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NOTE FROM THE EDITOR-IN-CHIEF

Since the publication of the Winter 09 issue events in the Caucasus and the wider region have continued to shift, which underlines yet again the region's critical importance for the wider world. The beginning of Barack Obama's tenure as President of the United States has opened up new possibilities for geopolitical shifts in the Caspian region, as he seeks to press the reset button with Russia and offer a hand to Iran. The course of these developments will have a profound effect in the Caucasus and Central Asia, even without the myriad of factors in play in the region. Turkey has tried to reassert itself in the Caucasus, moving towards rapprochement with Armenia and alienating Azerbaijan. The Nabucco pipeline project looks increasingly doomed, even as Turkmenistan seeks to free itself from Russian control. Meanwhile, the conflict in Afghanistan has continued to cast its ripples over the region.

This latest issue continues the efforts of the Caucasian Review of International Affairs (CRIA) to expand and deepen knowledge of this critical region. The Spring edition also demonstrates CRIA's commitment to providing insightful and original analysis on a broad spectrum of topics. An assessment of the EU's Eastern Partnership is included alongside a discussion of female suicide bombers in Chechnya: a scientifically rigorous analysis of Uzbekistan's gas sector is presented along with incisive papers on Georgia's domestic politics. We are also proud to present papers on splits in the Russian 'tandemocracy'; China's expansion into Central Asia; the beginnings of the Russia-Georgia war; the effects of the cases of Kosovo, Abkhazia and South Ossetia on international law; and a review of the Handbook of International Humanitarian Law. CRIA is also very proud to offer interviews with the director of the Silk Road Studies Institute, Dr. Svante E. Cornell, and with Professor George Hewitt from the University of London.

Since the publication of the last issue CRIA has continued to increase its subscription and its profile elsewhere. The Review has been included in the renowned citation indexes/research databases such as ProQuest Research Library, EBCOhost Research Database, Directory of Open Access Journals, Ulrich's Periodicals Directory and *Deutsche Nationalbibliothek*. Partnering with the Journal of Turkish Weekly has enabled CRIA to reach an even wider audience, and upcoming partnerships with other regional forums will make CRIA even more accessible. Since March, CRIA's weekly Caucasus Update has also been translated into Russian, allowing CRIA to connect with millions of Russian speakers in the region and beyond. Our preeminent Editorial Board has been expanded to include the distinguished Caucasus specialist Dr. Cory Welt from the Georgetown University. Also two new members joined our Staff.

This continues to be an exciting time for CRIA. The Review will, in the coming months, continue to develop partnerships with regional research institutes and news agencies, and will also be introducing a series of Occasional Papers – some written by CRIA's own staff, some written by outside experts – as well as a series of regular interviews.

Each issue of CRIA, which is a free and non-profit online publication, is the result of voluntary and hard work of the affiliated persons. Therefore, I'd like to express my deep gratitude to all the members of the Advisory and Editorial Boards, editorial assistants, other staff members and all online interns of CRIA for their consistent and profound engagement.

I hope that you will enjoy the Spring 09 issue and look forward to your comments and suggestions.

IMPLICATIONS OF KOSOVO, ABKHAZIA AND SOUTH OSSETIA FOR INTERNATIONAL LAW

The Conduct of the Community of States in Current Secession Conflicts

Heiko Krueger*

Abstract

The objective of this article is to examine whether the current conduct of the community of states in the cases of Kosovo, Abkhazia and South Ossetia has any implications on international law. This question arises particularly in the case of Kosovo, since many states have recognised its separation from Serbia. Can the conduct of the community of states be used as a legal precedent by other groups seeking separation, e.g. in Azerbaijan, China, Georgia, Moldova, Spain or Ukraine? What if more states were to recognise Kosovo in the future? The focus of this paper will be to consider the implications of the conduct of the community of states on the interpretation of international treaties and customary international law. In this respect, the conduct of states in the cases of Abkhazia and South Ossetia in August 2008 will also be taken into account.

Keywords: territorial integrity, self-determination, secession, Kosovo, Abkhazia, South Ossetia, international law

Introduction

In many states, ethnic groups are demanding separation from their “mother state” by invoking the right to self-determination of peoples, which was originally developed within the context of decolonisation. This has led to a general discussion concerning the extent to which ethnic peoples, groups and minorities are entitled to rights to self-determination and, in particular, rights to secession. To date, the community of states has rejected rights to secession for these groups and supported the mother states concerned by upholding the principle of territorial integrity.

Many states seemingly deviated from this strict course in the spring of 2008 by recognising Kosovo and its separation from Serbia. An important question is whether this conduct has any

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implications on international law and whether it can be used as a legal precedent by other groups seeking separation, e.g. in Azerbaijan, China, Georgia, Moldova, Spain or Ukraine. States that recognised Kosovo, including Great Britain, Germany and the United States, have already ruled out the interpretation of the Kosovo case as a precedent. However, does this necessarily mean that the recognition of Kosovo has no influence on international law? Furthermore, Russia recognised the breakaway regions of Abkhazia and South Ossetia as being independent from Georgia. How should the fact that no other state – apart from Nicaragua – has followed this example be interpreted?

The current article will examine these questions in greater detail. The main focus will be to consider the implications of the conduct of the community of states in the case of Kosovo in the spring of 2008 on the interpretation of international treaties and customary international law (part II). In this respect, the conduct of states in the cases of Abkhazia and South Ossetia in August 2008 is worth taking into account. Further conclusions will emerge from this analysis (part III). Subsequently, possible future scenarios will also be discussed in the case of Kosovo and their hypothetical implications on international law (part IV).

I. International Right to Secession – Until Late 2007

First of all, it is necessary to outline how the international right to secession appeared prior to the spring of 2008. The international right to secession refers to the entirety of territorial separation rights which result from international law and which can be exercised by certain groups of the population against their mother states. Such rights to separation and secession are recognised in various constellations. The classic case is represented by former colonies that were able to break free from their colonial states.¹ Secession is also compliant with international law if it is based on a decision made by the entire population of the mother state.² Furthermore, this applies if the secession is anchored in the national law of the mother state and follows the respective secession procedure.³ A case is also regarded as legitimate if a region annexed by another state in circumstances contrary to international law declares its secession from the annexing state.⁴ Within this context, the separation of the Baltic countries from the USSR prior to its collapse is a prime example.

Rights to secession for ethnic peoples, groups or minorities outside the context of decolonisation are generally rejected if they pursue the separation unilaterally, i.e. without consulting the entire population or without any legitimacy through a national secessionist procedure. As shown below, this constellation applies to the case of Kosovo, which is why the present article focuses on this specific scenario.⁵

First and foremost, ethnic peoples, groups or minorities are entitled to human rights and the rights to minorities. They may also invoke the so-called internal (defensive) right to self-

¹ Hans-Joachim Heintze, in *Völkerrecht* [International Law], ed. Knut Ipsen (Munich: 2004), 421 et seq.

² See Antonio Cassese, *Self-Determination of Peoples* (Cambridge: 1995), 144; Frauke Mett, *Das Konzept des Selbstbestimmungsrechts der Völker* [The Concept of the right to self-determination of peoples] (Frankfurt/Main: 2004), 209, 269, 270 et seq., 371.

³ Marcelo G. Köhen, *Secession, International Law Perspectives* (Cambridge: 2006), 20.

⁴ Köhen (op. cit. 3) 19; Cassese (op. cit. 2) 129 (“Peoples under foreign military occupation”).

⁵ See section II. 3. below.

determination.⁶ This affects the free organisation of state order, and in turn the relationship of a people or an ethnic group with the government. However, there is consensus, at least in principle, that the aforementioned groups are not entitled to an external (offensive) right to self-determination. The external right to self-determination is primarily geared towards constructing an independent state of one's own, namely secession. Such a right to secession is rejected by pointing to the territorial integrity of the mother state.

The prevailing view held by international legal scholars does not allow for any exceptions in this respect.⁷ According to a strongly opposing view, mainly espoused in Germany, ethnic groups should be entitled to a right to separation, at least in extreme, exceptional cases.⁸ Accordingly, an ethnic group should be entitled to a right to secession if it undergoes suppression to an unbearable extent, and if separation is the only available means as a last resort. This would need to involve the most severe infringements, namely crimes under international law, cases of systematic discrimination and massive human rights violations.⁹ The state apparatus would need to be exposed as a torturous regime of terror and a tyrannical system¹⁰ in order for the existing duty of loyalty towards the state to be rescinded.¹¹

Some commentators also extend the list of exceptions to forms of extreme political discrimination. According to this viewpoint, ethnic groups should be entitled to a right to secession if they are denied any form of participation in the political system.¹²

Whether a right to secession under international law also exists in strictly defined exceptions for ethnic peoples, groups or minorities, depends upon whether the community of states grants them such a right by treaty or by custom. These groups must therefore be able to invoke either international treaties or customary international law in order to exercise their secessionist ambitions.

⁶ In regard to the Kosovo Albanians see Gerd Seidel, "A new dimension of the right of self-determination in Kosovo?," in *Kosovo and the International Community*, ed. Christian Tomuschat (Dordrecht: 2002), 205 et seq., 212.

⁷ See Emililio J. Cárdenas/ María F. Cañás, "The Limits of Self-Determination" in *The Self-Determination of Peoples*, ed. Wolfgang Danspeckgruber, (London: 2002), 113; Svante E. Cornell, "Undeclared War: The Nagorno-Karabakh Conflict Reconsidered," *Journal of South Asian and Middle Eastern Studies*, vol. XX, no. 4 (1997): 21; Olivier Corten, "Are There Gaps in the International Law of Secession?," in *Secession, International Law Perspectives*, ed. Marcelo G. Kohen (Cambridge: 2006), 231 et seq.; Kohen (op cit. 3), 10; Tim Portier, *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia* (The Hague: 2001), 36; Gnanapala Welhengama, *Minorities' claims, from autonomy to secession*, (Aldershot: 2000), 313 et seq. cf. also in this respect Christian Tomuschat, "Secession and Self-Determination," in *Secession, International Law Perspectives*, ed. Marcelo G. Kohen (Cambridge: 2006), with further references; Matthias Herdegen, *Völkerrecht [International Law]* (Munich: 2006), 256.

⁸ Cf. Karl Doehring, in *The Charter of the United Nations*, ed. Bruno Simma (Oxford: 2002), Art. 1, Annex: Self-Determination (40); Heintze, in Ipsen (op. cit. 1) 414; Herdegen (op. cit. 7) 257; Stephan Hobe/ Otto Kimminich, *Einführung in das Völkerrecht [Introduction to International Law]* (Tuebingen: 2004), 118; Tomuschat, in: Kohen (op. cit. 7) 38 et seq.; *Ibid.*, *Modern Law of Self-Determination* (Dordrecht: 1993), 9.

⁹ Hobe/Kimminich (op. cit. 8) 118; Herdegen (op. cit. 7) 257; Heintze, in Ipsen (op. cit. 1) 414; Tomuschat, in Kohen (op. cit. 7) 4.

¹⁰ Tomuschat, (op. cit. 8) 9; *Ibid.*, in Kohen (op. cit. 7) 42.

¹¹ Heintze, in Ipsen (op. cit. 1) 414.

¹² Cf. Mett (op. cit. 2) 268, 373; Tomuschat, in Kohen (op. cit. 7) 39.

1. International Treaties

From a treaty perspective, the United Nations Charter and the Covenants of Human Rights (International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights) are taken into consideration.¹³ The right to self-determination is cited in all three sources (Article 1.2 and Article 55 of the United Nations Charter, Article 1 of both Covenants of Human Rights). If the right to secession is to be derived from these sources, the existing right to self-determination must be interpreted in a manner that substantiates a right to secession.

This is impossible solely on the basis of the wording of the texts. Forms of self-determination may also be exercised within an existing state. In this respect, the concept as such does not necessarily entail secession. Regarding the UN Charter, it was already rejected as a basis for pressing secession demands in its drafting stage.¹⁴ Indeed the parties to the Charter would clearly have been able to extend the right to self-determination contained in the UN Charter, as well as that in the Covenants of Human Rights, further into a right to secession (the thinking behind Article 31.3 of the VCLT¹⁵). This would have been the case if the states which were parties to the treaties had been convinced in the past that the right to self-determination included the right to secession. However, no such conviction existed. As shown in part I.2 of the current paper, state practice is characterised as being hostile to secession.¹⁶ This also applies to the practice of the states signed up to the UN Charter and the Covenants of Human Rights. None of the three documents has ever been invoked by the contractual states as a basis for supporting secessionist movements.

A teleological interpretation is also worthy of consideration. Concerning the UN Charter, it could be assumed that secession represents the final resort. From a peace-keeping perspective, the separation of a region may appear to make sense in a region that is permanently subject to violent ethnic disputes. However, it is debatable whether the permanent dismemberment of a state constitutes a particularly effective peace-keeping measure. Secession only serves the interests of the group seeking separation and scarcely allows for compromise solutions on the basis of which a long-term peaceful co-existence might appear possible without international support. Moreover, separatist movements worldwide would be encouraged to use force. In a prolonged violent dispute, groups seeking secession would interpret the UN Charter in their favour and call for secession regardless of the actual circumstances. This would do scant justice to the intentions behind the UN Charter.

In respect to the Covenants of Human Rights, it might appear that the means of secession must be open to groups of populations suffering the most severe forms of discrimination. Beyond any doubt, these groups require effective assistance from the community of states and the United Nations. The community of states should intervene on humanitarian grounds in the

¹³ See also Tomuschat, in Kohen (op. cit. 7) 26 et seq.

¹⁴ UNCIO VI, 296, Document 343, I/1/16; Ruediger Wolfrum, in *The Charter of the United Nations*, ed. Bruno Simma (Oxford: 2002), Art. 1 (21); Oscar Schachter, *United Nations legal order*, vol 1 (Cambridge: 1995), 353.

¹⁵ VCLT = Vienna Convention on the Law of Treaties, 1980.

¹⁶ See also Tomuschat, in Kohen (op. cit. 7) 31; Welhengama (op. cit. 7) 308, 312; Mett (op. cit. 2) 269; Heintze, in Ipsen (op. cit. 1) 423.

mandate of the UN Security Council¹⁷ and, if necessary, set up interim international administrations and take measures to address the problem at its root, namely against the respective suppressive regime. However, on first glance it could be unclear why it should also make sense to permanently split up the mother state.¹⁸ On the one hand, a new state created from secession can hardly survive on its own and is dependent on intensive international support. On the other hand, the Kosovo case shows that human rights will be respected if long-term international engagement is present. The aim of the Covenants of Human Rights can therefore be achieved through other means. If these means are proven to be successful, the Covenants of Human Rights can no longer be referred to as a basis for dismembering the mother state.¹⁹

Consequently, it is highly debatable whether rights to secession can be inferred from the United Nations Charter or the Covenants of Human Rights. Moreover, there are good reasons in favour of rejecting rights to secession, even in exceptional situations. Otherwise there is a danger that ethnic groups might be too quick to interpret exceptional rules in their favour and incite the mother states in question to take discriminatory countermeasures and preventative steps. This does not correspond to the spirit of international treaties which is primarily focused on prevention. As a result, there are strong arguments against the exceptional granting of secession through the UN Charter and Covenants of Human Rights.²⁰

2. Customary International Law

Rights to secession under international law for ethnic peoples, groups or minorities could at best arise from customary international law. The classic requirements of a norm under customary law are an appropriate practice of the states, as well as the firm belief that this practice meets a legal obligation (*opinio juris sive necessitatis*).²¹ Proponents of legal schools of thought espousing natural law only consider the subjective element, namely the *opinio juris*, to be essential.²²

Proving the existence of a norm under customary international law frequently raises difficulties. For this reason, it is often correctly deemed satisfactory for so-called "fundamental principles of international law"²³ to arise from international relations or fundamental treaties (e.g. UN Charter, Treaty of Maastricht on European Union). Here it is not a matter of so-called general legal principles resulting from national legal systems, but of

¹⁷ See Bernd R. Elsner, *Die Bedeutung des Volkes im Völkerrecht* [The Meaning of People in International Law] (Berlin: 2000), 305.

¹⁸ See also Kohen (op. cit. 3) 10 et seq.

¹⁹ See also Andreas Zimmermann and Carsten Stahn, "Yugoslav Territory, United Nations Trusteeship or Sovereign State?" *Nordic Journal of International Law*, vol. 70 (2001): 423, 456; Philipp A. Zygojannis, *Die Staatengemeinschaft und das Kosovo* [The Community of States and Kosovo] (Berlin: 2003), 260.

²⁰ Consequently also Tomuschat, in Kohen (op. cit. 7) 26 et seq. referring to the prevalent view that the Covenants of Human Rights in particular fail to constitute any basis for legitimate secessionist demands.

²¹ Art. 38 Para. 1 lit. b ICJ statute; Hobe/Kimminich (op. cit. 8) 184; Wolff Heintschel von Heinegg, in *Völkerrecht* [International Law], ed. Knut Ipsen (Munich: 2004), 214 et seq.; Malcom E., Shaw, *International Law* (Cambridge: 2003), 68 et seq.

²² Heintschel von Heinegg, in Ipsen (op. cit. 21) 214.

²³ Heintschel von Heinegg, in Ipsen (op. cit. 21) 227; Hermann Mosler, "General Principles of Law," in *The Encyclopedia of Public International Law (EPIL)*, vol. II, ed. Rudolf Bernhardt (Amsterdam: 1995), 511, 513; Tomuschat, in Kohen (op. cit. 7) 39.

norms belonging to customary law. To be precise, determining such principles does not represent any departure from the classic approach of customary international law, but further simplifies the proof of the existence of a customary norm.

It is beyond dispute that no clear state practice, common practice throughout the state and *opinio juris* in favour of ethnic groups seeking secession, was visible up until the end of 2007.²⁴ Moreover, even proponents of an exceptional right to secession agree that state practice was hostile to secession until that juncture.²⁵

Accordingly, states did not even offer any rights to secession to ethnic groups or minorities which were proven to be the victims of severe human rights violations. Acts of violence infringing on human rights may have been broadly censured; nonetheless, the community of states underlined the territorial integrity of the mother states exerting this violence. Pertinent examples are the cases of Eritrea,²⁶ Chechnya²⁷ and Kosovo. Within the UN Security Council resolution 1244 (1999) on Kosovo, this notion was formulated as follows:

“Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party, ... Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2, ...”

Regardless of this rejecting stance of states and the prevailing view, some legal scholars presuppose the existence of rights to secession in exceptional cases, as previously mentioned. This could be dogmatically explained by accepting the premise that an exceptional right to secession constitutes a “fundamental principle of international law”. This principle could arise from fundamental international documents. It is indeed questionable whether this applies, as states are not neutral in regard to secessions, but rather disapprove of them.

Proponents of exceptional secession point first and foremost to a paragraph contained in the *Friendly Relations Declaration*,²⁸ which is not binding per se. This “saving clause” states:

*“Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour”.*²⁹

²⁴ Cf. in particular the detailed examination of this question in: Mett, *Das Konzept des Selbstbestimmungsrechts der Völker* (op. cit. 2). cf. also James Crawford, “State Practice and International Law in Relation to Secession,” *British Yearbook of International Law*, vol 69 (1998): 114; Christine Gray, *International Law and the Use of Force* (New York: 2004), 58; Heintze, in Ipsen (op. cit. 1) 423; Shaw (op. cit. 21) 444; Welhengama (op. cit. 7) 308, 312.

²⁵ Cf. Tomuschat, in Kohen (op. cit. 7) 27ff.; Karl Doehring, in *The Charter of the United Nations*, ed. Bruno Simma (Oxford: 2002), Article 1, Annex: Self-Determination (36).

²⁶ More details on this in Mett (op. cit. 2) 150 et seq.

²⁷ Cf. also Mett (op. cit. 2) 250 et seq.

²⁸ Cf. for the discussion of the *Friendly Relations Declaration* in this context: Kohen (op. cit. 3) 10 et seq.; see also Seidel (op. cit. 6) 206 et seq.

²⁹ UN, *Friendly Relations Declaration*, The principle of equal rights and self-determination of peoples, sec. 7.

The upshot of this is that the declaration should not constitute any warrant to question the territorial integrity of a state which acts according to the self-determination of peoples and has a government representing all groups of the population. According to this line of reasoning, it does not necessarily follow that ethnic groups should be granted a right to separation in extreme, exceptional cases.

It is already unclear which groups of the population fall under the concept of a “people”, and particularly whether ethnic groups and minorities are also included. It is impossible to provide a conclusive answer to this as the community of states and international institutions do not use any firm criteria to define a “people”.³⁰ In addition, the preamble to the declaration asserts that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a state is incompatible with the purposes and principles of the UN Charter³¹ and is in turn incompatible with the spirit of the declaration.³² Accordingly, this calls into question whether the saving clause can be interpreted in favour of groups seeking separation. Furthermore the saving clause does not contain any exact legal conditions justifying a separation. Such an unspecified right to secession would leave the doors wide open to the possibility of abuse, and would be difficult to reconcile with the primary aims of the declaration, namely to preserve security and keep the peace.³³ In order to encounter these risks effectively, it is not sufficient to affirm the existence of a right to secession, but to limit its scope and to make it conditional upon non-regulated, purely academic and inconsistent criteria. Even legal scholars representing the view that the right of secession applies in exceptional cases concede that ultimately, on the basis of the saving clause, it is impossible to formulate clear, definable and universal conditions for an exceptional secession.³⁴

It would ultimately be essential for any perceived interpretation of the saving clause in favour of the exceptional right to secession to reflect a “fundamental principle of international law” (see above³⁵). Only in this case could a legal claim be construed on the basis of the Friendly Relations Declaration, which actually constitutes “soft law”. It would be necessary for such a principle to gain general acknowledgement and to be supported by a far-reaching and clearer combination of documents. Otherwise its character could hardly be approved as a basic norm of customary international law. Due to the lack of clarity and the contentiousness of the saving clause in the Friendly Relations Declaration, the declaration does not in and of itself constitute grounds for asserting the existence of a fundamental principle of exceptional secession.

In the final analysis, other documents may also not be of use in this respect. The CSCE Final Act (Helsinki Final Act) of 1975 and the OSCE Charter of Paris of 1990 are examples of this. Both documents assert the right to self-determination of peoples. The CSCE Final Act even

³⁰ Cf. Elsner (op. cit. 17) 310; Heintze, in Ipsen (op. cit. 1) 407, 410; Thomas D. Musgrave, *Self Determination and National Minorities* (Oxford: 1997), 148.

