject of discussion with the Abkhazians. The authors have submitted this document to the state authorities for review.

The document consists of five parts and two appendices.<sup>94</sup> It should be noted that only the last and fifth part of the concept has been published and is officially available. This last section describes the general objectives and requirements for a federation. The full version of the concept was only sent to the government.

The principle of the concept is based on federal relations and the federal model of the state. According to this model, Georgia is a federal state and includes the subjects of the federal government, in this case Abkhazia. The special status of Abkhazia is also reflected in the fact that it is the subject of the Federation. The peculiarity of Abkhazia is reflected in the fact that its existence and its status as a federal unit do not depend on the will of the federal government. Abkhazia has its own legitimacy in this project, that is, its own government sources. In addition, Abkhazia has its own characteristics of statehood, such as: its own territory, its own people who elect its government, and its own government which exercises its powers over that territory.

According to the concept, the powers of Abkhazia and the federal government are separated. The federal government has special powers in the areas necessary to maintain the unity of governance, internal integration and the boundaries of a single federal state. All decisions in these areas are made by the Federation and no entity (including federal agencies) has the right to deviate from or violate them. In the event of a dispute (dispute between jurisdictions), the final decision will be made by the Constitutional Court of Georgia. According to the draft, the

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<sup>91</sup> Newspaper 24 hours, June 30, 2004, No. 153 (702). The concept was released on June 30th. As soon as the concept was released, it caught public attention. Discussions took place in the newspaper 24 Hours, January 12, 2005, No. 5 (865). Later, in 2007, the book "Answers to Frequently Asked Questions about the Concept of Abkhazia Special Status in the State of Georgia" was published. Editors: Nino Kalandarishvili, Lawrence Browsers, Paata Zakareishvili. The book in question-and-answer format contains some explanations of the concept published in the newspaper.

<sup>92</sup> Expert group: Konstantine Kublashvili, Archil Gegeshidze, Ivliane Haindrava, Paata Zakareishvili.

<sup>93</sup> The following international experts participated in the work on the project: Prof. em. Dr. iur., Dr. h. c. Thomas Fleiner (University of Fribourg) and Prof. Dr. Alexander Blankenagel (Humboldt University Berlin).

<sup>94</sup> See the document – „Concept on the Special Status of Abkhazia in the Georgian State“, p. 5 et seq.

norms of federal law will have the highest legal force in their special areas. These are special areas: border protection, defense, state security, issuance of money and so on - all the powers required for the state to function as a unit.

According to the concept, as a federal unit, Abkhazia is an equal and independent partner in its relations with the federal government. This means that it has the characteristics of the state. It is assumed that the existence of Abkhazia does not depend on the will of the Federation. The Federation cannot terminate it unilaterally. Abkhazia exists and maintains an independent relationship with the federation, which is defined by a federal agreement. The federal agreement then becomes part of the constitution and that agreement is reached by both parties.

In this context, it should be underlined that, according to this concept, the Abkhaz people enjoy the right to self-determination as a people. The Georgian and Abkhazian peoples are considered to be the founders of the Federation.

The concept also contains very interesting and important aspects related to the so-called “Abkhaz citizenship”, according to which „the constitutional law and the Constitution of Abkhazia may stipulate that permanent residents of Abkhazia held Abkhazian citizenship and have a document identifying their citizenship – a personal identity card. At the same time citizens of Abkhazia would automatically also be citizens of the federal state of Georgia“.

The other most important aspects of the concept are additional political guarantees for Abkhazians: Abkhazian representatives<sup>95</sup> in the upper chamber of the parliament and in the senate, the system of high quorums, guarantees related to military service, guarantees related to the national currency, restrictions on the purchase of real estate in Abkhazia, issues of property restitution etc.

The Alasania project (2005) concerned the settlement of the conflict in Abkhazia by the exertion of economic methods. However, this project was not successful due to the absence of political will from both sides.

During Mikheil Saakashvili's presidency, he sometimes spoke about asymmetrical regionalism,<sup>96</sup> but the concept was never made concrete.

With regard to Georgia's state strategy for resolving conflicts, the impression remains that there is no single strategy. Georgia has taken some steps over the years to foster human relations and these are certainly positive steps. However, the dynamic is about whether that positive attitude has changed something, for example in terms of attracting young people to education or in terms

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<sup>95</sup> What is meant here is not a representation based on ethnicity as in 1991, but rather the representation of the candidates elected in the Abkhaz region.