³¹ UN, *Friendly Relations Declaration*, (1970), Preamble.14.

³² According to the general part of the declaration, the UN Charter sets the authoritative framework for the interpretation.

³³ UN, *Friendly Relations Declaration*, Preamble.1, 2, 3 & 4.

³⁴ Cf. Zygojannis (op. cit. 19) 258.

³⁵ Part I. 2.

mentions the possibility of being able to determine the external political status for oneself.³⁶ However, the documents do not provide any clearer information on who should wield this right – whether that be the peoples of states, colonised peoples or ethnic peoples, groups and minorities. Furthermore, both documents stress that the right to self-determination is only to be respected if it is exercised in accordance with the principle of territorial integrity.³⁷ There is no basis for granting an independent right to secession to override the principle of territorial integrity.

The lack of authoritative documents in favour of a right to secession was not addressed by the declaration of the World Human Rights Conference of 1993, and the declaration to commemorate the 50th anniversary of the United Nations. Both declarations, which took place after the Friendly Relations Declaration, contain a saving clause which is comparable to the Friendly Relations Declaration and is therefore just as imprecise. This means that the community of states, fully aware of the “contestability” of the saving clause in the Friendly Relations Declaration, was not able to confirm the existence of an exceptional right to self-determination by clarifying and enshrining it in the two subsequent declarations.

Nor can the Vienna Convention on the Succession of States – often cited by proponents of the opposing viewpoint – be presented as a convincing argument.³⁸ Although the Vienna Convention establishes “separation” as a form of state succession, this does not necessarily mean that ethnic groups should have rights to secession.

Consequently, it cannot be assumed that international documents go against state practice, which is hostile to secession, and that they reflect the existence of a principle of exceptional secession. This deduction is consistent with the prevailing international view – at least right up to the end of 2007 – that international law did not provide any rights to secession for ethnic peoples, groups and minorities. Moreover, the latter were merely entitled to established human rights and minority rights, and, potentially, internal rights to self-determination such as the right to autonomy.

3. Alternative Approaches to Secession

Alongside the discussion on the right to self-determination of people, other approaches are argued by individual authors. These approaches are based on the premise that the separation of ethnic groups is supposedly legitimate in exceptional cases. This applies to constellations in which the mother state rejects every compromise solution in a conflict situation, or when there is no realistic prospect of a conflict being resolved, especially when the methods of peaceful conflict resolution appear to have been exhausted.³⁹ The arguments are merely the projections of individual authors and have not yet gained any general recognition in theory or in practice.⁴⁰ Even if it is not possible to deal with such approaches in any detail here, there

³⁶ Cf. CSCE Final Act 1975, Questions relating to security in Europe, 1.a.VIII; OSCE Charter of 1990, Friendly Relations among Participating States.

³⁷ CSCE Final Act 1975, Questions relating to security in Europe, 1.a.VIII; OSCE Charter of 1990, Friendly Relations among Participating States.

³⁸ Cf. Seidel (op. cit. 6) 207.

³⁹ Cf. summary in Heintze (op. cit. 1) 424 et seq.

⁴⁰ Cf. Heintze (op. cit. 1) 425.

appears to be grounds for scepticism. In the fairly recent past, the conduct of states in secession conflicts reflected very diverse conflict resolution strategies and political motives.⁴¹ These scarcely allow for any clear general legal conclusions to be reached. As shown below, this was confirmed in the case of Kosovo.⁴² Set against this background, it is difficult to identify convincing rules of customary law.

II. Conduct of the Community of States in the Case of Kosovo in Spring of 2008, and Implications on the International Right to Secession

1. The Kosovo Conflict

Generally speaking, the causes of the Kosovo conflict – like many other ethnic conflicts – can be traced to the fact that an area is claimed by several groups of the population primarily for historical and ethnological reasons. For Serbians, Kosovo represents an essential constituent part of Serbia, particularly due to the Battle of Kosovo in 1389, in which Christian Serbians fought against the troops of the Ottoman Empire. The Kosovo Albanians, who are predominantly Muslim, also lay claim to Kosovo because of the Albanian majority living there.

From 1449 until 1912, Kosovo was part of the Ottoman Empire. After its liberation from the Turks it was split up between Serbia and Montenegro, and after the Second World War it was assigned to the constituent republic of Serbia within Yugoslavia, which had become Communist in the meantime. In light of the hostilities between Serbians and Albanians, the Yugoslav leadership declared Kosovo to be an autonomous territorial entity whose status was continually extended. In fact, Kosovo held similar status to the republics of Yugoslavia, but it never received their formal standing.⁴³

The Kosovo Albanians therefore continued to demand their independence more vehemently. This led to an increase in tensions between the Albanian majority and the Serbian minority, as well as early trouble at the beginning of the 1980s. The migration of tens of thousands of Serbians and Montenegrins over the following period unleashed Serbian fears, which the future Serbian President Slobodan Milosevic used to his advantage in 1986. This subsequently led to a restriction of Kosovo's autonomy and reprisals, breeding further tensions. In 1989 the autonomy of Kosovo was completely suspended. From 1996, the Albanian resistance grew more radical under the Kosovo Liberation Army (KLA/UÇK). The tensions between Serbian special forces and the Albanian UÇK adopted a form resembling war. Kosovo's civilian population was driven into exile, and acts of violence were carried out towards them by the Serbians. After fruitless international attempts to intervene, NATO conducted air strikes that were intended to put an end to the expulsions.

Since the end of the war in 1999, Kosovo has been placed under the UN Interim Administration Mission in Kosovo (UNMIK). Security has been upheld by international

⁴¹ The predominance of political motives could already be seen in previous secession conflicts, e.g. in the case of Eritrea. See Mett (op. cit. 2) 150 et seq.

⁴² Please see section III below.

⁴³ Mett (op. cit. 2) 312.

peace-keeping troops (KFOR) under NATO leadership. Tensions between the Albanian and Serbian populations still persist. The most serious disturbances occurred in the divided city of Mitrovica in 2004, and were mainly directed against Serbians. Right up to the spring of 2008, Serbia and Kosovo were unable to reach an agreement on the status of the breakaway province. Kosovo's own administration declared independence on 17 February 2008. For Serbia, this declaration remains without any legal effect, and Kosovo should still belong to Serbia.

2. Conduct of the Community of States

The community of states did not react to the Kosovo conflict until 1998, when warlike conditions broke out. The Kosovo Contact Group, consisting of France, Germany, Great Britain, Italy, the Russian Federation and the United States, imposed an arms embargo and froze Serbian bank accounts abroad.⁴⁴ Furthermore, the UN Security Council passed resolution 1160 (1998), in which Serbian attacks on Albanian civilians were condemned, as were terrorist acts committed by the Albanian UÇK. At the same time, the resolution stressed that any solution to the Kosovo question would be based on the territorial integrity of former Yugoslavia and would take into account the Albanians' position under international law. The preamble to the resolution emphasised the continuing sovereignty and territorial integrity of Yugoslavia in even clearer terms. The resolution was manifestly not a question of giving a legal or political foundation to the secession attempts of the Albanians, but to put a stop to the violent attacks and expulsions.⁴⁵ The NATO air strikes of 1999 were also indicative of this objective. They were solely aiming to end the violence. On an international level, the solution to this conflict seemed to be extensive autonomy for Kosovo as enshrined in resolution 1244 (1999) of the UN Security Council.⁴⁶ A right to self-determination, which could have led to the territorial separation of Kosovo, was also rejected here.⁴⁷

In 2006, intervention talks began under UN auspices. These did not produce any result as both Serbia and the Kosovo Albanians stuck to their respective positions. In February 2007, the UN special envoy Ahtisaari presented a proposal under which Kosovo was supposed to receive the status of a “supervised independence”. A UN Security Council resolution was drafted, but this was not supported by Russia, which cited the territorial integrity of Serbia, and was therefore rejected. Another attempt to intervene, undertaken by a troika consisting of the European Union, Russia and the USA in August 2007, also failed at the end of 2007. The Kosovar leadership then set its aims to announce breaking away from Serbia in 2008, a step which ultimately occurred in February 2008.

The community of states has not reacted unanimously to the unilateral separation of Kosovo from Serbia.⁴⁸ Several states recognised Kosovo's independence mainly due to the need to

⁴⁴ Mett (op. cit. 2) 335 et seq.

⁴⁵ Ibid.

⁴⁶ Resolution 1244 (1999) Annex 2.5.

⁴⁷ Also Mett (op. cit. 2) 338 et seq.; Seidel (op. cit. 6) 206.

⁴⁸ Cf. the following reports: *Reuters*, “US, EU powers recognise Kosovo: some opposed,” February 18, 2008, <http://www.reuters.com/article/europeCrisis/idUSL18315383> (accessed April 22, 2009); *Euractiv*, “Europe split on Kosovo independence,” February 18, 2008, <http://www.euractiv.com/en/enlargement/europe-split-kosovo-independence/article-170353> (accessed April 22, 2009); *Tagesschau*, “Tiefe Gräben im Sicherheitsrat,” [Deep

resolve the conflict (as detailed below in part II.3 and part IV). These states include Albania, Afghanistan, Australia, Belgium, Denmark, Germany, France, Great Britain, Ireland, Italy, Austria, Peru, Switzerland, Turkey and the USA. Up until now, 58 countries have formally recognised Kosovo's independence.

Other countries have refused to acknowledge Kosovo's secession on the grounds of upholding the territorial integrity of Serbia. These states include Argentina, Azerbaijan, Bolivia, Bosnia-Herzegovina, China, Georgia, Kazakhstan, Romania, Russia, Slovakia, Spain, Sri Lanka, Serbia, Venezuela and Vietnam.

Other states (e.g. Egypt, India, Iran and Iraq) have adopted a neutral position to date. Some – including Brazil, Chile, Greece, Mexico and South Africa – have at least voiced their scepticism concerning Kosovo's independence and suggest further negotiations.

3. Implications on the International Right to Secession

International law recognises various constellations in which the secession of a territorial part of a state may be acknowledged as legitimate. These include the territorial separation within the context of decolonisation, separation based on the decision taken by the entire population of the mother state, secession arising under national law, or independence for an area which was originally unlawfully annexed (see part I).

Kosovo's secessionist endeavours do not fall into these categories. The Kosovo Albanians can neither invoke a decision taken by the entire Serbian population nor an intra-state right to secession. Even if the constitution of former Yugoslavia provided for the possibility of secession, this applied to republics of the union and not to autonomous regions such as Kosovo. Nor can it be assumed that Serbia necessarily annexed Kosovo in unlawful circumstances. The region was split up in 1912 after Serbia and Montenegro defeated the Turks. At that time, the modern prohibitions on the use of force and annexations did not yet apply under the regime of classic international law. In the early 20th century, wars waged by sovereign countries were still regarded as legitimate (*ius ad bellum*)⁴⁹ and, in the case of annexation, were considered to be a legal means of obtaining territory.⁵⁰ In the subsequent course of history, Kosovo was assigned to the republic of Serbia inside Communist Yugoslavia. On this basis and according to the principle of *uti possidetis*,⁵¹ it remained a composite part of Serbia after the break-up of Yugoslavia.⁵²

rift in Security Council] February 19, 2008, <http://www.tagesschau.de/ausland/sicherheitsrat8.html> (accessed April 30, 2009).

⁴⁹ The prohibition under international law of aggressive war began with the ratification of the Kellogg-Briand Pact signed in 1928. It obtained validity under customary international law at the outbreak of the Second World War. See Hobe/Kimminich (op. cit. 8) 36 et seq., 49; Georg Dahm/ Jost Delbrück/ Ruediger Wolfrum, *Völkerrecht* [International Law], vol. I/3 (2002), 821; Knut Ipsen, *Völkerrecht* [International Law] (Munich: 2004), 35; Horst Fischer, in *Völkerrecht* [International Law], ed. Knut Ipsen (Munich: 2004), 1069; Theodor Schweisfurth, *Völkerrecht* [International Law] (Tuebingen 2006), 357.

⁵⁰ Cf. Hobe/Kimminich (op. cit. 8) 39, 85; Tom Hillier, *Sourcebook on Public International Law* (London 1998), 241; Otto Kimminich, „Menschenrechte: Von kollektiven und individuellen Rechten,“ <http://www.lsg.musin.de/deutsch/d/aufkl/menschenrechte.htm>; John O'Brien, *International Law* (London 2001), 212; Schweisfurth (op. cit. 49) 291; Shaw (op. cit. 21) 423.

⁵¹ The principle of *uti possidetis* was originally established within the context of decolonisation, although it can be assumed that it became part of customary international law at the end of the 20th century. Cf. Hillier (op. cit.

The case of Kosovo is therefore a constellation in which an ethnic group unilaterally decided to break away from its legal mother state. The conduct of the community of states in the case of Kosovo in the spring of 2008 might at best have an impact on the assessment of such constellations under customary international law. This issue arises if the widely-held view that Kosovo Albanians have hitherto not been entitled to any right to separation is adopted. On the one hand, commentators rejecting rights to secession for ethnic groups under any circumstances⁵³ have been drawn to this conclusion. On the other hand, this is also the view espoused by some commentators who accept the right to secession in exceptional circumstances as a last resort in the face of severe human rights infringements.⁵⁴ In their opinion, the safeguarding of human rights has already been restored by UNMIK, meaning that no desperate situation existed which may have necessitated secession as a final means of recourse to protect human rights.

However, even for commentators who have already accepted a right to secession for Kosovo Albanians prior to 2008,⁵⁵ the conduct of the community of nations is of interest, as it possibly confirms the legal view they have held.

There are possible normative implications in two respects: first, implications on the interpretation of international treaties, and second, implications on customary international law.

a. Implications on the Law of International Treaties

According to Article 31.3.b of the Vienna Convention on the Law of Treaties (VCLT), the conduct of states in the application of an international treaty should be considered when it is interpreted. State practices may therefore also affect the interpretation of international treaties. One might question whether the conduct of the community of states in the spring of 2008 had an impact on the interpretation of the right to self-determination, as resulting from Article 1.2 and Article 55 of the UN Charter and Article 1 of the Covenants of Human Rights. It is theoretically conceivable that in the case of Kosovo, state practice cemented the right to self-determination as provided for in these articles to become a right to secession for ethnic peoples, groups or minorities under certain conditions. Hitherto this had not been the case.⁵⁶

Article 31.3.b of the VCLT, which by analogy is also applicable to the UN Charter,⁵⁷ requires for such an interpretation that the signatory states establish a common agreement on the meaning of a treaty when applying it.⁵⁸ For this to be the case, the signatory states of the UN

50) 218; Schweisfurth (op. cit. 49) 283; Christiane Simmler, *Das uti-possidetis-Prinzip* [The Uti-Possidetis Principle] (Berlin 1999), 293; ICJ, ICJ Reports 1986, 554 et seq., notes 20 et seq. Regarding the application of the principle in the practice of international law see also Hobe/Kimminich (op. cit. 8) 78 et seq.

⁵² See also Mett (op. cit. 2) 370.

⁵³ On this view and the opposing viewpoint cf. section I above.

⁵⁴ Cf. Zimmermann/Stahn (op. cit. 8) 423, 456; Zygojannis (op. cit. 19) 260; Kerstin Wirth, "Kosovo am Vorabend der Statusentscheidung," *Heidelberg Journal of International Law*, vol. 67 (2007):1065-74 et seq.

⁵⁵ Cf. Seidel (op. cit. 6) 206 et seq.; Katharina Wodarz, *Gewaltverbot, Menschenrechtsschutz und Selbstbestimmungsrecht im Kosovo-Konflikt* [Prohibition of the Use of Force, Human Rights Protection and Right to Self-Determination] (Frankfurt: 2002), 192 et seq.

⁵⁶ On this point cf. section I.1 above.

⁵⁷ Georg Ress, in *The Charter of the United Nations*, ed. Bruno Simma (Oxford: 2002), Interpretation, note 8.

⁵⁸ *Heitschel von Heinegg*, in Ipsen (op. cit. 21) 146 et seq.

Charter and the Covenants of Human Rights would have to have assumed that the separation of Kosovo from Serbia is based on Article 1.2 and Article 55 of the UN Charter and on Article 1 of the Covenants of Human Rights.

However, this is not the case. The signatory states of the UN Charter and the Covenants of Human Rights are as divided as the entire community of states in respect to the legality of Kosovo's separation. Signatory states (e.g. Russia, Serbia, Spain) which did not recognise Kosovo made it clear that Serbia's territorial integrity should be protected. This made indirect reference to the validity of Article 2.1 of the UN Charter (sovereign equality of states) which enshrines respecting a state's territorial integrity as a basic principle of the UN.⁵⁹ Any interpretation of the UN Charter and the Covenants of Human Rights in favour of a right to secession which is able to contravene the principle of territorial integrity was thereby renounced.

Signatory states that acknowledged Kosovo (e.g. France, Germany, USA) have not stated clear legal reasons for Kosovo's separation or their positive reaction to it.⁶⁰ In the first instance they pointed out that only recognition by several states can lead to enduring stability in the region, and also that any solution by means of negotiation seems hopeless.⁶¹ They scarcely referred to the UN Charter or the Covenants of Human Rights. One reference to the UN Charter is made in the Declaration of the Council of the European Union of 18 February 2008:

*“The Council reiterates the EU's adherence to the principles of the UN Charter and the Helsinki Final Act, inter alia the principles of sovereignty and territorial integrity and all UN Security Council resolutions. It underlines its conviction that in view of the conflict of the 1990s and the extended period of international administration under SCR 1244, Kosovo constitutes a sui generis case which does not call into question these principles and resolutions.”*⁶²

However, it was not clear whether the Council of the European Union, and with it the Foreign Ministers of the EU Member States, regard the UN Charter as a legal basis for the secession of Kosovo. Moreover, they specifically referred to the extensive and paramount validity of the principle of territorial integrity. In this context, it remains unclear why the separation was regarded as a special case that numerous EU Member States obviously regarded as conforming to international law.⁶³ The mere reference to the events of the 1990s and the period of international administration does not provide any clarity from a legal perspective. In any case, the declaration cannot be used as explicit proof of the legitimacy of Kosovo's separation on the basis of the UN Charter.

⁵⁹ See Elsner (op. cit. 17); Kohen, (op. cit. 3) 6.

⁶⁰ Cf. the official letter of the US President to the President of Kosovo regarding the recognition of Kosovo by the USA, Washington, February 18, 2008; German Federal Press Office, press release no. 51, “Zustimmung des Kabinetts zur völkerrechtlichen Anerkennung des Kosovo” [Consent of the Cabinet to International Recognition of Kosovo], February 20, 2008. Cf. also section III below.

⁶¹ See German Federal Press Office, press release no. 51, “Zustimmung des Kabinetts zur völkerrechtlichen Anerkennung des Kosovo” [Consent of the Cabinet to International Recognition of Kosovo], February 20, 2008. See also section III below.

⁶² Council Conclusions on Kosovo, 2851st External Relations Council meeting, Brussels, February 18, 2008.

⁶³ See also in section III below.

As a result, there is no identifiable overriding conviction on the part of the signatory states that the UN Charter or the Covenants of Human Rights can be interpreted in favour of a right to secession for ethnic peoples, groups or minorities. On the contrary, states that rejected Kosovo's independence referred to the full validity of the principle of territorial integrity. Yet even states that supported Kosovo's independence did not refer to these treaties, thus raising the issue of the legal basis on which the secession was recognised. Accordingly, the conduct of the community of states in the Kosovo question in the spring of 2008 cannot have had any identifiable implications on the interpretation of applicable international treaties.

b. Implications on Customary International Law

The next point examines the possible implications of the conduct of the community of states in the Kosovo case on customary international law. The conduct of states represents the source and the engine of customary international law. To establish a customary norm, a state practice is required in addition to the conviction that the practice corresponds to a legal obligation (*opinio juris*).⁶⁴ Advocates of natural law and consensus-oriented jurisprudence only regard the *opinio juris* as essential. The existence of a customary norm in the form of a “fundamental principle of international law” can already stem from basic international documents.⁶⁵

Since no new basic documents have been enacted in respect to Kosovo, there is no departure from the above conclusion that international documents do not prove the existence of a right to secession for ethnic peoples, groups and minorities in the form of a fundamental principle of international law.⁶⁶ Therefore, it is necessary to consider whether there is any identifiable practice and/or *opinio juris* which documents the creation of a right to secession for ethnic groups in exceptional circumstances.

At least until the end of 2007, this was not the case.⁶⁷ However, this perspective probably changed during the spring of 2008. First of all, this perspective requires sufficient state practice. The conditions for this are highly contentious: at the very least, this must involve a de jure or de facto manner of conduct of states, which is of a certain duration, uniformity and coverage.⁶⁸

Objections cannot be raised to the creation of a customary norm if the manner of conduct is only observed over a short period of time.⁶⁹ As such, the conduct of states in the spring of 2008 would have been more than sufficient to establish a customary norm.

A manner of conduct is seen as being uniform if a representative number of subjects governed by international law tend to conduct themselves in a similar fashion, and if no noteworthy differences can be ascertained.⁷⁰ A manner of conduct is seen as attaining sufficient coverage

⁶⁴ Cf. section I. 2. above.

⁶⁵ Cf. section I. 2. above.

⁶⁶ Cf. section I. 2. above.

⁶⁷ Cf. section I. 2. above.

⁶⁸ See Heintschel von Heinegg, in Ipsen (op. cit. 21) 215 et seq; Shaw (op. cit. 21) 72.

⁶⁹ Heintschel von Heinegg, in Ipsen (op. cit. 21) 215.

⁷⁰ Heintschel von Heinegg, in Ipsen (op. cit. 21) 216.

if it is at least supported by those states whose interests are affected.⁷¹ It is insufficient for only the directly opposing parties to act. Nor does it, on the other hand, depend on all subjects governed by international law.

The key criterion is whether there is a uniform and prevalent manner of conduct to support the existence of a right to secession under certain conditions. As mentioned in part II, the community of states is extremely divided.⁷² In addition to the 58 countries recognising Kosovo, there were also several that rejected its independence. Others adopted a neutral stance, suggested further negotiations or are still awaiting further developments. This means that the majority of countries have not yet recognised Kosovo. Nor has the state practice of the 58 recognising countries been accepted without any opposition. Moreover, their practice has been clearly rejected or sceptically opposed. Therefore, there can be no talk of a uniform manner of conduct on the part of the states.

Furthermore, it should be noted that the countries refusing or opposing the recognition of Kosovo with scepticism were those that are potentially or actually affected by internal separation movements. The creation of a customary norm is conditional on their positive stance towards the secession. Precisely the interest of these nations would have been decisively affected by the creation of a right to secession under customary law. In addition to Serbia, these countries include Azerbaijan, China, Georgia, Moldova, Romania, Russia, Slovakia, Spain, Sri Lanka and Ukraine. As a result, the conduct of states is lacking not just in uniformity, but also in coverage. Consequently, there is insufficient state practice for ethnic groups to be able to legally justify their secession ambitions.

There is also a deficiency concerning the necessary *opinio juris*. This is based on a uniform and prevalent action on behalf of the states and only focuses on their motivation. In the face of disagreement between states in the case of Kosovo, it can not be assumed that the community of states was or is entirely convinced that ethnic groups should be entitled to rights to secession under certain circumstances. It could be implied that such a view is held by the countries that recognised Kosovo, but even this stance is partially unclear (see part IV). However, their sole perspective is not enough to justify the creation of a customary norm. This fact remains equally unchanged when considering that the understanding of the legal position is also partially unclear in the countries refusing to recognise Kosovo. At the very least, this applies to Russia which directly and indirectly supports secession attempts elsewhere, such as the cases of Abkhazia, South Ossetia and Transdniestria.

All things considered, it can not ultimately be assumed that there has been a prevalent conviction on the part of the community of states under which ethnic peoples and groups are entitled to rights to secession under certain circumstances. Accordingly, the conduct of states in the spring of 2008 did not have any documentable implications on customary international law. There was a lack of sufficient state practice as well as the necessary legal conviction. Hence, even the recognition of Kosovo was unjustified and unlawfully in terms of international law due to an insufficient legal basis.

⁷¹ Cf. ICJ in the North Sea Continental Shelf case, ICJ Reports 1969, 42 et seq.; Heintschel von Heinegg, in Ipsen (op. cit. 21) 216; Hobe/Kimminich (op. cit. 8) 184; Shaw (op. cit. 21) 84.

⁷² Cf. section II. 2 above.

III. Conduct of the Community of States in the Cases of Abkhazia and South Ossetia in Summer of 2008, and Implications on the International Right to Secession

Despite all historical, political and social differences, the cases of Abkhazia and South Ossetia reveal strong parallels to the case of Kosovo in view of the right to secession. Like Kosovo, Abkhazia and South Ossetia were subordinate, autonomous areas within a former Socialist multi-ethnic state. When signs of reform and decay began to emerge throughout the entire Eastern Bloc at the end of the 1980s, strong independence movements were also erupting in Abkhazia and South Ossetia. When this occurred, neither region had any more right than Kosovo to claim secession under national or international law. Against this background, the community of states continually refused to recognise the independence of these two breakaway regions from Georgia. These regions were not granted rights to secession, nor were the de facto regimes that were formed in the meantime accepted as states.

In the course of the Russia-Georgia conflict in August 2008, Russia recognised the independence of Abkhazia and South Ossetia. Russian President Medvedev referred to the free will of the Abkhazian and South Ossetian people. He claimed Georgia had failed to bring about a peaceful solution for many years.⁷³ According to Russia, independence was the only way to protect Abkhazia and South Ossetia. The UN Charter, the Friendly Relations Declaration and the CSCE Final Act of 1975 were drawn upon to support this position.⁷⁴

In light of these assertions and the aforementioned documents, the Russian line of argument was not based on the de facto status existing in Abkhazia and South Ossetia in the meantime. It referred to the highly controversial external right to self-determination of peoples, the existence of which Russia had denied in other cases, such as Kosovo. Nicaragua was the only country to follow the Russian example and recognise Abkhazia and South Ossetia. In fact, many countries rallied against the course taken by Moscow. Even countries which had supported Kosovo's independence, such as France, Germany and the USA, vehemently rejected the independence of both regions. They referred to the need to protect the territorial integrity of Georgia.⁷⁵ The conduct of Russia was strongly condemned.

In line with part II's conclusion, the recognition of Kosovo did not change anything regarding the position of the community of states that were hostile to secession. The vehement rejection of the Russian line of argument in the cases of Abkhazia and South Ossetia particularly

⁷³ *BBC*, "West Condemns Russia over Georgia," August 26, 2008, <http://news.bbc.co.uk/2/hi/europe/7583164.stm> (accessed April 22, 2009); Civil Georgia, "Russia Formally Recognises Abkhazia, S. Ossetia," Civil Georgia, August 26, 2008, <http://www.civil.ge/eng/article.php?id=19293> (accessed April 22, 2009).

⁷⁴ Civil Georgia, "Russia Formally Recognises Abkhazia, S. Ossetia," Civil Georgia, August 26, 2008, <http://www.civil.ge/eng/article.php?id=19293> (accessed April 22, 2009).

⁷⁵ Cf. *BBC*, "West Condemns Russia over Georgia," August 26, 2008, <http://news.bbc.co.uk/2/hi/europe/7583164.stm> (accessed April 22, 2009); and Civil Georgia, "Rice Says Russia's Move 'Regrettable,'" Civil Georgia, August 26, 2008, <http://www.civil.ge/eng/article.php?id=19298> (accessed April 22, 2009); Civil Georgia, "Merkel: Russia's Move Unacceptable," Civil Georgia, August 26, 2008, <http://www.civil.ge/eng/article.php?id=19297> (accessed April 22, 2009); Civil Georgia, "OSCE Chair Condemns Russia's Recognition of Abkhazia, S. Ossetia," Civil Georgia, August 26, 2008, <http://www.civil.ge/eng/article.php?id=19296> (accessed April 22, 2009).

highlighted how no legal foundation had been laid for secessionist claims advanced by individual groups within the population. Russia failed to convince with its arguments aimed at affirming the Abkhazians' and South Ossetians' external right to self-determination. What is more, Russia was condemned for recognising the breakaway Caucasus regions.

This underlines to what extent there still remains a lack of uniformity and widespread coverage of practice and a corresponding *opinio juris* on the part of states. Accordingly, there are still no grounds for approving the existence of a right to secession for certain groups within the population.

IV. Scenarios and Conceivable Future Implications of the Case of Kosovo on the International Right to Secession

Developments in the current secessionist conflicts are still ongoing. This does not just apply to Abkhazia and South Ossetia but also to Kosovo. Particularly in the case of Kosovo, it is conceivable that other countries will sooner or later follow the course of the USA and numerous European states, and recognise Kosovo. The crucial question will then be whether a right to secession under certain circumstances is established on this basis.

The recognition of Kosovo by other nations should have no bearing on the interpretation of international treaties. Even states that have already recognised Kosovo did not explain their conduct on the basis of the UN Charter or the Covenants of Human Rights.⁷⁶ It is therefore unlikely that other states will refer to the treaties to support their stance. It seems as if the lack of a firm treaty basis is also currently preventing them from accepting Kosovo's independence.

Apart from this, it is disputable whether a right to secession under customary law will be created within the process of Kosovo's recognition by a broader range of countries. After all, the states' divided opinion on the Kosovo question is currently preventing a corresponding right from developing. However, at present there are grounds for doubt as to whether this schism between states will be overcome in the near future, and whether a uniform, pervasive practice will be observed. For sufficient uniformity to be seen to exist, it would be necessary for Kosovo's independence to be recognised by the very states which are actually or potentially affected by separation movements, as their interests would be particularly compromised by a possible normative validation of the right to secession.⁷⁷ However, these states – among them China, Serbia, Russia, Spain and Ukraine – vehemently denied Kosovo's independence or were particularly critical of its unilateral defection from Serbia. At present, there is no prospect of these stances changing.

Yet even if a scenario, in which states like China, Serbia, Russia, Spain and Ukraine recognized Kosovo, were to be accepted, it remains questionable whether the *opinio juris* needed to justify a norm by international customary law would apply. This would constitute the remaining essential condition for a right to secession to be approved under customary law.⁷⁸ For a corresponding *opinio juris* we would have to assume that in recognising Kosovo,

⁷⁶ Cf. section II. 3. a) above.

⁷⁷ Cf. section II. 3. b) above.

⁷⁸ Cf. section I. 2 above.

the states would be convinced that they were observing a legal obligation or considering this recognition to be appropriate, as it would be legitimate due to specific reasons grounded in the law of secession. Whether this has been the case until now requires closer examination.

As a matter of principle, it may be contended that firm legal convictions underlie the recognition of a region as a state.⁷⁹ Normally, one of the prime objectives behind recognition is the elimination of doubts concerning the legal position of such a region.⁸⁰ Therefore, it could be assumed that recognition contains a juristic element. This applies to so-called *de facto* recognition, but also to *de jure* recognition. Unlike the latter, the former should only have temporary implications.⁸¹

Furthermore, it may be assumed that states generally wish to conduct themselves in accordance with international law and would only confirm the independence of a territory on the assumption that statehood has fully been established or the conviction that secession from the mother state is legitimate. According to general opinion, a region seeking secession may be accepted in principle if it meets all qualitative conditions of statehood, especially if a new effective government emerges.⁸² Prior recognition would constitute interference in the internal affairs of the mother state in question and would therefore be contrary to international law.⁸³ In the case of Kosovo, the existence of its own effective government could not be ascertained. The latter was still supposed to be under construction. Kosovo was still, and effectively continues to be, administered by the international interim administration (UNMIK). In addition, Serbia did not lose its sovereignty because of the international interim administration.⁸⁴ As such, it was essential for at least a right to secession to exist on the basis of which Kosovo could break free from Serbia prior to the construction of its own effective statehood. Accordingly, the conduct of the states recognising Kosovo arguably leads to the deduction that they assumed the existence of such a right to secession. At the very least, it could be presumed that these states were hoping for their conduct to be copied by other states, thereby enabling the creation of a novel right to secession.⁸⁵

Viewed from this perspective, the conduct of states recognising Kosovo genuinely seems to reflect legal convictions. However, the deduction at hand is drawn from a general approach, and this does not automatically allow for any assumptions concerning the creation of a certain right to secession. Processes of secession are extremely complex and multi-faceted. Circumstances normally allow for various interpretations in respect to the legal and political motives of the states. Yet clarity must ultimately prevail in this respect: only concrete, identifiable legal motives enable one to reconstruct the clear structure of a right to secession under customary law and its conditions. Customary law is founded upon specific manners of conduct and reasons for behaving in this way. General arguments may be able to indicate a

⁷⁹ Cf. Shaw (op. cit. 21) 84.

⁸⁰ Cf. Hobe/Kimminich (op. cit. 8) 70; Volker Epping/ Christian Gloria, in *Völkerrecht* [International Law], ed. Knut Ipsen (Munich: 2004), 258, Herdegen (op. cit. 7) 68.

⁸¹ Hobe/Kimminich (op. cit. 8) 72.

⁸² Cf. Epping/Gloria, in Ipsen (op. cit. 80) 266, 271 et seq.; Hobe/Kimminich (op. cit. 8) 71; Anne F. Bayefsky, *Self-Determination in International Law* (2003), 73.

⁸³ Cf. also Mett (op. cit. 2) 160; Epping/Gloria, in Ipsen (op. cit. 80) 271 et seq.; Hobe/Kimminich (op. cit. 8) 71.

⁸⁴ Convincing in this respect Wirth (op. cit. 55), 1065, 1077 et seq.

⁸⁵ Cf. also Shaw (op. cit. 21) 82 et seq.

trend, but they can not be a substitute for a legal and sociological analysis of individual cases, and do not refute the conclusions arising from them.

The motives expressed in the Kosovo case must be more precisely considered. It is significant that the states that have already recognised Kosovo have been reluctant to reveal their reasons for doing so. For instance, in its Declaration on the Independence of Kosovo, the Council of the European Union alluded to the need for the establishment of stable relationships in the western region of the Balkans. Furthermore, it referred to the conflict in the 1990s and the long period of interim administration.⁸⁶ The German government made the following declaration: “After long years of trying, no other intervention attempts had enjoyed any success. Therefore, speedy recognition of the Republic of Kosovo by the greatest possible number of states is the only way to bring enduring stability to the region”.⁸⁷ Referring to two decades of violence and conflict, British Secretary of State for Foreign and Commonwealth Affairs David Miliband said: “There is a very strong head of steam building among a wide range of EU countries that do see this as the piece of the Yugoslav jigsaw and don't see stability in the western Balkans being established without the aspirations of the Kosovar people being respected”.⁸⁸ Swiss President Couchepin regarded Kosovo's independence as a solution preferable to all others.⁸⁹ The Austrian Foreign Ministry expressed itself in similar terms and characterised the status quo of Kosovo as the unsustainable and constant source of instability.⁹⁰

The reasons expressed for the recognition of Kosovo can be summarised as follows:

- the need for regional stability and a solution to the conflict,
- the view that a peaceful solution to the conflict and international intervention have failed,
- the view that Kosovo's independence represents the best solution,
- human rights abuses and expulsions on a massive scale (events in the 1990s),
- continued exclusion of the rightful sovereign by the international interim administration, and
- Kosovo as a piece in the multi-ethnic jigsaw of former Yugoslavia.

The motivation behind the recognition of Kosovo was clearly much more complex than openly expressed.⁹¹ However, there is no need for this discussion to focus on possibly concealed foreign policy motives. Instead, it is essential to gauge whether any legal convictions emerge from these identifiable motives. Otherwise the discussion would encroach upon the realm of political hypotheses which would be far too speculative for legal evaluation.

Matters are complicated by the fact that no exact deduction can be made as to whether any legal importance was attached to one or several of the motives cited. It was not clear whether

⁸⁶ Council Conclusions on Kosovo, 2851st External Relations Council meeting, Brussels, February 18, 2008.

⁸⁷ Press Release by German Federal Government on February 20, 2008, “Deutschland erkennt Kosovo an” [Germany recognizes Kosovo], http://www.bundesregierung.de/nr_1264/Content/DE/Artikel/2008/02/2008-02-20-deutschland-erkennt-kosovo-an.html (accessed April 22, 2009).

⁸⁸ Cf. *USA Today*, “Global rift over Kosovo widens,” February 18, 2008.

⁸⁹ Declaration “Anerkennung von Kosovo und Aufnahme von diplomatischen Beziehungen” [Recognition of Kosovo and establishing diplomatic relations], Berne, February 27, 2008.

⁹⁰ Declaration “Schreiben über Anerkennung des Kosovo unterzeichnet” [Letter of recognition of Kosovo signed], Vienna, February 28, 2008.

⁹¹ For general information on the motives for recognition see Epping/Gloria, in Ipsen (op. cit. 80) 267.

the pertinent legal reason was seen as the Kosovo Albanians' external right to self-determination, the permanent de facto exclusion of Serbian sovereignty by the interim administration, the failure of the status negotiations or a combination of these aspects. In this regard, the states recognising Kosovo deliberately failed to lay their cards on the table. There was no explanation as to whether the reasoning was based purely on external security, economic and social grounds, or if it were also a product of legal convictions.

In particular, the declaration of the Council of the European Union is revelatory, as it hinted that the council envisaged the possibility of Kosovo being recognised in conformity with international law. However, within this context it was not attributed to legal considerations, but to aspects which clearly reflect external security motives. It was a matter of re-establishing stability in the Balkan region.⁹² This failure to adduce clear and more precise legal reasons was symptomatic of the states recognising Kosovo. Any reasoning allowing for generally applicable legal conclusions was avoided outright. In particular, there was no talk of any external right to self-determination for the Kosovo Albanians. Even the reference to human rights violations in the 1990s sheds no light on the question, as these did not give the community of states any cause to grant the Kosovo Albanians their own state in the preceding years.

Closer examination confirms a trend which could also be observed in other secession conflicts.⁹³ The conduct of the states was dominated by political motives, and legal aspects were only given secondary importance. The states in favour of Kosovo's secession were primarily concerned with improving the precarious security and economic situation in Kosovo. They saw the acceptance of an independent Kosovo as the key for enduring peace and stability in the region. The objective lay in dissolving the stalemate situation in which Serbians, Kosovo Albanians and the members of the UN Security Council had become entangled. The decisions to accept Kosovo's independence reflected what was regarded as correct conflict resolution strategies, as well as other considerations which served foreign policy aims. It can not be concluded that the states recognising Kosovo also espoused certain legal convictions.

These findings are confirmed by the fact that the pro-Kosovo states explicitly tried to rule out the lasting binding effect of their supporting stance on customary law. They expressly denied the nature of the Kosovo example as a precedent and characterised it as a case *sui generis*.⁹⁴ Certainly, this casts doubt upon whether such a rejection of the precedent nature can be of any relevance. It must be borne in mind, at least according to the general argumentation presented above, that the states probably considered the recognition of Kosovo – for whatever reasons –

⁹² Council Conclusions on Kosovo, 2851st External Relations Council meeting, Brussels, February 18, 2008.

⁹³ Cf. also Seidel (op. cit. 6) 215.

⁹⁴ In so doing, the US government asserted that the independence of Kosovo “cannot be seen as a precedent for any other situation in the world”, cf. *Times*-online report “US and Britain join rush to recognise Kosovo,” February 19, 2008, <http://www.timesonline.co.uk/tol/news/world/europe/article3392492.ece> (accessed April 30, 2009). The Council of the European Union stated: “...in view of the conflict of the 1990s and the extended period of international administration under SCR 1244, Kosovo constitutes a *sui generis* case...”, cf. Council Conclusions on Kosovo, 2851st External Relations Council meeting, Brussels, February 18, 2008. cf. also the declaration by the German Federal Press Office, press release no. 51, “Zustimmung des Kabinetts zur völkerrechtlichen Anerkennung des Kosovo” [Consent of the Cabinet to International Recognition of Kosovo], February 20, 2008, as well as the declaration by the Swiss Federal President “Anerkennung von Kosovo und Aufnahme von diplomatischen Beziehungen” [Recognition of Kosovo and establishing diplomatic relations], Berne, February 27, 2008.

to be in accordance with international law, and that a normative right to secession existed or was being established. Such a normative right to secession could then have applied in comparable cases and would have rendered the dismissal of the precedence effect obsolete. Therefore, the assertions of the assenting states were not just unclear, but also ambivalent. On the one hand, it appeared that these states were operating on an international legal basis which they failed to define in any more detailed terms. On the other hand, they rejected its normative character again by defining the Kosovo solution as a non-transferable case *sui generis*.

On the whole, the motives appear unclear and ambivalent from a legal point of view. As shown above, when construing a right to secession and its preconditions, there is a need to support it with concrete and univocal legal convictions. Such a normative right to secession can not be inferred from the conduct of the states. The general approach outlined above (see part IV) is of no further assistance, as any possible conclusions based on it are too speculative. As a result, it can not be expected that the conduct of states in the case of Kosovo will have any clear influence on the international right to secession in the future. On the contrary: even the conduct of states supporting Kosovo's independence confirms their opposition to secession in general. These states were reluctant to recognise general rights to secession for ethnic groups and, in particular, the right to external self-determination. This is substantiated by their vehement rejection of the Russian line of argument in the cases of Abkhazia and South Ossetia – a line which takes the right to external self-determination for granted (see part III).

Finally, the deduction made from the case of Kosovo seemingly accommodates the line of the assenting states in de facto establishing Kosovo as an independent state without creating a legal precedent. However, it should be noted that this is fundamentally based on the demotion, neglect and non-communication of legal considerations, as can be observed in other cases of secession. In this manner, these states are running the risk that secessionist movements elsewhere make their own legal or political deductions from their conduct in the case of Kosovo and, consequently, feel encouraged to pursue secession with the exertion of force.

V. Conclusion

In strictly dogmatic terms, the question raised about the repercussions which the conduct of the community of states in the cases of Kosovo, Abkhazia and South Ossetia could have on the international right to secession must be answered in the negative. No tangible arguments are forwarded in favour of a change in international law. According to the view represented here, which continues to prevail internationally, ethnic peoples, groups and minorities are still not entitled to secede from their mother state if they pursue separation unilaterally or without any justification rooted in national law. At best, these groups may have recourse to human rights, minority rights and internal rights to self-determination. Not even the states that recognised Kosovo's independence deviated from this fundamental stance. Therefore international law is characterised as being hostile to secession which seemingly also applies for the future. That implies that there is no legal basis for a justified recognition of Kosovo, Abkhazia and South Ossetia, meaning the recognising states violated international law.

Despite this dogmatic perspective, the conduct of the community of states bears other legal implications, namely in sociological terms. Due to the violation of legal principles and the focus on political aims in the case of Kosovo and other secessionist conflicts,⁹⁵ international law is practically losing its validity. The contours of the international law which applies in secessionist situations seem to become increasingly blurred due to the priority status accorded to political considerations. Therefore, the international law on secession is represented as being of indefinite shape, even for international bodies dealing with secessionist conflicts. This unclear situation, which the community of states is not resolving with any clarity, is compounded by the debate between experts in international law concerning exceptional rights to secession. As a result, international law does not seem to set a reliable benchmark for affected mother states or for groups of populations seeking self-determination.

The consequences are clear for all to see: secessionist attempts are being stepped up all over the world, breakaway regions are less willing to compromise, status negotiations are proving more difficult, affected mother states are becoming more unsettled, and – at worst – they feel impelled to undertake violent countermeasures. Furthermore, third countries are given more scope for pursuing their own strategic interests, which was particularly demonstrated by the Russia-Georgia conflict in August 2008.

The conduct of Western nations appears inconsistent in this context, as they vehemently insist on maintaining the rule of law and upholding law as a top priority elsewhere. The European Union Rule of Law Mission in Kosovo (EULEX), whose set-up makes sense in principle and serves the aims of establishing the rule of law in Kosovo, is equally exposed against this backdrop. Particularly in light of the legal ambiguities and deficiencies described above, the mission is obviously based on questionable foundations with regard to international law.⁹⁶ Even if the negligence observed at the expense of international law may appear justified in individual cases from a political point of view, from a global and long-term perspective the dangers and disadvantages still outweigh the gains by far, in terms of worldwide security and, also, economic and socio-political aims. Western nations are making a convincing case for upholding the rule of law within emerging states. However, it would be desirable if this attitude were to prevail just as strongly within the framework of external relations.