<sup>96</sup> G. Hewitt, *Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts*, Leiden – Boston 2013, p. 204 et seq.

of finding free medical care in general, when all of this has consequences.<sup>97</sup> In today's reality it will be possible to just talk about the goals so that the state can develop a unified strategy. However, the vision of the Georgian side is not enough to determine the position of either party to resolve the conflict.<sup>98</sup>

It should be noted that the majority of the Georgian experts interviewed are in favor of asymmetrical federalism/regionalism and bilateral political formats with Abkhazians and Ossetians, parallel to the Geneva format.<sup>99</sup>

In this context, the above-described but thoroughly modernized concept about expanded autonomy for Abkhazia (2004) could be useful for further negotiations.

Russia is a party to the conflict in both regions, there are puppet regimes in Abkhazia and South Ossetia, all facts which are internationally recognized. Regardless, though, Abkhazians and Ossetians are first and foremost peoples, who have the right to political self-determination (especially to the internal context of this right – internal self-determination). This right has to be recognized from the Georgian side and after that it is necessary to begin at least informal dialogue with the Abkhazians about the granting an expanded autonomy within Georgia in the context of asymmetrical regionalism or federalism. A similar model of dialogue has to be created for the Ossetians.

## **VII. Conclusions and remarks**

Russia plays a key role in the emergence and continuation of territorial conflicts in Georgia. Russia is, in fact, a party to the conflict. However, nationalism is strong in Abkhazia in particular, and it is unlikely that the Abkhazians will agree to full assimilation with Russia<sup>100</sup> and the factual annexation process that is already under way.

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<sup>97</sup> This data is based on public Information provided by Ministry of Science and Education of Georgia and Ministry of Health, Labour and Social Affairs of Georgia.

<sup>98</sup> On June 24, 2021, the Cabinet of Ministers of Georgia set up a government commission to develop and implement a state strategy for deoccupation and peaceful settlement of the conflict. The Ministry of Foreign Affairs chairs and coordinates the commission.

<sup>99</sup> Interview with Giorgi Kanashvili, Expert, conducted on 28.01.2021; Interview with Prof. Giorgi Kverenchkhiladze, Tbilisi State University, conducted on 20.01.2021; Interview with Prof. Beka Kobakhidze, Ilia State University, conducted on 4.01.2021; Interview with Prof. Tornike Sharashenidze, GIPA, conducted on 16.12.2020; Interview with Levan Meskhoradze, Head of the Department of State Representation in International Courts of the Ministry of Justice of Georgia in 2008-2016, conducted on 29.01.2021; Interview with Nodar Kharshiladze, Founder of the Georgian Strategic Analysis Center, conducted on 22.01.2021; Interview with Prof. Paata Zakareishvili, Gr. Robakidze University of Georgia, conducted on 30.12.2020; Interview with Ivliane Haindrava, Independent Expert, conducted on 30.12.2020.

<sup>100</sup> Iv. Haindrava, Regarding the "red lines" and more, Expert Opinion, Georgian Foundation for Strategic and International Studies (GFSIS), 2020, 5-7.

In view of all of the above, Georgia must use all its resources to enter into a dialogue with Abkhazians. Launching a dialogue with Abkhazia does not mean a change of the policy of non-recognition or the revision of the so-called Geneva format and the exclusion of Russia as a party to the conflict (main actor). The beginning of the dialogue marks the start of the discussion about the implementation of the right to political self-determination (so-called internal context of the right), which is currently taking place illegally as part of the secession process in Abkhazia and South Ossetia.

It is legitimate to speak of expanded autonomy within Georgia in context of the Abkhazian people's right to political self-determination (within the context of internal self-determination). This must be agreed between the Georgian and the Abkhaz people under a federal territorial agreement (in case of federation). Asymmetrical regionalism as a form of territorial division can also be adapted. The result will be asymmetrical federalism or regionalism. The same regional model (expanded autonomy) also applies to the Tskhinvali region (South Ossetia), which currently does not have regional status recognized in the Constitution of Georgia of 1995. This concept of conflict resolution should be part of the Georgian strategy for reintegration of the conflict regions.

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