⁹⁵ For example, in Azerbaijan, Georgia and Moldova.

⁹⁶ The EULEX Mission is primarily based on Security Council resolution 1244, because until now the EU Member States have not agreed as to whether Kosovo came about as a state of its own, and as such, whether Kosovo can consent to this mission as a sovereign state. Whether resolution 1244 forms a sustainable legal basis is also disputed. Doubts are arguably appropriate, as the resolution presupposes an international mission, not one at EU level.

THE EUROPEAN UNION'S EASTERN PARTNERSHIP: CHANCES AND PERSPECTIVES

Marcin Łapczyński*

Abstract

The European Union has recently introduced its Eastern Partnership initiative (EaP) as a tool to enhance the co-operation and support reforms in its Eastern neighbourhood. The initiative, jointly presented by Poland and Sweden, was an answer to the French efforts to promote and strengthen the Mediterranean Union. The initiative involves several important steps to encourage countries such as Armenia, Azerbaijan, Belarus, Moldova and Ukraine to build a stable and valuable relationship with the EU. With the Czech EU Council's presidency the project has become a foreign policy priority of the Union and a lot of effort has been put in the launching and preparations. Nevertheless, the EU should not take for granted the partner countries' support and interest in the EaP and should permanently work towards ensuring that the offer presented to the partners is attractive and suited to provide assistance in reforms.

***Keywords:** European Neighbourhood Policy, European Union, Eastern Partnership, Eastern Europe, South Caucasus, Czech Presidency, Poland, Sweden*

Introduction

Four years have passed since the official inauguration of the European Neighbourhood Policy, which was tailored to provide assistance to European Union's near abroad during the period of transition and reforms, to promote key European values and to ensure security, stability and prosperity in a wider Europe. The European Neighbourhood Policy has not met everybody's expectations. Instead, we have a bargaining game of promoting various member states' regional interests. France has proposed a further implementation of the Mediterranean Union project with a special emphasis on EU's southern flank, and the Polish-Swedish tandem proposed the Eastern Partnership Initiative (EaP) which is focusing more on the eastern flank.

The European Council approved the Eastern Partnership, and the European Commission officially presented its proposals in December 2008. The Polish-Swedish initiative, now the official policy of the European Union, has become one of the priorities of the Czech Republic Council's Presidency in the first half of 2009. Unfortunately Czech enthusiasm and plans to

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foster the project have met unexpected problems, such as the financial crisis. It is still not sure if the project will be implemented in a full capacity.

European Neighborhood Policy today

The European Neighbourhood Policy was officially launched in 2004 in order to promote and ensure security, stability and prosperity in the European Union's close neighbourhood by "the use of incentives ('carrots') in lieu of sanctions ('sticks')"¹. The policy applies to EU's direct neighbours to the south - Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria and Tunisia, and to the east – Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

Although being a "historically significant step [that] came through a strong awareness of the need to do 'something more', [-] it is not a perfect set-up"². Since the beginning, the ENP has found itself under strong criticism. One of the main points raised by experts and politicians was that it is not possible and desirable to treat the southern and eastern neighbours equally due to strong geographical and identity differences between them. African countries such as Algeria or Syria are completely different from, e.g. Ukraine or Moldova, which are situated in Europe and share similar values to those promoted by the current EU members. The EU itself has throughout the last few years extended its Eastern neighbours certain offers, such as the promise to establish a visa-free regime in a longer perspective or the possibility to enter the Energy Community established for Western Balkan countries. Southern members have not received such promises and it is unlikely they will³.

Second, the European Neighbourhood Policy is not the only policy towards neighbours that the EU has developed. Apart from the ENP there are policies towards EFTA/EEA countries (Iceland, Switzerland, Norway, Liechtenstein) that are not focused on membership but rather a close co-operation, the enlargement policy towards the western Balkans (Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia) and Turkey, or strategic partnership with Russia, which definitely does not seek membership in the EU. The ENP countries have not received a promise of membership, although the ENP never excluded such a prospect.

There are also strong differences among EU member states on what future they see for the European Neighbourhood Policy and what the principles governing this policy should look like. Germany focuses mainly on free trade with ENP countries, visa exemptions, stronger cooperation on energy issues, migration control, fight against organised crime, strengthening of sectors such as good governance, rule of law, justice, internal security, transport and environment. France is willing to develop the ENP in terms of energy supplies, migration control or fight against crime. The United Kingdom sees ENP mainly as a tool for fighting

¹Esther Barbé and Elisabeth Johansson-Nogués, "The EU as a modest 'force for good': the European Neighbourhood Policy," *International Affairs*, vol. 84: 1 (2008): 81.

² Tuula Yrjölä, "The EU's Interests and Instruments vis-à-vis Its Neighbours," *International Issues & Slovak Foreign Policy Affairs*, vol. XVI: 1 (2007): 15.

³Grzegorz Gromadzki, "Pięć tez o Europejskiej Polityce Sąsiedztwa" [Five Theses about European Neighbourhood Policy] (Policy Brief, Batory Foundation, Warsaw, October 2008): 3.

against terrorism. Poland promotes the establishment of a community of values and strengthening of civil society contacts⁴.

Different expectations and perceptions of the ENP by the participating states led to a situation where more and more politicians and experts started to call for a more diversified policy that would distinguish the southern and eastern dimensions of the EU's co-operation with its neighbours⁵. That is why the French president Nicolas Sarkozy proposed the Mediterranean Union, and the Polish and Swedish ministers of foreign affairs Radosław Sikorski and Carl Bildt offered the Eastern Partnership Initiative. Both options, in the opinion of Grzegorz Gromadzki, could be seen as a beginning of the end of European Neighbourhood Policy in its current shape⁶.

Eastern Partnership Initiative – A Step Forward?

The Eastern Partnership Initiative was officially presented for the first time on May 26, 2008 by the Polish and Swedish ministers of foreign affairs Radosław Sikorski and Carl Bildt at the EU General Affairs and External Relations Council (GAERC) in Brussels. One month later, on June 20, the European Council expressed its support for this joint initiative and asked the European Commission to prepare proposals for concrete measures and steps for further bilateral and multilateral co-operation.

During the presentation of the initiative Polish minister Sikorski said: “To the South, we have neighbours of Europe. To the East, we have European neighbours...They all have the right one day to apply [for EU membership]”⁷. The minister's statement was perceived as a clear line that distinguishes the Eastern Partnership Initiative from the Mediterranean Union proposed by Nicolas Sarkozy. Poland and Sweden stand on a position that if the European Union is going to strengthen its co-operation and support within the southern dimension, there will be a strong need to balance these steps by emphasizing also the eastern dimension.

This approach is especially characteristic for Polish foreign policy, which tries to put special attention on the unequal treatment of southern and eastern EU neighbours and actively tries to promote and support its eastern neighbours and partners, especially Ukraine and Georgia. Polish experts and politicians have always emphasized that one of the most important goals of Poland is to enhance European co-operation with eastern neighbours. That approach is based on the specific geopolitical situation of Poland. Even today, when the country is a member of NATO and the European Union, the unstable situation in Belarus, the uncertain situation in Ukraine and Russia's energy politics are increasingly important factors for Polish foreign

⁴ Barbara Lippert, “European Neighbourhood Policy: Many reservations – some progress – uncertain prospects,” (International Policy Analyses, Friedrich Ebert Stiftung, June 2008): 10.

⁵ Jose Manuel Barroso seems to acknowledge the problem, as he said: „I know that some have questioned the logic behind the ENP, questioned whether countries with such different societies, histories and traditions should, or even can, be brought together in one policy approach...” See: Jose Manuel Barroso, “Shared challenges, shared futures: Taking the neighbourhood policy forward” (Speech at the European Neighbourhood Policy Conference, Brussels, September 03, 2007), <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/502&format=PDF&aged=1&language=EN&guiLanguage=en> (accessed February 23, 2009).

⁶ Grzegorz Gromadzki, “Pięć tez o Europejskiej Polityce Sąsiedztwa...,” op. cit.: 7.

⁷ Renata Goldirova, “Eastern Partnership” could lead to enlargement, Poland says,” *EUObserver*, May 27, 2008, <http://euobserver.com/9/26211> (accessed March 20, 2009).

policy. Poland has its own interests in the East, but they are more a result of its position in the European Union and they should be perceived and realised through this institution⁸. Moreover, politicians and experts in Poland “find it extremely difficult to accept a single political concept which encompasses relations with such countries as Ukraine and Morocco⁹”, and therefore believe that Poland should play a more active role in lobbying for further appreciation of the east.

Sweden was also asked to join the initiative in a later stage. Polish Prime Minister Donald Tusk explained it by saying: “We asked Sweden because this is a very experienced country in terms of EU affairs and also because as a country it does not border our eastern neighbours¹⁰”. With the support of Sweden it was easier to seek approval for the project in Brussels. Sweden is going to hold the EU presidency in the second half of 2009, which may be important in implementing the initiative.

The Eastern Partnership Initiative is not the first initiative launched by the European Union that directly involves the EU’s eastern neighbours. So far, the Black Sea Synergy¹¹ from 2007 has been a tool complementary to the European Neighbourhood Policy involving countries of the Black Sea region, and the Northern Dimension from 1997 was aimed to help, the Baltic States and Poland (which were not EU members at the time), but also Russia in launching necessary reforms and programmes aimed at stability and peace in the Baltic Sea region.

In the opinion of both ministers, the proposal should practically and ideologically strengthen the existing policy towards countries that have some prospects for membership in the EU, but deals with the problem of “enlargement fatigue” which is emphasized by some European countries, such as France or Germany. According to Sikorski, the initiative is not directed against Russia. Moreover, he suggested that “(...) these are very practical things that Russia will also be able to profit from...¹²”

Content and Proposals

The Polish-Swedish initiative is focused on Armenia, Azerbaijan, Georgia, Moldova and Ukraine and aimed at enhancing the European Union’s bilateral relations with these countries in a way that would move beyond the existing European Neighbourhood Policy and on to creating a permanent formula for multilateral co-operation with the region. The primary focus

⁸ Roman Kuźniar, “Geopolityka i polityka bezpieczeństwa Polski” [Geopolitics and Poland’s Security Policy], *Sprawy Międzynarodowe*, nr 1 (2008): 59-60, 63.

⁹ The result of comparing ENP Eastern dimension and Southern dimensions in terms of EU financial support (MEDA and TACIS programmes plus integrated funds) for the years 2007-2010 shows that the support for EU’s Southern neighbouring countries is about 2,5 times greater than for Eastern neighbours. See: A.K. Cinciara, “Does the Strengthened European Neighbourhood Policy Restore the Balance Between Southern and Eastern Partner Countries?,” (“Analyses and Opinions” No.2, The Institute of Public Affairs of Poland, March 2008): 4-5.

¹⁰ Witold Żygulski, “Poland Pushes for New 'Eastern Partnership,’” *The Warsaw Voice*, June 11, 2008, <http://www.warsawvoice.pl/view/18068/> (accessed March 21, 2009).

¹¹ The Black Sea Synergy involves Armenia, Azerbaijan, (Bulgaria), Georgia, Moldova, Russia, Turkey and Ukraine and was aimed to develop concrete initiatives in transport, energy, environment, fishery, migration or organised crimes.

¹² Jacek Pawlicki, “Mr Tusk’s Eastern Partnership,” *Gazeta Wyborcza*, May 21, 2008, http://wyborcza.pl/1,76842,523-3125,Mr_Tusk_s_Eastern_Partnership.html (accessed March 20, 2009).

is put on Ukraine, and the other countries “would follow according to ambition and performance¹³”. When it comes to Belarus’ participation in the project, it was initially stated that this country would be involved at a technical and experts level with the possibility for future enhancement. After holding several high-level EU-Belarus meetings and issuing an invitation for president Lukashenka for the Prague summit in May 2009, it seems that the prospects for full participation of this country in the initiative are increasing¹⁴. Projects realised within the EaP could also be extended to Russia at some time in the future. Therefore, the whole project involves 27 EU members and “5+1 countries” in the Eastern Neighbourhood – Ukraine, Moldova, Armenia, Georgia, Azerbaijan and Belarus.

The enhanced bilateral co-operation with these countries would include: 1) co-operation on **migration issues** with the possibility to introduce a visa-free regime in a long-term perspective and easier visa-facilitating process in a short-term perspective; 2) creation of a **Free Trade Area** based on free-trade agreements with participating countries and the EU; 3) providing EU support for sector reforms, intensifying students’ exchange, promoting **civil society**, local and regional co-operation etc.; 4) drafting and signing a **new generation of Action Plans** with each country that could include “clear benchmarks and linkage to the alignment towards the EU legislation, standards and norms¹⁵”. Here, the new enhanced agreement with Ukraine should serve as a reference for all agreements; and finally 5) ensuring a distribution of **assistance funds** to the partner countries in a way that would reflect the progress in implementing reforms and according to the principle of differentiation;

The multilateral co-operation, according to the Polish-Swedish proposal, would be based on the implementation of concrete projects. The involvement in such projects would be voluntary and dependent on the interest of states in realising them. The aim of the initiative is to become a complementary project with already existing initiatives – Black Sea Synergy and the Northern Dimension. Possible projects are divided into 5 sub-categories: 1) **political and security**, which includes: promoting democracy, common values, rule of law, co-operation in the field of foreign and security policy, civil service and local administration; 2) **borders and trans-border movement**: regulating migrations, making visa regimes more flexible, improving border infrastructure; 3) **economic and financial**: implementation of reforms foreseen in the Action Plans; economic integration, removing trade barriers between the EU and the Eastern neighbourhood; development of transport and telecommunication networks, tourism; 4) **environment**: countering climate change, environment-friendly technologies, developing ecological consciousness; 5) **social**: cross-border co-operation, people-to-people contacts, development of co-operation between NGOs, educational programmes, joint research projects etc.

The benefit of the Eastern Partnership Initiative, according to the authors of the proposal, would be a multilateral co-operation that would foster regional links between participants of the initiative and which would be able to address issues that go much further than issues

¹³ Full text of the initiative can be found under: Ministry of Foreign Affairs of Poland, “Polish-Swedish Proposal: Eastern Partnership,” June 2008, <http://www.msz.gov.pl/Polish-Swedish.Proposal.19911.html> (accessed March 20, 2009).

¹⁴ David Marples, “Javier Solana Visits Belarus,” *Eurasia Daily Monitor*. Vol. 6, issue 41, March 3, 2009, [http://www.jamestown.org/single/?no_cache=1&tx_ttnews\[tt_news\]=34652](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=34652) (accessed April 22, 2009); Andrew Rettman, “Rogues and has-beens invited to EU Summit,” *EuObserver*, April 17, 2009, <http://euobserver.com/24/27958> (accessed April 24, 2009).

¹⁵ Ministry of Foreign Affairs of Poland, “Polish-Swedish Proposal: Eastern Partnership,” op. cit.

concerning the Black Sea and Baltic Sea regions. The second benefit would be an offer for Belarus, which has not been included in any EU multilateral initiative yet, and would create an opportunity for “inclusion of various social groups, e.g. the youth, SMEs and junior officials in the co-operation with the European Union¹⁶”.

When it comes to the financial support for the new initiative, the Polish and Swedish ministers claim that the strengthening of the eastern dimension will be neutral for the EU budget due to the fact that money will come from already available resources. The EU funds could be supported by EIB and EBRD credits and various resources from willing EU member states and EEA partner countries. The institutional framework, according to the authors, should be as light-weight and goal-oriented as possible, involve appointing a Special Coordinator, creating working bodies such as conferences or round tables, and might also include ministerial meetings or parliamentary co-operation.

Reactions, Positions and Critique

The idea was generally met positively. Foreign minister of Germany Frank-Walter Steinmeier called the proposal an “example of how, working together, we can take Europe forward¹⁷” and expressed his will to work towards linking the European Neighbourhood Policy, Eastern Partnership Initiative and Black Sea Synergy in order to enhance stability in the region. In 2007 the German Ministry of Foreign Affairs under Steinmeier prepared a similar proposal, the so-called ENP Plus, which was intended to become a part of the “Neue Ostpolitik” (“New Eastern Policy”) of the German government¹⁸. That idea was not implemented, as the priority status within the “Neue Ostpolitik” was granted to Russia. Also France, which held the EU presidency in the second half of 2008, expressed its interests in Eastern Partnership initiative. Bernard Kouchner said that “it is no sin to go East and South at the same time¹⁹”.

The Polish-Swedish project was especially warmly welcomed by the Czech Republic, which holds the EU presidency in the first half of 2009. The Eastern Partnership Initiative has officially become one of the priorities of the Czech presidency²⁰.

These countries – Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus – generally expressed their interest and warmly welcomed the new initiative²¹. Ukraine, which was

¹⁶ Ministry of Foreign Affairs of Poland, “Polish-Swedish Proposal: Eastern Partnership,” June 2008, op. cit.

¹⁷ Speech by Foreign Minister Frank-Walter Steinmeier at the 13th German-Polish Forum, December 5, 2008, <http://www.auswaertiges-amt.de/diplo/en/Infoservice/Presse/Rede/2008/081205-BM-DeuPolForum.html> (accessed March 24, 2009).

¹⁸ Iris Kempe, “What are the pillars of the “New Ostpolitik” during the German EU presidency?,” *Caucas Euronews*, March 6, 2007, http://www.caucas.com/home_eng/breve_contenu.php?id=304 (accessed April 22, 2009).

¹⁹ Ahto Lobjakas, “EU: New Initiative Suggests East Is Edging Out South In ‘Neighbourhood’ Tussle,” *RFE/RL*, May 30, 2008, <http://www.rferl.org/content/Article/1144518.html> (accessed March 21, 2009).

²⁰ Alexandr Vondra, “Priorities of the Czech EU Presidency” (Remarks by Deputy Prime Minister for European Affairs of the Czech Republic Alexandr Vondra, Czech-German Discussion Forum on the Czech EU Presidency, Berlin, December 2, 2008), <http://www.vlada.cz/scripts/detail.php?id=46806> (accessed March 21, 2009).

²¹ Claire Bigg, “EU Enhances ‘Eastern Partnership’ - But Is There Less Than Meets The Eye?,” *RFE/RL*, December 4, 2008, http://www.rferl.org/Content/EU_Enhances_Eastern_Partnership_But_Is_There_Less_Than_Meets_The_Eye/1356313.html (accessed March 29, 2009).

“carefully following” the debate believes that the initiative “(...) should envisage a clear EU membership perspective to those European neighbours of the EU who can demonstrate seriousness of their European ambitions through concrete actions and tangible achievements²²”. Azerbaijani foreign minister Elmar Mammadyarov expressed a will to work with the EU on specific programmes at the bilateral level within EaP²³. Belarus perceives the initiative as “(...) another step to boost pragmatic co-operation with the countries in the European Union’s immediate neighbourhood”. The foreign ministry expressed its will to work “(...) in conjunction with the European Commission to mould the Eastern Partnership (...) along a number of mutually beneficial directions including trade, energy, transport, cross-border crime, environment, and agriculture²⁴...”

Nevertheless, the Eastern Partnership Initiative has found itself under critique as well. Some publicists argue that the proposal is not necessary as there is already the European Neighbourhood Policy and therefore there is no need to create something new. In their opinion the EaP is duplicating already existing mechanisms, such as trade agreements, energy deals, and assistance for civil society or student exchanges. Thus, the areas of action proposed by Poland and Sweden have already been launched or are just about to be launched.

Some experts notice that the idea proposed by Poland, with Sweden joining later, has been a part of a “power struggle between Sarkozy and Tusk”, or rather “Old Europe” versus “New Europe” as the project is supposed to be a Polish answer to Sarkozy’s Mediterranean Union and his plans to move more funds towards the Union’s southern neighbours²⁵.

Among the EU members, the initiative faced the critique mainly from Bulgaria and Romania, who are afraid that the project will undermine their efforts invested in the Black Sea Synergy, as well as from Spain and Italy, who are more interested in the Mediterranean dimension of the ENP²⁶.

Much criticism has been also observed when it comes to a possible strengthening of the co-operation with the authoritarian regime in Belarus, which is the only post-Soviet state that does not have any contractual relationship with the European Union²⁷. The critique is part of a wider debate on what the EU should do for Belarus and on how to deal with Lukashenka and his administration. Grzegorz Gromadzki notices that so far the EU’s Eastern Neighbourhood Policy has not provided any adequate strategy for Belarus and the Union’s policy towards this country has been implicitly considered as a failure. As in many other cases, there is a sharp division between member states on what should be done. It could be seen clearly in 2006 after the presidential elections that were declared “rigged” by the Western

²² Ministry of Foreign Affairs of Ukraine, “Statement Of the Ministry of Foreign Affairs of Ukraine Regarding The Development of the Eastern Dimension of the European Union Foreign Policy,” May 26, 2008, <http://www.mfa.gov.ua/eu/en/news/detail/13105.htm> (accessed March 21, 2009).

²³ *APA Press Agency*, “Minister: Azerbaijan views Eastern Partnership initiative as very positive,” December 9, 2008, <http://en.apa.az/news.php?id=93383> (accessed March 21, 2009).

²⁴ Ministry of Foreign Affairs of Belarus, “MFA Press Secretary Andrei Popov comments for the media on the Brussels-showcased presentation of the EU’s Eastern Partnership Policy,” December 3, 2008, <http://www.mfa.gov.by/en/press/news/f65ae7713490b10b.html> (accessed March 21, 2009).

²⁵ Katerina Safarikova, “Poland: Eastern Promises,” *Transitions Online*, March 6, 2008.

²⁶ Agnieszka K. Cinciara, “Does the Strengthened European Neighbourhood Policy,” op. cit.: 3.

²⁷ Ian Klinke, “The European Union’s Strategic Non-Engagement in Belarus. Challenging the Hegemonic Notion of the EU as a Toothless Value Diffuser,” *Perspectives. The Central European Review of International Affairs*, vol. 14: 2 (2006): 25.

observers. Some EU members such as Poland, Lithuania, Czech Republic or Slovakia called for taking stronger actions than freezing the accounts of the regime's officials and impose a ban on entry to the EU. Other countries, such as Germany, opted for milder sanctions²⁸.

The situation repeats itself now. Some countries are clearly against setting any contacts with Belarus, some show a certain interest in providing Belarus with help and assistance but only when there are democratic changes and the will to co-operate. The Polish-Swedish proposal seems to be a compromise. Benita Ferrero-Waldner said: "(...) the EU is ready to engage with Belarus, but Belarus must do its part too – by continuing recent positive trends", which she sees in recent steps allowing "certain opposition media to print within the country", and in seeking "advice on improving electoral legislation²⁹".

Launching of the Official Commission's Proposal

On June 19-20, 2008, the European Council adopted the respective Polish-Swedish initiative. Because of the war in Georgia in August 2008, on September 1 the Council asked the Commission to present its proposals earlier than it was scheduled. On December 3, 2008, the European Commission, following the consultations with EU eastern partners, officially presented the Eastern Partnership Initiative to the public. On March 20, 2009 the Eastern Partnership was officially launched.

During the presentation in Brussels Benita Ferrero-Waldner, Commissioner for External Relations and European Neighbourhood Policy stated:

"The time is ripe to open a new chapter in relations with our Eastern neighbours... Building on the progress of the last years we have prepared an ambitious and at the same time well-balanced offer. The security and stability of the EU is affected by events taking place in Eastern Europe and in the Southern Caucasus. Our policy towards these countries should be strong, proactive and unequivocal. The EU will continue with the successful approach of tailor-made programmes on a new scale and add a strong multilateral dimension³⁰ ..."

The president of the Commission José Manuel Barroso added that:

"Only with strong political will and commitment on both sides will the Eastern Partnership achieve its objective of political association and economic integration. We need to make an even greater investment in mutual stability and prosperity. This

²⁸ Grzegorz Gromadzki, "A Difficult Case. Belarus as the Part of the European Neighborhood Policy," *International Issues & Slovak Foreign Policy Affairs*, Vol. XV: 2 (2006): 39-41.

²⁹ Benita Ferrero-Waldner, "Ambitious New Partnership for the East" (Speech in the Polish Parliament, November 27, 2008),

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/672&format=PDF&aged=0&language=EN&guiLanguage=en> (accessed March 23, 2009).

³⁰ "The Eastern Partnership – an ambitious new chapter in the EU's relations with its Eastern neighbours," EU Press Release IP/08/158, December 3, 2008,

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1858&format=PDF&aged=0&language=EN&guiLanguage=en> 9 (accessed March 22, 2009).

*will be quickly compensated by important political and economic benefits and will lead to more stability and security both for the EU and for our Eastern partners*³¹.”

In a “Communication from the Commission to the European Parliament and the Council³²”, the Commission presented a detailed scheme of bilateral co-operation, framework of multilateral co-operation, and provided details on resources and founding of the new Eastern Partnership Initiative based on a joint Polish-Swedish proposal.

On a bilateral level the Commission proposed the following concrete steps in 5 main areas of co-operation:

- **New contractual relations:** new individual and tailor-made *Association Agreements* (AAs) that would be negotiated with those partners, who wish to make a far-reaching commitment with the EU. These agreements would establish a closer link with EU standards and *acquis communautaire* as well as advance co-operation on Common Foreign and Security Policy/European Security and Defence Policy; emphasising progress in democracy, rule of law and human rights that will be a precondition for deepening relations with EU; developing a *Comprehensive Institution Building Programme (CIBP)* that would help partner countries to meet all conditions settled by the EU by improving administrative capacities in all sectors of co-operation.
- **Gradual integration into the EU economy:** goal of establishing a deep and comprehensive free trade area only after partner countries join the WTO and covering all trade, including energy; creation of a network of bilateral agreements among partners possibly leading to a creation of “*Neighbourhood Economic Community*”; envisaging an Agricultural Dialogue with partners; and strengthening of intellectual property protection.
- **Mobility and security:** offering partner countries tailor-made “*Mobility and Security*” *pacts* covering fighting illegal migrations; upgrading asylum systems to EU standards; setting up border management structures; assistance in fighting corruption and organised crime; a new visa policy that should lead to visa liberalisation together with financial assistance to partners; agreements on visa facilitation accompanied by readmission agreements; possibility of introduction of additional facilitations including waiving a visa fee for all citizens; developing a plan to improve member states’ consular coverage in partner countries; opening a dialogue about future visa-free travel.
- **Energy security:** inclusion of “*Energy interdependence*” *provisions* in the AAs; completion of negotiations on Ukraine’s and Moldova’s membership in the Energy Community; conclusion of *Memoranda of Understanding* on energy issues with Moldova, Georgia and Armenia; support for full integration of Ukraine’s energy market in the EU’s market; enhance political engagement with Azerbaijan, which is the only gas producing country in EaP; finalisation of EU Commission-Belarus declaration on

³¹ *ibidem*

³² “Eastern partnership: Communication from the European Commission to the European Parliament and the Council,” COM(2008) 823, December 3, 2008, http://ec.europa.eu/external_relations/eastern/docs/com08_823_en.pdf (accessed March 22, 2009).

energy; and encouraging all partners to participate in the Intelligent Energy Europe Programme.

- **Supporting economic and social development:** conclusion of *Memoranda of Understanding* on regional policy; launching pilot regional programmes with additional funding; supporting direct transnational programmes in the regions; and extending the current ENPI-funded cross-border co-operation to the borders of Eastern partners.

A new framework for multilateral co-operation is intended to support the partner states' progress in bilateral relations with the European Union and to become a forum of sharing information and experience. It would also facilitate reaching common positions and initiate joint activities. The structural framework has been set at four levels: a) **meetings of the EaP heads of state/governments** held every 2 years; b) annual **meetings of ministers of foreign affairs** attached to the EU General Affairs and External Relations Council, aimed at reviewing the progress made and provide policy guidance; c) four **thematic platforms** corresponding to the main areas of co-operation at the level of senior officials from policy areas, held at least twice a year: Democracy, good governance and stability; Economic integration and convergence with EU policies; Energy security; Contacts between people; and d) **panels** to support the work of the thematic platforms in an as yet undefined format.

The Commission believes that the objectives of the new Eastern Partnership could be advanced through implementing certain “flagship initiatives”, that include: “Integrated Border Management Programme; an SME Facility; promotion of regional electricity markets, energy efficiency and renewable energy sources; development of the southern energy corridor; and cooperation on prevention of, preparedness for, and response to natural and man-made disasters³³”.

Implications

First of all, by launching this initiative Sweden and Poland forced their European partners to admit that EU's Eastern neighbours, including Azerbaijan, Armenia and Georgia from the Caucasus, are all located in Europe. Thus, according to the principles set down in the Rome Treaty of 1958, they are all theoretically eligible to apply for EU membership and to be admitted as members. Radosław Sikorski during the meeting of 26th of May admitted that the “European Union has European neighbours in the East, whereas to the South, there are just neighbours of Europe³⁴”. By saying this, the Polish minister tried to show that the EU cannot deny the European aspirations of its eastern neighbours which have a certain European identity and share common values.

Secondly, it is important to emphasize that the initiative and the Commission's proposal include several important steps and solutions that would certainly help eastern partners in their democratic transitions and in implementing reforms. The possible creation of a Neighbourhood Economic Community seems to be one of the most significant. The Community would take its inspiration from the European Economic Area and in the longer term would offer full access to the single market. The EU would provide partner countries

³³ “Eastern partnership: Communication from the European Commission,” op. cit.

³⁴ Ahto Lobjakas, “EU: New Initiative Suggests East...,” op. cit.

with technical and financial assistance in order to ensure the progress and reforms in these countries. Besides economic and security proposals, the creation of an EaP Civil Society Forum seems to be a good step forward. The Forum would promote the further development of civil society organisations and their relations with authorities and would become a platform for contacts with partners from the EU.

Thirdly, although the Polish-Swedish proposal stated that there would be no new funds needed, there will indeed be new funding involved. The initiative will require supplementing the current ENPI with about €350 million for 2010-2013 as the Commission intends to progressively raise current ENPI funding for eastern partners from current €450 million to €785 million in 2013. To address the most immediate need, the Commission proposes to re-focus the ENPI Regional Programme East to sustain the EaP multilateral dimension. Therefore the funds available now under this programme could be used to start the most important initiatives immediately. The Commission proposes that €250 million could be re-programmed for 2010-2013 time period. According to the Commission a total amount of €600 million, both fresh and re-programmed funds, will be devoted to the implementation of the Initiative.

The Czech Presidency and the Eastern Partnership

The first controversial issue that the Czech Presidency has to deal with is the involvement of the authoritarian regime of Alyaksandr Lukashenka of Belarus. Despite the criticism that has been observed within the EU member states, the EaP seems to be a compromise. The first steps to engage the Belarusian authorities into the implementation of the project and to soften the regime have already been taken. On February 19, 2009 the EU High Representative for CSFP, Javier Solana, visited Minsk and met with Lukashenka. This visit was followed by several others, including prime minister of Latvia Godmanis and Polish vice-prime minister Pawlak. These steps were perceived as the beginning of the liberalisation of the regime and at the same time as a consideration by the EU of the “issues of human rights and democracy in the interests of deeper engagement³⁵”. The Belarusian leader, who surprisingly announced that “(...) Europe does not see its future without Belarus...³⁶”, was officially invited to the launching summit in Prague in May.

The second problem for a successful implementation of the Eastern Partnership Initiative and one that the Czech Presidency will probably not solve before the end of its presidency in June 2009 is the financial crisis and problems with financing the project. Initially, as stated earlier, the European Commission proposed to allocate €600 million for the years 2010-2013 to implement the initiative. With the economic crisis the situation has become unclear and there are more doubts whether the EU could afford to allocate these funds. A high ranked Czech diplomat told *Gazeta Wyborcza*, the biggest daily newspaper in Poland, that some of the supporters of the EaP have already agreed to reduce the funds and what is needed is the political impulse to start the project³⁷. Nevertheless, the scepticism towards the EaP is rising,

³⁵ David Marples, “Javier Solana Visits Belarus,” op. cit.

³⁶ *Belarusian Telegraph Agency*, “Aleksandr Lukashenko: Javier Solana’s visit will help improve Belarus-EU relations,” February 24, 2009, <http://www.belta.by/en/news/president?id=337909> (accessed April 22, 2009).

³⁷ Dominika Pszczółkowska, “Partnerstwo Wschodnie zagrożone” [Eastern Partnership in Danger], *Gazeta Wyborcza*, February 21, 2009, http://wyborcza.pl/1,75477,6302603,Partnerstwo_Wschodnie_zagrozone.html (accessed March 29, 2009).

especially among Mediterranean member states like Spain, Portugal or France which are afraid of spending too much money on the East instead of supporting the Mediterranean Union. Germany and the Netherlands are afraid that it would not be reasonable to spend too much money during the crisis.

Conclusions and Recommendations

The Eastern Partnership Initiative, initially proposed by Poland and Sweden, could become a great success of the Czech Presidency and the European Union as a whole. The project is important both for the member states and the eastern neighbours of the EU. But to prevent the initiative from becoming another failure there are several steps that might be taken.

First, Poland and Sweden should play a more active role as advocates of the eastern neighbours within the EU, and co-operate closely with member states in promoting and implementing the EaP, especially with Germany. Poland should continue its efforts to bring Ukraine and Belarus closer to Europe and to contribute to the EU's understanding of the so-called "East". The "new" member states, including Poland and the Czech Republic, should work closely to ensure a high level of political consensus among all EU member states when it comes to the EU eastern neighbourhood

Second, the new Eastern Partnership Initiative should bring a united and clear "political message of solidarity of the EU with additional, tangible support for democratic and market-oriented reforms and the consolidation of partners' statehood and territorial integrity"³⁸, as Benita Ferrero-Waldner said. As the success of EaP will depend mainly on the political will of both EU member states and partner countries, it is necessary to ensure that the multilateral framework for communication is used in an efficient way. The EU member states should support the Czech and Swedish presidencies throughout 2009 in their efforts to create a stable and effective framework of co-operation with the eastern neighbourhood. When it comes to the partner countries, the EU should tailor its offer for Armenia, Azerbaijan, Georgia, Moldova, Ukraine and possibly Belarus to each partner's needs and capacities and should offer its help to all interested countries that are not yet ready to undertake negotiations or implement a Free Trade Area but wish to do so in the near future. What is of significant importance is that the EU should ensure the equal treatment and support for its southern and eastern neighbourhoods and work towards ensuring that the EU will still be a "pole of attraction"³⁹ for its neighbours.

Third, the EU should not take for granted partner countries' support and interest in the EaP and should permanently work towards ensuring that the offer it presents to its partners is attractive and suited to provide assistance in reforms. Member states should emphasize support for Belarus in democratic changes. A clear set of rules that would make co-operation with the Belarusian regime possible should be established - ensuring the right of people to independent information, elections, respecting rights and freedoms including the freedom of

³⁸ Benita Ferrero-Waldner, "Ambitious New Partnership for the East," *op. cit.*

³⁹ Eneko Landaburu, "From Neighbourhood to Integration Policy. Are there concrete alternatives to enlargement?" (Policy Brief, no. 95, Centre for European Policy Studies, Brussels, March 2006): 3.

expression, making a good use of the offer provided by the OSCE and other organisations⁴⁰. The EU should consider the opening of an EU delegation office in Minsk in order to promote the EU and provide assistance in implementing possible projects within the EaP.

Finally, the EU should stress that the EaP initiative is not directed against Russia and stress that partner countries need to maintain good relations with this country as well. The EU should continue its efforts in finding solutions to the frozen conflicts in Transnistria, Abkhazia, South Ossetia, and Nagorno-Karabakh.

⁴⁰ EC Non-Paper, “What the European Union could bring to Belarus,”
http://ec.europa.eu/external_relations/belarus/intro/non_paper_1106.pdf (March 21, 2008).

DEMOCRATIC TRANSITION IN GEORGIA: POST-ROSE REVOLUTION INTERNAL PRESSURES ON LEADERSHIP

Jesse David Tatum*

Abstract

This article analyses Georgia's post-Rose Revolution progress in the process of democratic transition up until the August 2008 war. The focus is on the role that the incumbent administration plays in this process, and on the internal pressures that the leadership currently faces. In the light of some important studies in the democratisation field, this article considers the extent to which President Saakashvili and his government represent a clear change in the political order vis-à-vis his two predecessors. With regard to the crises in November 2007 and August 2008, this period in Georgia's development as a nation will have a profound impact on its population, its neighbouring countries and an area of the world in close proximity to the EU. While Saakashvili has made admirable progress overall, he still retains a surfeit of power detrimental to Georgian democracy.

Keywords: Georgia, Saakashvili, democratic transition, Rose Revolution, leadership

“When the flower of the rose is dried and withered it falls, and another blooms in the lovely garden. The sun is set for us; we are gazing on a dark, moonless night.”¹

Introduction

On 23 November 2003, protesters in Tbilisi's Freedom Square forced their way into the Parliament building to repudiate the illegitimate parliamentary elections held at the beginning of the month. The opposition leader Mikheil Saakashvili of the UNM (United National Movement) was among those who led the charge. They were armed, but not with conventional weapons. Instead, they carried roses and a desire for tangible political change, starting with the then leader of the country, political dinosaur and former Politburo member, President Eduard Shevardnadze. As the non-violent demonstrations reached their peak, Saakashvili forced a rose upon Shevardnadze – who was in the middle of giving a speech to

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¹ From the poem *The Knight in Panther's Skin* by 12th century Georgian poet Shota Rustaveli; p. 7, line 35. (Translated by Marjory Scott Wardrop, London: Royal Asiatic Society, 1912.)

the Parliament – and shouted, “Resign!”² Shevardnadze was forced to step down, and on 4 January 2004, Saakashvili was elected president by an astounding majority (96% of the vote).³

The subsequent four years have seen the dynamic president rapidly embark on a path of reform, including tackling endemic corruption, revamping the economy, and decisively pointing Georgia in the direction of the West. However, while initially appearing to be a resolutely democratic leader in a region where democracy is somewhat lacking, an “authoritarian streak” in Saakashvili’s personality was revealed by the events of the November 2007 protests in Tbilisi.⁴ This time, Georgians protesting against continuing widespread poverty and a lack of viable outlets for opposition parties⁵ were dealt with harshly by Saakashvili’s administration: a police crackdown, a declared two-week state of emergency, and the shutting down of independent media outlets such as *Imedi* TV and the *Kavkasia* channel.⁶

In order to prevent this ominous reversal of fortune, Saakashvili quickly announced that he would hold snap presidential elections, where he was elected with 53.4% of the vote, avoiding a second round. However, he was not able to avoid receiving the same criticism he once made against his predecessors. During the May 2008 parliamentary elections, where Saakashvili’s UNM won 59% of the vote and ensured a constitutional majority, more protests were held in the capital by the opposition. Despite a mainly positive response from international observers, the opposition claimed widespread fraud and intimidation, and was concerned about the margin of victory, which gives Saakashvili control over legislation.⁷ It seems that the following months will be crucial in determining the course Georgia will take in the next few years. The question of whether the incumbent president will be remembered and revered for his initial democratic zeal or whether he will follow the path of his predecessors – which spirals downward into socio-political stagnation, cronyism, and authoritarianism – remains to be answered.

Nevertheless, it is worth considering that only 17 years ago, Georgia was shattered by civil war, ethnic cleansing, and a devastated economy. The capital was in ruins as “rabble-rousing”⁸ and hyper-nationalistic president Zviad Gamsakhurdia hid in the parliament building, seeking shelter from the siege laid to Tbilisi to oust him from power. When Shevardnadze was subsequently invited to take over the presidency he served to stabilise the country to a great extent. However, as Brogan notes, he was a leader who was “born and

² *BBC News*, “How the Rose revolution happened,” May 10, 2005, <http://news.bbc.co.uk/2/hi/europe/4532539.stm> (accessed January 3, 2006).

³ *BBC News*, “Georgia swears in new president,” January 25, 2004, <http://news.bbc.co.uk/2/hi/europe/3426977.stm> (accessed January 3, 2006).

⁴ Robert Parsons, “Georgia: progress interrupted,” *Open Democracy*, November 16, 2007, http://www.opendemocracy.net/article/conflicts/caucasus/progress_needed (accessed April 21, 2008).

⁵ *International Crisis Group*, “Georgia: Sliding Towards Authoritarianism?” Europe Briefing N° 189, December 19, 2007, <http://www.crisisgroup.org/home/index.cfm?id=5233&l=1> (accessed April 21, 2008).

⁶ Lasha Tchantouridzé, “On the results of the special presidential elections in Georgia,” *Central Asia and the Caucasus Journal of Social and Political Studies*, vol. 1:49 (2008), http://www.ca-c.org/online/2008/journal_eng/cac-01/01.shtml (accessed July 30, 2008).

⁷ Mikhail Vignansky, “Georgian President Hails Poll Victory,” *IWPR*, http://www.iwpr.net/?p=crs&s=f&o=344751&apc_state=henh (accessed May 22, 2008).

⁸ George Hewitt, “Sakartvelo, roots of turmoil,” *Open Democracy*, November 27, 2003, http://www.opendemocracy.net/democracy-caucasus/article_1611.jsp (accessed May 19, 2008).

raised under Stalinism and reached top pile under Brezhnev”.⁹ Despite being a respected authority figure and restoring a degree of security and order, Shevardnadze could hardly have been expected – considering his political background and experience – to conjure up democratic and economic reform from the simmering cauldron that was Georgia in the 1990s, especially as he was attempting to negotiate between the communist and the neo-liberal elements within the government.¹⁰ It is significant that Saakashvili (who, in his early 40’s, is relatively young for a high-ranking politician) has surrounded himself with like-minded and youthful technocrats and politicians who, arguably, have a sense of the current modalities of democratisation. They have recently seen it come to pass in other areas of Europe formerly in the sphere of Soviet influence, e.g. the Baltic States and parts of east-central Europe, which can be considered similar to Georgia in terms of society and identity. This ideological divergence from Georgia’s previous post-Soviet leaders is necessary for the stability and progress of the country. According to Ágh, this is the idea of systemic change within the political elite, which must combine the institutional, cultural and personal alteration of political actors.¹¹

At present, the role of leadership in Georgia is as complex and important as it has ever been, therefore, the present work will analyse to what extent post-Soviet leadership currently affects Georgia’s “trajectory of transition”.¹² In particular, the focus will be on the years after the incumbent president Saakashvili took over from Shevardnadze during the Rose Revolution of 2003. The ensuing build-up to the November 2007 crackdown, when Saakashvili declared a state of emergency to quell more mass protests, will subsequently be analysed, since these events led to the presidential and parliamentary elections in 2008. Within this context, the post-revolution internal pressure currently exerted on Saakashvili’s administration by various actors is prominent, particularly in consideration of the August 2008 crisis. These demands clearly challenge the administration’s construction of legitimacy and attainment of stability, the likes of which must be accepted at both domestic and international levels. Finally, it is important to determine the extent to which the new president represents a clear change from the post-Soviet Georgian political elite. The significance of leadership in Georgia’s transition and its implications for democratisation will be assessed in light of political theory and, in particular, of the insights offered by studies in the field of transition studies over the past decade.

Theoretical Framework: Leadership & Democratisation

It is often the case that leadership plays a vital role in the transitional process of a country, whether in terms of Weberian social order and responsibility, or through the myriad top-down transitional theories represented in the field of democratisation scholarship. In the Georgian experience, the leadership of the state has arrived at a crossroads in its contemporary development. Since Georgia gained its independence from the Soviet Union in

⁹ Patrick Brogan, *World Conflicts: Why and Where They are Happening* (London: Bloomsbury, 1992), 391-396.

¹⁰ Christoph H. Stefes, “Governance, the State, and Systemic Corruption: Armenia and Georgia in Comparison,” *Caucasian Review of International Affairs*, vol. 2:2 (Spring 2008), http://www.cria-online.org/3_2.html (accessed February 2, 2009).

¹¹ Attila Ágh, “From nomenclatura to clientura,” in *Stabilising Fragile Democracies. Comparing New Party Systems in Southern and Eastern Europe*, eds. G. Pridham & P. Lewis (London: Routledge, 1996), 44.

¹² David Lane, “Trajectories of Transition,” in *The Legacy of State Socialism & the Future of Transformation*, eds. Lane et al. (Lanham: Rowman & Littlefield, 2002), 3-30.

1991, its leadership has at different times appeared as: fervently nationalistic;¹³ a quasi-continuation of the former communist regime; progressively neo-liberal; and often as a hybrid of the three. In many instances, Georgian leaders sought to sever the link to communist rule – an ideological separation from Soviet-style leadership. Only by such a break with history can change and progress be manifest, as the nation defines itself and sets upon a course towards the future.

In Georgia, as in other post-Soviet republics, divergence from former communist party rule has in part developed with the leadership's attitude towards democracy. Huntington distinguishes three distinct groups of post-communist leaders: first, the "standpatters", or those leaders who are primarily concerned with keeping the old communist order and system alive; second, the "liberal reformers", such as Shevardnadze, who are not averse to restructuring the political system, but only with a degree of caution; and third, the "democratic reformers", or those leaders that demand total divergence from the communist past, such as Saakashvili.¹⁴ This classification of groups of leaders must be supported by the three separate strategies that these said leaders pursue, as defined by Ishiyama and Bozóki, which are: the "leftist-retreat", the "nationalist-patriotic", and the "pragmatic reformist".¹⁵ The first strategy shuns the West and the market economy in order to preserve Marxist-Leninist ideology, which would include the standpatters and many liberal reformers. The second, nationalist-patriotic, is perhaps the most dangerous strategy, which ultimately replaces communism with nationalism. The chauvinist Gamsakhurdia administration was a clear example of this strategy. Finally, the third, pragmatic reformist, seeks democratic transformation through modernisation and complete divergence with the old guard. Within this framework, only a democratic reformer with a pragmatic reformist strategy can completely break with communism, in terms of ideology, institutions, and reform. Other leaders and strategies often lead to the given problems of stagnation and authoritarianism.

In terms of post-Soviet leadership, Suny defines a number of characteristics and patterns that explain its intricate complexity. In the context of working to achieve legitimate authority and consensus, political elites are at the forefront of any top-down transitional regime change in the political culture of a country.¹⁶ In short, Suny's analysis inevitably leaves room for Weberian thought in terms of legitimacy and how it may lead to political stability. Moreover, Lane indicates that the transition process, in the case of most post-Soviet republics, develops along the lines of a "path-dependent" approach. In this specific approach, the political culture of the former communist party rule is institutionally "embedded" in the political leadership, civil society, and population of the respective republics.¹⁷ This approach is the opposite of the idea of starting from a "clean slate" at the beginning of a regime change. Norms, ideas, concepts, and styles of leadership, and the manner in which the public interact with and view their leaders, cannot be removed, ignored, or forgotten instantly. Furthermore, Lane stresses that it is in these instances that political actors must "facilitate" or lead the transition process

¹³ Ronald G. Suny, *The Making of the Georgian Nation* (Bloomington: Indiana Univ. Press, 1994), 318.

¹⁴ John T. Ishiyama, "Introduction and Theoretical Framework," in *Communist Successor Parties in Post-Communist Politics*, ed. Ishiyama (New York: Nova Science, 1999), 5-6.

¹⁵ John T. Ishiyama & András Bozóki, "Adaptation and Change: Characterizing the Survival Strategies of the Communist Successor Parties," *Journal of Communist Studies and Transition Politics*, vol. 17:3 (September 2001): 32-51.

¹⁶ Ronald G. Suny, "Elite transformation in Late Soviet and Post-Soviet Transcaucasia, or What Happens when the Ruling Class can't Rule," in *Patterns in Post-Soviet Leadership*, eds. Colton & Tucker (Boulder, CO & Oxford: Westview, 1995), 141-142.

¹⁷ Lane, "Trajectories," 6 & 9.

if it is to be successful. Thus, if a regime shift towards democracy is to come from above (elite-driven), then the leadership of a country must fully commit to establishing a bond of legitimacy with civil society, the population in general, and within its own ranks. To do so requires the political actors to achieve a degree of consensus, with respect to reform, unity, and party solidarity.¹⁸

Regarding the current situation in Georgia, President Saakashvili came to power for a number of reasons, one of which is his charismatic personality. This is often a prerequisite for any leader who hopes to ultimately establish legitimate authority. In terms of the combination of legitimacy and authority in leadership, Weber wrote “[the] leadership of rational thinking politicians should prevail over the politics of the streets and the instincts of the moment”.¹⁹ Weber also alludes to a sort of “taking of power” by a charismatic leader, who draws a following rather than being produced by it.²⁰ If such a leader can then sustain the sway they hold over their following, and if that following is large enough to represent the majority of the population, and if, in the vein of Western democratic ideals, that leader is elected in a free and fair manner, then perhaps a great degree of legitimacy is achieved. Nevertheless, with this legitimacy comes responsibility (as Weber would be quick to point out), and it must be remembered that Saakashvili’s predecessors were, to a certain extent, charismatic and calculating as well. In the end, however, they flouted this responsibility and abused their surfeit of power, or what Fish calls “superexecutivism”.²¹ He explains that this is a trend whereby the executive branch of government (the president in Georgia’s case) accumulates too much political power and begins to disregard their responsibility to respect the norms of democracy. With the harsh November crackdown, claims of vote-rigging and other abuses of power, Saakashvili is now no longer immune to the pitfalls of superexecutivism that befell his predecessors, nor the “heat of the moment” politics that the frustrated population brings to the streets. Political legitimacy and the trust of the population rely upon Saakashvili’s ability to prove he is committed to total systemic democratic change in the fundamental institutions of governance.

Furthermore, concerning regime change, Pridham and Lewis highlight two main theoretical approaches in this area: firstly, the functionalist approach which stresses, among various determinants, economic development, cultural patterns, and modernisation; and secondly, the genetic approach, which chiefly emphasises political determinants – i.e. the choices made and the strategies pursued by political actors in power.²² Both approaches carry some considerable weight in the overall democratisation process, and the amalgamation of all determinants – both economic and political, as well as those of the government and the population – is what ultimately drives, or derails, progress towards democratic reform. As far as the interaction between leaders and their constituencies is concerned, Schumpeter wrote that the population in any given democracy is merely free to choose who leads them, thereby giving the elected leaders total control for initiating change – i.e. the “genetic” model of change.²³ Nevertheless, while elites are indeed duly chosen and given a great amount of

¹⁸ Lane, “Trajectories,” 4; Suny, “Elite Transformation,” 160.

¹⁹ David Beetham, *Max Weber and the Theory of Modern Politics* (Cambridge: Polity, 1985), 244.

²⁰ *Ibid.*, 256-258.

²¹ M. Steven Fish, “When More is Less: Superexecutive Power and Political Underdevelopment in Russia,” in *Russia in the New Century: Stability or Disorder?* eds. Bonnell & Breslauer (Boulder, CO: Westview, 2001), 15.

²² Geoffrey Pridham & Paul Lewis, “Stabilising fragile democracies and party system development,” in *Stabilising Fragile Democracies*, op. cit., 4.

²³ Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (London: Routledge, 1994), 284-285.

power, the “politics of the streets” are omnipresent in any free or partly free country, and failure to tactfully and fairly negotiate them determines the course a political career takes. This ongoing dynamic relationship between the strategies of the “top” and the demands of the “bottom”, or those in power and their relevant populations, respectively, is what ultimately decides the route democracy will run.

In comparing separate groups of democratisation theories, Pridham and Ágh explicate that those in what is known as the “genetic” theory group imply an elite-driven, “top-down” process. In addition, however, they define an “interactive” theory group, which is based on Kirchheimer’s hypothesis that socio-economic circumstances present at the beginning of a regime’s emergence heavily influence its decision-making and the trajectory upon which it chooses to embark.²⁴ This is important since change is not always initiated and directed from above in a top-down manner. There is also an element of “bottom-up” pressure, whereby individuals outside of the ruling class or large segments of the population place demands on the country’s leadership. Hence, within the given theoretical framework, Pridham and Ágh also add the aspect of the dynamic relationship between the state and society, with all of its inherent pressures, and explain that multiple transformations must take place within the context of the overarching democratisation process.²⁵

Consequently, this becomes a triple-layered process, which can be briefly explained as follows: first, the phase of “transition”, whereby a new regime replaces the old and seeks to build authority and legitimacy; second, the “consolidation” phase where the values and procedures of democracy become socio-politically embedded and replace the norms of the former regime; and third, “transformation”, which is the point when the regime is considered to be an established, fully-functioning democracy.²⁶ In short, even though the setting for each newly independent country was in some instances similar throughout the former USSR, it nevertheless differed enough to make the process a highly intricate one. The subsequent leadership in each republic – Georgia included – faced a complex situation requiring a unique response. In constructing a legitimate regime, breaking with embedded cultural norms, and establishing a bond with the public, political transition requires an interactive model of change to account for the myriad difficulties inherent in such a process.

The Transitional Process: Georgia’s Current Status

It would appear that Georgia is in the consolidation phase of the democratisation process for a number of reasons. Even at this stage, a degree of vulnerability exists in terms of progression to the next phase versus regression to the former one. This is because the consolidation stage is a tenuous mixture of enacting progressive measures and preserving what has recently been attained. Moreover, it is the lengthiest and most difficult stage in the process since, as Berglund notes, the consolidated internalisation of democratic norms and procedures must take effect in Linz and Stepan’s five different arenas: civil society, political society, economic society, rule of law, and state bureaucracy. The cyclical and systemic relationship between these arenas must be interactive and reinforcing, thus enabling

²⁴ Pridham, “Comparative Reflections on Democratisation in East-Central Europe,” in *Prospects for Democratic Consolidation in East-Central Europe*, eds. Pridham & Ágh (Manchester Univ. Press, 2001), 7-8.

²⁵ *Ibid.*, 9.

²⁶ Pridham & Lewis, “Stabilising fragile democracies,” 2-4.

progression within the consolidation stage.²⁷ In this complex web of interactivity, Wheatley explains that transition in Georgia has stalled because the leadership has morphed into a “hybrid regime”, and divergence with the recent past and democratic reform remains elusive.²⁸ Since 2004, Saakashvili has reverted to some of the old tricks of his predecessors, which, as Wheatley states, is due to four main reasons: first, a surfeit of power concentrated in the executive branch (Saakashvili’s exclusive network); second, power achieved either through close ties with the president or through charisma, rather than a legitimate agenda; third, a weak and fragmented party system that creates fierce competition between candidates who may often resort to rigging the vote; and finally, in conjunction with the third reason, a lack of respect for constitutional and electoral law.²⁹ The amalgamation of these trends perpetuates the given idea of superexecutivism, as well as “political underdevelopment”.³⁰ Common to most post-Soviet regimes, this is arguably a problem for the highly charismatic and outspoken Saakashvili, who has surrounded himself with fellow reform-minded politicians and revelled in his initial post-revolutionary mandate; while the opposition basically remains weakened by fragmentation and infighting, and while Western institutions remain somewhat ambiguous about reform and election results. In terms of responsibility towards Georgia’s population and building consensus between political actors, the abuse of power proves to be a tiresome trend and is perhaps the most divisive issue. Since Saakashvili’s first presidential and parliamentary elections in 2004, Georgia is still, as Cheterian writes, a “single party republic”.³¹ Consequently, the internal politics of Georgia will be examined hereafter within this context.

Internal Influence on Leadership

According to Rondeli, the Soviet legacy “plays a double role” in the process of transition, which also reflects Lane’s path-dependent approach. First of all, it is a question of the length of time since the collapse of the USSR; in short, seventeen years can be perceived as being both a long and a short amount of time. Georgia was a part of the Russian Empire and the Soviet Union, and the collapse, Rondeli points out, severed many established and integral economic and political ties.³² As a result, seventeen years is arguably a relatively short amount of time when compared with two centuries of rule by Saint Petersburg and Moscow. On the other hand, in terms of running a state, i.e. offering citizens a modicum of security and prosperity, the post-Soviet Georgian leadership has proven itself inept, “embedded” with detrimental traits from the former regime. This can also be attributed to the idea that, as explained by Goldman, central rule from Moscow deteriorated, leaving governments in the respective republics with an increased amount of responsibility, but with none of the requisite

²⁷ Sten Berglund et al., “Foundations of Change,” in *The Handbook of Political Change in Eastern Europe*, eds. Berglund et al. (Cheltenham: Elgar, 1998), 9.

²⁸ Jonathan Wheatley, “Georgia’s democratic stalemate,” *Open Democracy*, April 14, 2008, http://www.opendemocracy.net/article/democracy_power/caucasus_fractures/georgia_democratic_stalemate (accessed May 7, 2008).

²⁹ Ibid.

³⁰ Fish, “When More is Less,” 15.

³¹ Vicken Cheterian, «Révolutions en trompe-l’oeil à l’Est» [Revolutionary Aftershocks in the East], *Le Monde diplomatique*, October 2005, <http://www.monde-diplomatique.fr/2005/10/CHETERIAN/12816> (accessed June 6, 2008).

³² Alexander Rondeli, “Georgia’s search for itself,” *Open Democracy*, July 8, 2008, <http://www.opendemocracy.net/article/georgia-s-search-for-coexistence> (accessed July 14, 2008).

resources.³³ Furthermore, the idea of national identity, or what it meant to be a citizen of an independent Georgia, was challenged by the ensuing civil war, ethnic conflict and social disorder. Thus, more than a decade of post-collapse internal strife resulting from inept, ineffective leadership can seem like a long period of time – especially if there were no visible end in sight. In these years of independence, when urgent decisions had to be made regarding the needs of the country, the failure was largely because, as Henderson states, neither the leadership nor the population had any profound experience running or living in a democracy.³⁴

More significant, perhaps, is what Manoukian calls the “second wave of revolutionary change” over the past two decades.³⁵ The first wave of great change occurred during the late 1980s and until the USSR’s collapse in 1991. This refers to the Gorbachev years of glasnost, perestroika, national reawakening and reconstruction throughout the Union when the rule of Moscow was seriously challenged.³⁶ The new forms of governance that were brought to the fore challenged the old order in all of the given strategic ways, many of which were little better – if not worse – than that of the USSR. In Georgia’s case, the nationalist-patriotic strategy sought by Gamsakhurdia utterly failed and led to civil war. Following his regime, Shevardnadze’s leftist-retreat reform strategy also faltered, leading to superexecutivism and endemic corruption. As a result, the second wave refers to the current trend of revolutionary change (in colour), as seen in Ukraine, Georgia and Kyrgyzstan, where these movements seek, as Liebich puts it, “to readjust the political order”³⁷ and strategies that have failed since the first wave.

After the November 2007 Crisis

Completely readjusting the political order has proven to be too difficult for Saakashvili’s administration. In the maelstrom of the November 2007 crisis there was another disturbingly authoritarian-like manoeuvre made by the incumbent. In fact, the president quickly called for snap presidential elections to be held in the beginning of January 2008. However, according to Tchantouridzé, this was not what the opposition was demanding. It wanted the *parliamentary* elections to be held in accordance with the constitution in order to be able to legally contest Saakashvili within the proper framework of governance;³⁸ in essence, to become a more powerful legislative “check” on the executive branch. Saakashvili had wanted to delay these elections until autumn. Tchantouridzé goes on to suggest that support for Saakashvili’s party (UNM) was waning and that they would not have won a majority in

³³ Philip Goldman et al., “Introduction: Soviet Federalism- its origins, evolution, and demise,” in *From Union to Commonwealth: Nationalism and Separatism in the Soviet Republics*, eds. Lapidus et al. (Cambridge University Press, 1992), 5.

³⁴ Karen Henderson, “The path to democratic consolidation in the Czech Republic and Slovakia: divergence or convergence?” in *Prospects for Democratic Consolidation*, op. cit., 210.

³⁵ Quoted by Manoukian in Cheterian, « Révolutions, » 2005. The use of the word ‘wave’ here should not be confused with that of Huntington’s, which refers to transnational democratisation by proximity (Samuel Huntington, *The Third Wave* (Oklahoma Univ. Press, 1991), 13-16).

³⁶ For an erudite, comprehensive account of these issues and years, see Mark Saroyan, *Minorities, Mullahs, and Modernity: reshaping community in the former Soviet Union*, ed. E. Walker (Berkeley: The Regents of the Univ. of California, 1997).

³⁷ Quoted in Cheterian, « Révolutions, » 2005.

³⁸ Tchantouridzé, “On the results,” 2008.

the parliament.³⁹ Although Saakashvili eventually agreed to call the parliamentary elections according to the opposition's demands, he cleverly manipulated the process in his favour by holding the presidential election first. By winning the presidential race, he regained a renewed amount of power going into the parliamentary plebiscite, and decreased the chance of having to contend with a diverse – but necessarily competitive for democracy's sake – parliament. In addition, snap presidential elections meant that the opposition, already suffering from a lack of media outlets, had merely one month to organise a campaign, putting them at a distinct disadvantage.⁴⁰ This situation is in line with Wheatley's above description of Saakashvili's authoritarian streak, and leaves some degree of doubt about the president's commitment to Georgian democracy.

The development of political parties and their relationships with each other are necessarily conducive to top-down transitional change. The internal processes of constructing legitimacy, establishing authority and consensus-building among elites has since come to a standstill, as seen in the parliamentary elections of May 2008. This situation attracted a large amount of internal pressure to Saakashvili, particularly in terms of engaging in constructive dialogue with the opposition. The Central Election Commission confirmed the election results on 21 May 2008: Saakashvili's UNM won 59.2% of the vote (119 seats); while the closest competitor, the United Opposition Council (the nine-party coalition led by Levan Gachechiladze), won a meagre 17.7% (17 seats).⁴¹ This gives Saakashvili a constitutional majority, thus rendering any alleviation of the superexecutive syndrome impossible, since the legislative branch will not be able to effectively check the power of the executive without fear of being dissolved. Additionally, there is little chance of an opportunity for competitive and open debate within such a parliament. Initially, the opposition claimed widespread fraud and intimidation as they subsequently took to the streets of the capital, staging a 10,000-strong rally. The protests petered out in the following weeks, in part because the international community noted that the elections were mostly free and fair.⁴² There are, however, more important reasons that explain the lack of prolonged protest.

First, according to Parsons, the opposition parties have failed to develop clear agendas and strategies to counter those of Saakashvili's administration. Instead, they have relied on rhetorical confrontation and character assassination. This lack of an issue-based party system is one indicator of the "immaturity" of democratic political society in Georgia, one of the five elements in the above list from Linz and Stepan.⁴³ This often leaves the Georgian population inclined to either vote for candidates on the basis of personality and charisma, rather than real political issues, or simply against the current government to show dissatisfaction, rather than for an actual candidate.⁴⁴ In fact, Parsons goes on to lament that one of the main candidates

³⁹ Ibid.

⁴⁰ Rondeli, "Georgia: politics after revolution," *Open Democracy*, November 14, 2007, http://www.opendemocracy.net/article/conflicts/caucasus/georgia_after_revolution (accessed July 14, 2008).

⁴¹ Angus Reid Global Monitor: Election Tracker, Georgia, July 15, 2008, http://www.angus-reid.com/tracker/view/30264/georgia_2008_legislative (accessed same date).

⁴² Press Release from the ODIHR (Tbilisi), "Despite efforts to conduct Georgia's elections," *OSCE*, May 22, 2008 http://www.osce.org/odihr-elections/item_1_31267.html; and EC Delegation, "EU Presidency Statement," *europa.eu*, May 21, 2008, <http://www.delegeo.ec.europa.eu/en/press/22may2008.html>.

⁴³ Parsons, "Georgia's dangerous gulf," *Open Democracy*, May 30, 2008, <http://www.opendemocracy.net/article/conflicts/georgia-s-dangerous-gulf> (accessed July 14, 2008).

⁴⁴ Konstantine Kandelaki et al., "Local Government in Georgia: Developing New Rules in the Old Environment," *LGI Report (Open Society Institute)*, 275, <http://www.eurasianet.org/resource/georgia/links/government.shtml> (accessed August 1, 2008).

in the opposition who has refrained from the “politics of confrontation” and developed a clearly outlined political agenda is Davit Usupashvili (Republican Party leader, co-chairman of the Alliance for Georgia coalition party), who won only 3.8% of the vote (2 seats). He calls this a sincere disappointment for the mature development of the Georgian party-system infrastructure.⁴⁵ Having separated from Gachechiladze’s United Opposition Council in late February, Usupashvili’s Republican Party is popular with intellectuals and middle-class voters, and its constituency therefore remains small in comparison to that of Gachechiladze’s.⁴⁶ In contrast, Gachechiladze, who came second in the January presidential elections (2008) with nearly 26% of the vote, appeared to focus the bulk of his energy on the organisation of protests against Saakashvili’s administration. Moreover, his political strategy was less clear than Usupashvili’s, and he had the unenviable task of attempting to preserve a coalition of nine parties under constant threat of further fragmentation. As a result of these factors and the August war, Gachechiladze is no longer the strongest, most popular opposition leader. In fact, the face of the opposition is rapidly changing in response to the war’s aftermath, and a few major contenders have reappeared on the political scene, namely Nino Burjanadze (former president of parliament) and Irakli Alasania (former ambassador to the UN).

The underdevelopment of political society and party politics directly affects the attainment of legitimacy and stability in the political ranks. The Georgian leadership has a tenuous hold on legitimate power due to the opposition’s efforts to expose fraudulent activity. This pressure from the opposition, combined with various powerful actors in civil society, leads to what de Waal calls the “Caucasus election script”.⁴⁷ He describes this phenomenon as a cyclical chain of events, whereby dubious election results are often produced by the incumbent administration, which in turn spur popular protest. These protests are usually mobilised by the strongest candidate from the main opposition party, who then calls for the incumbent’s removal from office. The Rose Revolution itself was no more than such an event – albeit a most successful one – that had been well organised and supported by powerful external actors.⁴⁸ What is more, it was technically an unconstitutional change of power. This outside support is often the catalyst for encouraging bottom-up pressure that leads to transitional change. For example, Saakashvili, who was the Minister of Justice under Shevardnadze, was supported by the *kmara* (Enough) movement, which was funded by international NGOs such as George Soros’s Open Society Georgia Foundation and the National Democratic Institute (NDI).⁴⁹ At present, although not all the rival candidates possess the same level of support, charisma, and power that Saakashvili had in 2003 against Shevardnadze’s government, it is enough, nevertheless, to prolong the “stalemate” status to which Wheatley refers, and to create a wider rift between Saakashvili’s government and the citizens. The process of building legitimate authority within the context of democratisation is rendered more difficult when a rift between political actors is present, and when civil society is able to continuously

⁴⁵ Parsons, “Georgia’s dangerous gulf,” 2008.

⁴⁶ *Civil Georgia*, “Parties and Election Blocs,” May 14, 2008, <http://www.civil.ge/eng/article.php?id=17830> (accessed June 5, 2008).

⁴⁷ Thomas de Waal, “The Caucasus Election Script,” *IWPR*, April 2, 2008, http://www.iwpr.net/?p=crs&s=f&o=343751&apc_state=henprcrs (accessed April 15, 2008).

⁴⁸ There is terminology dispute in this case, that is, whether the 2003 event was actually a coup or a revolution. See Giorgi Kandelaki, “Georgia’s Rose Revolution: A Participant’s Perspective,” United States Institute of Peace, Special Report No. 167 (July 2006), <http://www.usip.org/pubs/specialreports/sr167.html> (accessed May 3, 2009).

⁴⁹ Cheterian, « Révolutions, » 2005.

threaten its construction. It becomes more pronounced, however, between the general population and the government when the incumbent administration cannot be trusted in the electoral process, and the opposition cannot be trusted to offer feasible change.

In fact, the political impasse between the Georgian leaders is all the more unfortunate in view of the fact that the actual gap is not due to ideological difference, i.e. the majority of the Georgian political elite “rejects” communism and a return to it is unlikely.⁵⁰ There is general political consensus that Saakashvili’s western orientation, in particular, away from the Russian sphere of influence, is a satisfactory course for the nation to take. Instead, the opposition disputes Saakashvili’s modus operandi and his excessive power over the executive and legislative branches of government, as well as his unwillingness to engage in constructive dialogue. According to Lewis, these factors and a lack of party competition result in the continuation of the “hegemonic” party system of the Soviet past.⁵¹ Nonetheless, it is of great importance that there is such a political consensus in which the threat of a communist party coming back to power is virtually non-existent. This is the type of divergence that democratic reformers pursuing a pragmatic-reformist strategy need in order to continue the transitional process. However, it is constantly under threat from participants in the process, both from the ranks of the elites (top-down) and from the mobilisation of the populace (bottom-up).

August 2008–April 2009

The August 2008 Russia-Georgia crisis offers further proof of the drift away from the communist past: the opposition largely stood behind Saakashvili, insofar as calling for Georgian solidarity in the face of the Russian incursion. Amid statements from Gachechiladze, Usupashvili and David Gamkrelidze, leader of the New Rights party and co-chairman of the Alliance for Georgia party, calling for a halt to inter-party confrontation, even Okruashvili, still in exile in Paris, announced his willingness to overcome the problems/allegations of the corruption scandal in order to return and offer the government his support.⁵² On the other hand, however, as the crisis has come to a nervous conclusion, the opposition has begun again to question Saakashvili’s actions and his surfeit of power. As *The Economist* notes, the fact that Saakashvili could have made such a radical decision in launching the offensive on Tskhinvali, without voices in the opposition calling for restraint, attests to the superexecutive syndrome and the shortcomings of Georgian democratic institutions.⁵³ Among powerful potential rivals, former Rose revolutionary and UNM parliamentary speaker Nino Burjanadze, who stepped down from her role in April 2008 due to “tactical differences” with the party, formed the Foundation for Democratic Development (FDD, July 2008). In October 2008 her Democratic Movement–United Georgia party took

⁵⁰ Lane, “Trajectories,” 4.

⁵¹ Paul Lewis, “Party Systems & the State Socialist Legacy,” in *The Legacy of State Socialism*, op. cit., 39-40.

⁵² Brian Whitmore, “The War at Home -- Unity, Nationalism, And Bravado In Georgia,” *RFE/RL*, August 11, 2008,

http://www.rferl.org/content/Georgian_War_At_Home_Unity_Nationalism_And_Bravado/1190003.html

(accessed same date).

⁵³ Tbilisi correspondent, “The war in Georgia: A Caucasian journey,” *Economist*, August 21, 2008, http://www.economist.com/world/europe/displaystory.cfm?story_id=11986018 (accessed August 23, 2008).

shape, and she will use it as a platform to run for office.⁵⁴ Burjanadze is noteworthy for the fact that Moscow may be more inclined to see her in power,⁵⁵ and she also maintains a strong working relationship with the US and the West. With a more moderate stance than Saakashvili, Burjanadze (or other potential candidates) may be able to begin to repair the fractured Moscow-Tbilisi relations in August's wake, while at the same time involving the West in such a political framework. If the Georgian leadership can continue to build on the progressive ties with the West and its institutions that Saakashvili has pursued, while simultaneously beginning to mend fences with Russia, it would transform Georgia into an important regional actor – and solving external instability can often lead to internal stability.

As the political ceasefire after the August war has ended, a “united” opposition movement has taken to the streets in protest (April 2009) with continued scrutiny of Saakashvili's legitimacy and demands for his resignation. Although opposition leaders managed to rally tens of thousands of demonstrators, signs of divisions in solidarity have already begun. (For instance, Alasania made a departure from the opposition's steadfast demand for Saakashvili's resignation when he stated that discussions and compromise may still be possible.) Nevertheless, even if the protests slowly peter out after Orthodox Easter with the result that Saakashvili remains in relatively strong standing, if there is no violence and a slim chance of two-way dialogue, the impact of the demonstrations will speak to a degree of progress with respect to democratic values.

Neo-functionalist Progress at the Expense of Social Reform

Despite the political struggle and the two crises, in concrete terms of progress since 2004 Saakashvili's administration has taken many positive steps forward. First of all, in progressive economic terms, Wheatley's definition of a hybrid regime differs somewhat from the functionalist approach defined by Thompson, who explains that the focus of leadership is often predisposed towards economic efficiency replacing ideology.⁵⁶ In this instance, the leadership calculates that the resultant economic modernisation will give way to national prosperity and, ultimately, legitimacy. With respect to such an agenda, Saakashvili's administration has been much more successful than his predecessors in pushing through with radical economic reform, as well as actively pursuing foreign investment and inclusion in Western international institutions. Moreover, this modernisation campaign has been implemented in an impressively short amount of time, and it is in this sphere that Saakashvili successfully represents a break with the past in terms of leadership.

The post-Rose Revolution years of national-level economic indicators are impressive: according to the European Bank for Reconstruction and Development (EBRD), in 2007 real GDP growth was 12.4% – up from approximately 9.3% in both 2005 and 2006, and markedly better than 5.9% in 2004. Furthermore, the new president delivered on improving tax and

⁵⁴ Liz Fuller, “South Ossetia Debacle Could Trigger Political Backlash In Georgia,” *RFE/RL*, August 21, 2008, http://www.rferl.org/Content/South_Ossetia_Debacle_Could_Trigger_Political_Backlash_In_Georgia/1192751.html (accessed August 21, 2008).

⁵⁵ Although speculative, see Dmitry Rogozin's comments, which may be somewhat indicative of Moscow's preferences, in: *RIA Novosti*, “Russia NATO envoy says US planning to replace Georgian leader,” November 28, 2008, <http://www.unian.net/eng/news/news-287175.html> (accessed April 15, 2009).

⁵⁶ Mark Thompson, “Totalitarian & Post-Totalitarian Regimes,” *Totalitarian Movements and Political Religions*, vol. 3:1 (Summer 2002): 91-95.

customs administration, which led to an increase in revenues from 16.2% of GDP in 2003 to 23.4% in 2005.⁵⁷ Another example of economic progress is the World Bank's compilation of statistics: in 2006 it listed Georgia as the leading global reformer, and it has remained one of the list's top ten reformers for the two years since. This is particularly because Saakashvili has improved procedures for starting up businesses, obtaining the requisite licences, and clearing up regulatory and bureaucratic "red tape".⁵⁸ As a result, the Doing Business report 2008 lists Georgia 18th out of 178 countries for business friendly environments. Only three years ago, it was ranked 112th, making it the only country to have made such an amount of progress so rapidly.⁵⁹ Consequently, many other Western international institutions and individual countries have also responded favourably to such tangible results and view Saakashvili as "the best man for the job".⁶⁰ They have taken an acute interest in Georgia's development; the EBRD alone signed on for 57 new projects in January 2007, which totalled nearly €300 million.⁶¹ Since Saakashvili and his fellow technocrats carefully devised this process of economic reform, the speed and scale of the recent progress is empowering. The president, intently gazing westward, uses it as a prime example in his case to consolidate legitimacy.

However, many of these sweeping functionalist reforms only focused on specific socio-economic sectors, such as the areas of finance, energy, and the armed forces. These reforms seem to be aimed more at ensuring eventual membership in NATO and increased co-operation with institutions like the World Bank, EBRD, the IMF, and the EU, rather than improving local-level problems. The international focus has blurred the lens pointed towards the domestic scene, and this approach has alienated much of Georgia's population, which still suffers from widespread poverty, unemployment, and income inequality. The November 2007 protests signalled the latent discontent that Saakashvili has failed to allay over the last four years. This was most clearly shown by the results of his second presidential nomination, where he won only 53.4% of the vote, narrowly avoiding a second round run-off. As Smirnov notes, Saakashvili's reforms have not succeeded in alleviating poverty, inflation, and unemployment, all of which are directly responsible for the low standard of living for the majority of the Georgian population, over half of which were living below the poverty line as of 2006.⁶² As overall GDP growth continues to slow (down to 7% in 2008⁶³), so does this neo-functional momentum. In its wake, lagging social prosperity and defaulting on democratic reform will continue to lead to internal frustration and complicate the leader-citizen relationship.

⁵⁷ EBRD, "Georgia Country Presentation (EBRD Annual Meeting, Kiev 2008)," <http://www.ebrd.com/new/am/program/georggvindadze.pdf>; and "Georgia: EBRD country factsheet," <http://www.ebrd.com/country/country/georgia/index.htm> (accessed April 3, 2009).

⁵⁸ Parsons, "Georgia: progress interrupted," 2007.

⁵⁹ Worldbank, "Georgia- Country Brief 2007," January 2008, <http://www.worldbank.org/>, Path: Countries; Georgia; Overview (accessed July 30, 2008).

⁶⁰ Tbilisi correspondent, "Misha bounces back," *Economist*, January 12, 2008, vol. 386:8562, 27-28.

⁶¹ "Georgia: EBRD country factsheet".

⁶² Sergey Smirnov, "The Economy of 'Rose' Georgia: Flowering or Fading?" *Central Asia and the Caucasus Journal of Social and Political Studies*, vol. 1:43 (2007) http://www.ca-c.org/online/2007/journal_eng/cac-01/13.smieng.shtml (accessed July 30, 2008). Incidentally, the percentage of citizens living below the poverty line has by some accounts decreased between 2006–8 (54–31%).

⁶³ CIA World Factbook, "Georgia," April 2, 2009, <https://www.cia.gov/library/publications/the-world-factbook/geos/gg.html#Econ> (accessed April 9, 2009).

In addition to failing to bring about internal economic prosperity, Saakashvili's reforms have also been lacking in the legal system and increasing civil liberties and political freedom.⁶⁴ This is particularly an issue for citizens at local level. In 1999, during Shevardnadze's administration and still four years before the Rose Revolution, Georgia was given a rating of '5' for political rights and '4' for civil liberties on the *Freedom House* scale. This scale goes up to '7', which is the best rating, from '1', which denotes the worst score. According to Lane, Georgia's scores rate in the middle of the scale and this assumes that in 1999 Georgia was only a "partly free" society where transition was still uncertain.⁶⁵ Today, however, almost five years since the revolution, Georgia's rating still stands at '4' for civil liberties and has fallen to '4' for political rights.⁶⁶ In order to assemble these marks, *Freedom House* includes a checklist in its methodology for both categories, which contains each one of Dahl's egalitarian requirements for preserving democracy (free, fair and frequent elections; freedom of expression; alternative sources of information; associational autonomy; inclusive citizenship),⁶⁷ as well as ratings for Linz and Stepan's five arenas. If in 1999 transition was in doubt in accordance with these poor performance ratings, then the lack of improvement suggests that this doubt remains in place, weakening the momentum of the second revolutionary wave for Georgian citizens.

Although it is not all-inclusive as a means to understand a nation's political modalities, as an experienced outside observer *Freedom House* also offers a coinciding analytical report by a Georgian insider, Nodia, who provides some reasons as to why political freedom is falling behind that in the sphere of the economy. First, Nodia notes the low marks Georgia received at the levels of both national and local governance. At national level, the report mentions the superexecutive syndrome overwhelming the other branches of the state apparatus.⁶⁸ At local level, the low marks are attributed to the newly installed system of municipal governance, which is still ineffective in its degree of competence.⁶⁹ This assessment is reiterated by K. Kandelaki's (et al.) comprehensive report on local government in Georgia, in which he states that the lack of any clear tradition of self-government is in part attributed to the Soviet legacy of installing local "puppet" governments, completely acquiescent to the central authority.⁷⁰

As a result, the relationship between the two levels of government is structurally deficient, relying on elite bargaining over issues and subject to mismanagement and corruption in multiple areas, especially the electoral process.⁷¹ This structural weakness of local government has a direct effect on the ability of the citizenry to effectively participate in politics because of its inefficiency, proclivity to corruption and restricted freedom. Therefore, the previously mentioned economic difficulties for the majority of the Georgian population are compounded by a lack of political rights – both issues for which the leadership should assume direct responsibility.

⁶⁴ Rondeli, "Georgia: politics after revolution," 2007.

⁶⁵ Lane, "Trajectories," 18-19.

⁶⁶ *Freedom House*, "Country Report: 2008 Edition,"

<http://www.freedomhouse.org/template.cfm?page=22&country=7398&year=2008> (accessed Aug. 7, 2008).

⁶⁷ Robert A. Dahl, *On Democracy* (Yale Univ. Press: New Haven, CT, 2000), 92.

⁶⁸ Ghia Nodia, "Georgia," *Nations in Transit* 2008 report, 232-234,

http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Georgia-final.pdf (accessed Aug. 7, 2008).

⁶⁹ See Appendix (p. 16) for a table with the *NIT* report's scores.

⁷⁰ K. Kandelaki, "Local Government in Georgia," 270.

⁷¹ Nodia, "Georgia," 244-246.

Conclusion

In order to represent a clean break with the recent past of inept post-Soviet leadership in Georgia, President Saakashvili and his administration must make several more steps towards democracy. By following the pragmatic-reformist strategy that Ishiyama and Bozóki recognise, the Georgian leadership, engaged in Manoukian's second revolutionary wave, can maintain its momentum and appeal, thus leading to democratic transformation and legitimacy. The internal challenges to the current regime are formidable: mounting discontent from the population, infighting amongst the opposition, and an executive branch with a glut of power. Nevertheless, important progress can continue to be made, particularly in terms of Saakashvili's willingness to engage in constructive dialogue with the opposition so as to alleviate the symptoms of superexecutivism. Moreover, structural advances are needed in the realm of local government to ensure political freedom and participation for the Georgian population. Finally, all independent media outlets must be allowed to operate without governmental restrictions, the likes of which were evident during the November 2007 crackdown.

When Saakashvili took the reins from his predecessor, the initial honeymoon period was filled with great change and hopes for the future of a country that could, perhaps, prove to be an example for its immediate Caucasian neighbours and for other former Communist republics in Eurasia. Moreover, the administration has resolutely looked westward with the hope of achieving what the ex-Soviet countries in east-central Europe have: economic, political and social integration with the West. However, democracy can prove to be a confusing concept, especially for a nation in the process of transition with considerable pressure exerted upon it from various actors. The internal combustible combination of pressure from below – i.e. civil society and the general public – and powerful political elites was brought to a head in the November 2007 crisis. The resulting situation has been fraught with difficulty and has left much of the Georgian population in doubt of Saakashvili's ability to be a legitimate democratic leader.

Finally, although the August 2008 war was clearly a pressure exerted upon the leadership by an external actor, it manifested itself internally with the April protests against Saakashvili, his decision-making and legitimacy, and calls for his resignation. Whether these circumstances will now serve to further unite the opposition in its motivation for consolidation, or conclude in another political crisis, is yet to be seen. Despite the turmoil, President Saakashvili and the opposition still have an unprecedented opportunity to rekindle the spirit of 2003, which would benefit not only the leadership and democracy, but also the Georgian population as a whole. If any positive result arises from the last two challenging years, it may be an emergence of a strong leader who can unite a consolidated opposition party to challenge the UNM, taking Georgian politics to an unprecedented higher level – which would represent the cleanest break with the past of them all.

APPENDIX

NATIONS IN TRANSIT (NIT) RATINGS & AVERAGE SCORES: *Freedom House Europe*

*Ratings based on a scale of 1 to 7, with '1' representing the highest level of democratic progress and '7' the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year. (Source: Nodia, "Georgia, Nations in Transit," *Freedom House* 2008 report, http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Georgia-final.pdf.)

	1999	2001	2002	2003	2004	2005	2006	2007	2008
Electoral Process	4	4.5	5	5.25	5.25	4.75	4.75	4.5	4.75
Civil Society	3.75	4	4	4	3.5	3.5	3.5	3.5	3.5
Independent Media	3.75	3.5	3.75	4	4	4.25	4.25	4	4.25
Governance	4.5	4.75	5	5.5	5.75	n/a	n/a	n/a	n/a
National Democratic Governance	n/a	n/a	n/a	n/a	n/a	5.5	5.5	5.5	5.75
Local Democratic Governance	n/a	n/a	n/a	n/a	n/a	6	5.75	5.5	5.5
Judicial Framework & Independence	4	4	4.25	4.5	4.5	5	4.75	4.75	4.75
Corruption	5	5.25	5.5	5.75	6	5.75	5.5	5	5
<i>Democracy Score</i> [total]	4.17	4.33	4.58	4.83	4.83	4.96	4.86	4.68	4.79

DECISION-MAKING AND GEORGIA'S PERPETUAL REVOLUTION: THE CASE OF IDP HOUSING

Till Bruckner*

Abstract

Observers tend to enthuse about Georgia's leadership or damn it, but such black-and-white views do little to explain what is really going on in the country. Examining the government's recent efforts to provide housing to those internally displaced by the August 2008 conflict with Russia sheds light not only on the housing program itself, but on contemporary Georgian politics in general. In particular, four traits characteristic of the ruling United National Movement's revolutionary governance are brought into focus: informal decision-making, fluid roles, heroic action, and vanguard politics.

Keywords: *Georgian IDPs, decision-making, heroic action, democracy*

Introduction: Georgia's Rulers: Saints or Sinners?

Beginning in late 2008, strange new structures suddenly started mushrooming out of the plains west of Tbilisi, Georgia's capital. Day and night, in sunshine and under floodlights, construction workers labored around the clock to build row after row of identical-looking small houses at breakneck speed. Within a few months, over a dozen new settlements had appeared in the landscape, new homes for people displaced by the Georgian-Russian fighting over the disputed separatist territory of South Ossetia just months earlier. Of the over 100,000 Georgians who fled their homes during the Russia-Georgia war of August 2008, most were able to return before the onset of winter. Over half of the remaining long-term displaced, around 18,000 people, have now been moved into 15 "mushroom villages".¹

The reactions of international observers in Tbilisi to this government undertaking varied hugely. Cynics interpreted the move as a public relations stunt. According to this view, Mikheil Saakashvili, a telegenic megalomaniac with sinister backers, seized power in a 2003 coup, duped Western media into thinking he was a democratic reformer (in early 2005, US senators Hillary Clinton and John McCain even nominated him for the Nobel Peace Prize

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¹ For detailed figures on the numbers of internally displaced persons (IDPs) and their distribution, see the documents compiled on the Georgia Relief Action website, <http://relief.migration.ge/intranet/>

together with Ukrainian President Viktor Yushchenko²), and proceeded to make trains run on time while redistributing the fruits of privatizations and the assets of political enemies to his supporters. Brushing aside the warnings of his backers in Washington, Saakashvili started a disastrous war, lost it, and then wangled 4.5 billion dollars in aid out of embarrassed donor nations unwilling to let Georgia collapse and fall back into Moscow's orbit.

According to these cynics, building new houses for those displaced by the war fulfills several functions for the government: improving its image at home and abroad, ridding public buildings in the capital of the embarrassing human fallout of its misadventure, presenting visible results to alienated donors and a public critical of the military defeat, bailing out well-connected construction companies facing economic meltdown,³ and generating ample opportunities for graft in the top echelons of power.

To illustrate their point, the critics point to Tserovani, the new settlement closest to the capital. The government steers foreign dignitaries and Georgian television crews alike towards this Potemkin village, with its solidly built houses and indoor plumbing, while the residents in other mushroom villages just down the road are left to contemplate peeling paint and wooden outhouses.

Sympathizers of the current government see a completely different picture. In their view, Saakashvili's initiative shows just how much Georgia has changed for the better since the "Rose Revolution"⁴ of 2003. Shevardnadze's government had cynically kept many of those internally displaced by Georgia's 1990s wars in misery to bolster its claims to the lost territories and preserve international aid flows, while at the same time engaging in profitable illicit trade with the self-declared republics and embezzling the aid money destined for the displaced.⁵ In contrast to its predecessor, the new government cared about the nation and the people under its stewardship. In the name of humanitarianism, Saakashvili's government boldly abandoned the long-standing pretense that Georgia's displaced would be going home soon,⁶ stared realities in the face, and did its utmost to help the victims of war. Not only was the government well-intentioned, it also proved itself highly capable. While there may have been some quality problems with the new homes, such lapses were unavoidable when building within tight timeframes and budgets. With around fifty construction companies

² *Associated Press*, "U.S. senators nominate Saakashvili, Yushchenko for Nobel prize," January 26, 2005, <http://www.highbeam.com/doc/1P1-104744926.html> (accessed March 20, 2009). For an interesting perspective on this, see Ryan Powers, "Did Scheunemann Engineer McCain's 2005 Nobel Prize Nomination of Georgian President for Financial Gain?," 2008, <http://thinkprogress.org/2008/08/13/georgia-mccain-nobel/> (accessed March 20, 2009).

³ United Nations and World Bank, "Georgia Joint Needs Assessment" (Tbilisi: World Bank, 2008), completed on October 9, 2008, the full uncensored version remains secret at the request of the Georgian government.

⁴ For more background on the "Rose Revolution", see David Anable, "The Role of Georgia's Media – and Western Aid – in the Rose Revolution" (working paper, Joan Shorenstein Center, Harvard University, Boston, 2005). Also of interest: Zurab Karumidze and James Wertsch (eds), *'Enough!' The Rose Revolution in the Republic of Georgia 2003* (New York: Nova, 2005); and Jonathan Wheatley, *Georgia from National Awakening to Rose Revolution* (Aldershot: Ashgate, 2005).

⁵ For a particularly compelling analysis of Shevardnadze's rule, see Barbara Christophe "Understanding Politics in Georgia," *Demstar Research Report no. 22*, (2004), www.demstar.dk (accessed October 7, 2008).

⁶ To track the changes in Georgian government policy towards the displaced, see Benjamin Sweeney, "Annotated Bibliography on IDPs in Georgia" (Tbilisi: TI Georgia, March 2009), http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=478 (accessed March 28, 2009).

reportedly involved,⁷ some skimming may have taken place, but the results on the ground are broadly in line with the stated cost per house.

Revolutionary Governance

Black-and-white views such as those above do not do justice to the situation in Georgia, where decision-making is opaque, agendas are frequently mixed, and cabinet meetings involve the good, the bad and the ugly convening around the same table under the leadership of a mercurial president whose intelligence is as undisputable as his impulsiveness, arrogance and lack of self-control.⁸ The mushroom villages are neither the latest scam of a coherent conspiracy bent on fooling its patrons in the West while pursuing totalitarian control at home, nor are they the product of a perfect democracy led by humanistic saints. Reality is far more interesting than that.

The Georgian government sees itself as a revolutionary government, with the vanguard National Movement party engaged in a heroic and idealistic mission to build a strong Georgian state which will lead the nation into a bright future as a respected member of the European family. Within a few years, the party line runs, the National Movement transformed Georgia from a failed state that was the laughing stock of the international media⁹ into a functional state whose citizens enjoy electricity, good roads, state pensions, and freedom from depredation by criminals in and out of uniform.

From the moment it took power, Saakashvili's team showed scant respect for legal niceties. Inheriting a hollow state with incoherent legislation, a corrupt civil service and an untrustworthy judiciary, the new leaders decided that radical reform could only be achieved if they leapfrogged procedural hurdles and sidestepped legalistic arguments in their pursuit of the greater good. With overwhelming public support – and under the averted eyes of sympathetic Western observers – Saakashvili's team started off by throwing members of the corrupt old guard into prison¹⁰ on live TV, making them “donate” millions of their stolen dollars to the treasury, and using the proceeds to raise pensions for the elderly, many of whom had spent years going hungry due to the avarice of those who were now being squeezed. The frequently Western-educated reformers in Tbilisi also moved to curtail local and regional government autonomy, arguing that corruption could only be eliminated by sidelining incompetent and ‘backward’¹¹ structures outside the enlightened capital.

⁷ In February 2009, Transparency International Georgia filed Freedom of Information Act requests with the Ministry of Interior and the MRA in order to obtain the names of the companies involved. In spite of a legal obligation to officially respond within ten days, neither ministry has provided this information to date. TI Georgia is monitoring aid to Georgia, including housing for IDPs, on an ongoing basis. See www.transparency.ge for its recent publications on the issue.

⁸ For example, see the following recent profile: Wendell Steavenson, “Marching Through Georgia,” *The New Yorker*, December 15, 2008, pp. 64ff, http://www.newyorker.com/reporting/2008/12/15/081215fa_fact_steavenson (accessed March 16, 2009).

⁹ For example, see Thomas Goltz, *Georgia Diary* (London: M.E. Sharpe, 2006).

¹⁰ Lili di Puppò. “Anti-corruption reforms in Georgia: a few successes and big challenges ahead,” *Caucas.com*, October, 2005, http://www.caucas.com/home_eng/breve_contenu.php?id=191 (accessed March 20, 2009).

¹¹ Gerald Mars and Yochanan Altman, “The Cultural Bases of Georgia’s Second Economy,” *Soviet Studies*, vol. 35:4 (1983): 546-560. More generally, see Samuel Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, 1968).

Crucially, the National Movement achieved its most dramatic successes by prioritizing results and the perceived greater good over political and individual freedoms, civil liberties and the rule of law. Today, the domestic legitimacy of the ruling group rests not on its dubious record on democracy and civil rights, but on its forceful actions to restore Georgia's national dignity, the near elimination of petty corruption, and provision of tangible benefits and visible improvements in infrastructure. Over five years after the National Movement seized power, the revolutionary mindset endures. When the ruling team's legitimacy and power seemed acutely under threat in September 2008, President Saakashvili responded by promising Georgians not gradual evolution, but a "Second Rose Revolution".¹²

Examining the mushroom villages through the lens of Georgia's revolutionary politics sheds light not only on the housing program itself, but on contemporary Georgian politics in general. In particular, four traits characteristic of National Movement governance are brought into focus: informal decision-making, fluid roles, heroic action, and vanguard politics.

Informal Decision-Making

To this day, it remains mysterious who took the momentous decision to reverse long-established policy and take concrete steps towards providing "durable" (read: permanent) housing not only to those displaced by the August 2008 war, but also to the over 100,000 Georgians displaced in the 1990s who still lack permanent residences. It is equally unclear who decided to address the housing needs of the displaced by building mushroom villages across eastern and central Georgia before the winter. In Georgia, key decisions are taken informally and often spontaneously by a closely knit group of maybe half a dozen revolutionary comrades with long-standing personal ties.¹³ Decision-making on the mushroom villages seems to have followed this pattern, with rumors indicating that the powerful Ministry of Internal Affairs, which is headed by insider Vano Merabishvili, suddenly began construction of the villages without even informing the nominally responsible Ministry of Refugees and Accommodation (MRA), which at that time was formally headed by an outsider without clout in the inner sanctum of power.

The more important a decision, the less likely it is to leave a paper trail, and the easier it is to amend or reverse. For example, it appears that the government – though "the government" in itself may be a misleading term in this context – originally planned to construct all houses to the same design. The question of who finally decided to build houses with differing designs will probably never be satisfactorily answered.¹⁴

¹² Civil Georgia, "Saakashvili speaks of 'Second Rose Revolution'," Civil Georgia, September 24, 2008, <http://www.civil.ge/eng/article.php?id=19587> (accessed March 20, 2009).

¹³ International Crisis Group, "Georgia: The Risks of Winter", International Crisis Group, November 26, 2008, <http://www.crisisgroup.org/home/index.cfm?id=5787&l=1> (accessed March 11, 2009).

¹⁴ Rumor has it that the original plan foresaw indoor plumbing for all houses, but was shot down by Kakha Bendukidze, a shadowy oligarch who at the time formally held the post of head of government administration, but informally focused on economic policy-making. (Note that neither his formal nor his informal role appeared to have any connection with housing issues.) Bendukidze is alleged to have argued that the displaced were all villagers and therefore used to outdoor latrines anyway. As usual in Georgia, it is not verifiable whether this rumor is based on facts.

Fluid Roles

The seemingly bizarre decision to place supervision of the construction process under the remit of the Ministry of Internal Affairs mirrored developments inside the MRA that seemed equally puzzling to outsiders. In late October 2008, amidst an acute and still very fluid humanitarian crisis, the head of the MRA fell victim to a cabinet reshuffle.¹⁵ The outgoing minister, Tamar Martiashvili, had been viewed as an ineffectual political lightweight. Her replacement, Koba Subeliani, while not a member of the tight inner circle himself, had ranked second on the National Movement's party list during the last elections and brandished a reputation as a man who could be relied on to get a job done. In fact, the reshuffle had absolutely no effect on the ground, as Subeliani had *de facto* been in charge of the displacement crisis since the war;¹⁶ the elevation of the parliamentarian to the post of minister simply formalized his long-standing role. Meanwhile, registration of the newly displaced, theoretically under the remit of the MRA, was being carried out by the Civil Registration Agency, part of the Ministry of Justice. Pre-war, the MRA had been a low profile ministry with few highly competent staff, while the more prominent Ministry of Justice had better human resources with which to meet the challenge.

Ministry of Internal Affairs construction, epiphenomenal reshuffles and registration outsourcing all illustrate a central feature of National Movement governance: with low human capacity nationwide and a lack of trust in outsiders' abilities and probity, formal roles and structures count for little in the quest for meeting high priority goals.

The combination of informal decision-making and fluid roles makes it nearly impossible to get exact data on any kind of government activity in Georgia. For example, the MRA appears to be genuinely unable to answer the simple question as to how many houses were built in total. (The fragmentary data that are available may or may not conflate new houses in the mushroom villages with newly renovated apartments in public buildings.) An aid organization spent weeks trying to get a list of the around 6,000 people thought to live in Tserovani before it was given some handwritten pieces of paper, and MRA figures of displaced people do not necessarily match those compiled by the Civil Registration Agency.

Heroic Action

Heroic action¹⁷ is the third trait characteristic of National Movement governance, and may shed some light on why Georgia's rulers decided to rush ahead and build accommodation for nearly 20,000 people in a matter of months, against the advice of most international experts who argued for temporary winter shelters followed by construction in the spring. While there

¹⁵ Civil Georgia, "Four Ministers Lose Post in New Cabinet," Civil Georgia, October 29, 2008, <http://www.civil.ge/eng/article.php?id=19857> (accessed March 20, 2009).

¹⁶ Civil Georgia, "88,000 Georgians displaced – UNHCR," Civil Georgia, August 16, 2008, <http://www.civil.ge/eng/article.php?id=19164> (accessed March 20, 2009).

¹⁷ The concept of heroic action as used here implies a primacy of ends over means in the pursuit of grandiose schemes. It is adopted from Ken Jowitt, who persuasively argues that Soviet-era grand projects like the space programme were partly driven by a communist party whose identity and legitimacy depended on keeping the heroic image of the revolutionary period alive. See Ken Jowitt, *New World Disorder* (Oxford: University of California Press, 1992).

were sound arguments in favor of rapid and radical action, such as the need to move displaced people out of kindergartens and schools in order to let lessons continue, those in power may have decided to attempt the impossible¹⁸ simply because of the National Movement's deep and long-standing love affair with dramatic heroic action.

The period immediately following the "Rose Revolution", the golden age for the ruling team, was also its most heroic age. Promising radical change, Saakashvili won the January 2004 presidential elections with a resounding 96 percent of the vote. Armed with a popular mandate to do whatever needed to be done to get Georgia back on track again, the National Movement protagonists wildly jumped from issue to burning issue in perpetual crisis mode with no regard to established structures or legal constraints, adulated by Georgians and cheered along by the West as they fired the entire traffic police overnight one day and took out bandits in Svaneti in a televised shootout the next.

Contrary to the predictions of many observers, who had expected the government to settle into a pattern of humdrum bureaucratic administration once the initial momentum of the revolution had worn off, the pattern of heroic radical action in pursuit of grandiose goals survived the immediate aftermath of the revolution for several reasons. First, based on past experience, heroic action was seen as the key to success. The National Movement sees an inherent contradiction between having a well-developed plan and achieving radical change. Second, the dismantling of old institutions without creating new ones to take their place perpetuated the pattern of heroic action by generating a need for subsequent quick fixes. Third, the mercurial personality of the chief executive militated against his becoming a staid administrator-in-chief in a grey suit.¹⁹ Fourth, Georgians are widely thought to perform best at work if the task is presented as a monumental challenge requiring urgent and full-out action. Fifth, things in Georgia either happen quickly or they do not happen at all. By the time a detailed plan has been developed, the momentum has already passed and all attention and energy has shifted onto the next heroic quest. Sixth, Georgian culture worships the strong man of action as much as it despises the drab bureaucrat enslaved by rules, and prefers the grandiose to the mundane.²⁰ Elections in Georgia are not won by administrators with elaborate party platforms. Finally, heroic action presents greater opportunities for self-enrichment.²¹

Heroic action is part of a political culture that represents both the greatest strength and the Achilles' heel of the Georgian government. On the one hand, thousands of houses were built in a matter of months, something that most international experts had warned was impossible to achieve. On the other hand, construction at breakneck speed has had an impact on quality,

¹⁸ Saakashvili publicly claimed, not implausibly, that his government had constructed the new houses in the same time it would have taken international organizations just to do the preliminary paperwork. See Civil Georgia, "Saakashvili Delivers State of Nation Address," Civil Georgia, February 12, 2009, <http://www.civil.ge/eng/article.php?id=20421> (accessed March 20, 2009).

¹⁹ Similarly, it has been argued that Mao Zedong's personal love of heroic revolutionary activities strongly influenced his subsequent actions as statesman. See Jung Chang, *Wild Swans: Three Daughters of China* (London: Simon and Schuster, 1991).

²⁰ In the words of an expatriate news editor who is a long-term resident of Tbilisi, "everything must be an exceptional triumph". Interview with the author, Tbilisi, March 2006.

²¹ Unconfirmed rumors indicate that at least some construction companies have still not been paid in full for their work on the new villages. Meanwhile, international donors have fully refunded the government for its officially documented expenditures on some of the villages. The author was unable to find any company willing to discuss this issue, even off the record.

necessitating retrofitting and repairs, a mundane task that may never be completed once the heroic momentum has passed and the issue drops off the leadership radar.

Vanguard Politics

Interviews with displaced people²² reveal that they were neither informed of nor consulted about the government's plans for their future. Even now, after the immediate crisis has passed, there is a striking lack of awareness among the displaced about what their rulers hope to do with them. Similarly, the media has not been briefed, opposition parties are in the dark, and the issue has hardly been touched upon in parliament.²³ This is typical of the National Movement's vanguard politics. The leadership prides itself on having achieved the impossible in its quest to build a modern nation state: in a matter of years, Georgians have been provided with electricity, decent roads, and personal security.

These very real successes have created a sense of manifest destiny and even infallibility amongst the ruling inner circle (only recently checked by the humiliating defeat in the war of August 2008). The average Georgian is seen as a beneficiary rather than as a citizen, and the key unit of reference is less the individual than the "sacred Georgian nation". As a result, the National Movement sees little if any value in providing information or requesting input, and actively shuns making public commitments to detailed plans today that would restrain its capacity for unfettered heroic action tomorrow. As a result, the leadership's style is a blend of "the people are ignorant" and "trust us, we know best".²⁴

Those who question the government's wisdom are perceived as ignorant, hostile, or both – with some justice. While basic literacy rates in Georgia approach 100 percent,²⁵ the gap between the frequently Western-educated ruling elite and the bulk of the population is huge. Domestic politics revolves around personality clashes, slanderous defamations and conspiracy theories; fact-based argumentation is rare and does not win votes. Furthermore, many opposition figures are intellectually challenged, severely tainted by corruption and/or suspected of receiving funding from abroad. Due to a lack of broad-based human capacity, the government currently possesses the only team capable of running a country, a priceless asset in a winner-takes-all political culture where the term "constructive criticism" is widely regarded as an oxymoron. Any independent attempt at policy analysis is further stymied by lack of access to information on leadership plans, the scarcity of quality think-tanks, and a media comprised of politically polarized television stations and newspapers that lack editorial independence, professionalism and readership.

²² The author has personally interviewed over twenty individuals displaced in 2008, and can draw on the experience of TI Georgia's aid monitoring team, which collectively has interviewed over 100 people in the mushroom villages.

²³ It should be pointed out that public distrust towards parliament is traditionally extremely low, and has declined even further since its boycott by much of the opposition. See Transparency International Georgia, "Public Opinion Survey on Georgian Parliament" (Tbilisi: TI Georgia, 2008).

²⁴ The parallels with the international aid industry's attitudes towards its Georgian "beneficiaries" are striking. See, for example, Transparency International Georgia "Aid to Georgia: Transparency, Accountability and the JNA" (Tbilisi: TI Georgia, November 17, 2008), <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JBRN-7LGKT2?OpenDocument> (accessed April 13, 2009).

²⁵ UNDP, "Georgia Human Development Report 2008" (Tbilisi: UNDP, 2008).

The National Movement regards itself as a vanguard party with the democratically-mandated historic mission of dragging a nation of ignorant and culturally backward semi-peasants towards their European destiny. Transparency is not required as the leaders are to be trusted²⁶ based on their past track record in providing goods and services, consultation merely distracts²⁷ from producing the benefits for the masses on which legitimacy is built, accountability begins and ends at the ballot box, and criticism of the government between election dates is irrelevant at best.

Conclusion

The four traits characteristic of National Movement governance militate against simplistic black-and-white views of Georgia's ruling team. Cynics regularly overlook that fact that while the National Movement includes plenty of avaricious individuals, the leadership has staffed many key administrative positions with smart and honest people dedicated to the ideal of restoring national pride by building a modern nation free from want. Foreign critics in particular, few of whom have personal memories of the bad old days under Shevardnadze, often draw unfavorable comparisons based on the government's vacuous rhetoric of Georgia as a European country, forgetting what Saakashvili's team inherited just five years ago: a fragmented failed state hollowed out by corruption and rife with crime, run by a loose coalition of gangsters and kleptocrats unwilling to provide even the most basic of services to their countrymen,²⁸ with no tradition of democracy or rule of law, drained of its best and brightest by one of the highest outmigration rates in the world, populated by a disoriented people culturally torn between the twelfth century,²⁹ Stalin's heyday and gangster rap.

While the National Movement's style of governance can drive diplomats to despair with its lack of structure, aversion to forward planning, disdain for transparency and non-existent procedural accountability, it is important to realize that abandoning formally agreed-upon plans in the pursuit of novel heroic quests does not always constitute an act of bad faith, and that transactions between insiders that take place outside the public view are not necessarily always corrupt.

Conversely, the rose-tinted apologists for the president and his tight inner circle tend to overlook that Saakashvili's Georgia is not a democracy, except (arguably) in a strictly procedural sense. In Georgia, power has never changed hands through the ballot; the one election in Georgia's history whose outcome was not crystal clear in advance directly led to the "Rose Revolution". The National Movement's popular mandate does not rest on abstract values like civil liberties, human rights or freedom of the press, all of which were devalued during Shevardnadze's rule, when years of political freedoms failed to produce a decent government, let alone three meals a day. While the rhetoric of democracy may have generated considerable support abroad, the National Movement's legitimacy at home

²⁶ Lili di Puppo, "Anti-Corruption Interventions in Georgia: From Rhetoric to Practice," (paper presented at the Changing Europe Summer School, Bremen, July 28-August 2, 2008), http://www.changing-europe.org/download/Summer_School_2008/Di_Puppo.pdf (accessed March 20, 2009).

²⁷ MRA minister Koba Subeliani is a notable exception to this rule.

²⁸ For a personal account of life in Tbilisi in the late 1990s, see Wendell Steavenson, *Stories I Stole* (London: Grove Press, 2004).

²⁹ Ronald Suny, *The Making of the Georgian Nation* (London: Taurus, 1989).

squarely rests on a heroic nation-building mission whose sincerity is demonstrated³⁰ by the implementation of relentlessly propagandized high-profile heroic projects and the delivery of tangible benefits to ordinary Georgians.

³⁰ For a fascinating discussion of building popular legitimacy through visible outputs, see Sian Lazar, “Citizens Despite the State: Everyday Corruption and Local Politics in El Alto, Bolivia” in *Corruption: Anthropological Perspectives*, eds. Cris Shore and Dieter Haller (London: Pluto Press, 2005), 212-228.

VICTIMISATION OF FEMALE SUICIDE BOMBERS: THE CASE OF CHECHNYA

Nino Kemoklidze*

Abstract

While arguing about why women fight, many believe that these women are yet other victims in the hands of ruthless men, while others emphasize the seriousness of a particular conflict where even women are driven towards taking up arms, seen as a last resort in the eyes of many. Few, if any, confront this ever present “myth” of victimisation of women who choose radical forms of fighting. This paper will challenge this viewpoint and, based on the case of the so-called Black Widows of Chechnya, will argue that women can take up roles other than that of a victim in the battlefields; and that they are capable of fighting for a purpose other than that of a personal tragedy and/or family bereavement.¹

Keywords: *gender, violence, nationalism, female suicide bombers, Chechnya*

*“It is a woman who blew herself up, and with her exploded all the myths about women’s weakness, submissiveness, and enslavement”
(Al-Sha’ab (Egypt), February 1, 2002)²*

Introduction

Even though female suicide bombers are a relatively new phenomenon, human history can provide some interesting examples of female combatants fighting and dying alongside men in many wars. However, wars in general “fall under the normative gender categories” and have been traditionally associated with men.³ Women, on the other hand, have been excluded from the battlefields despite their constant presence in wars. They have mostly been seen in secondary/subordinate roles as nurses and caretakers at the front lines, or in the private/domestic

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² Cited in Mia Bloom, “Female Suicide Bombers: A Global Trend,” *Daedalus*, vol. 136:1 (2007): 98.

³ Dorit Naaman, “Brides of Palestine/Angels of Death: Media, Gender, and Performance in the Case of the Palestinian Female Suicide Bombers,” *Signs: Journal of Women in Culture and Society*, vol. 32:4 (2007): 934.

sphere as mothers and wives looking after the children and elderly. Furthermore, more than anything else, women have been portrayed as victims of war and its subsequent violence.

Thus, it is not surprising that when the first female suicide bomber struck Lebanon in 1985 it came as a shock to the world community.⁴ Destruction was a men's business, how could a *petite*, weak woman commit such an unthinkable act of violence? In the following decades the world would witness more female suicide attacks in Israel/Palestine, Turkey, Sri Lanka, Iraq, and Chechnya. This emerging trend of female suicide fighters was probably even more surprising due to the fact that the above-mentioned societies are highly patriarchal, therefore, female participation in such death squads shocked the communities which they came from as much as the outside world.⁵

While arguing about why women fight, many believe that these women are yet other victims in the hands of ruthless men while others emphasize the seriousness of a particular conflict in which even women are driven towards taking up arms, seen as a last resort in the eyes of many. Few, if any confront this ever present "myth" of victimisation of women who choose radical forms of fighting.⁶ The current paper will challenge this viewpoint and, based on the case of the so-called Black Widows of Chechnya, will argue that women can take up roles other than that of a victim in the battlefields; and that they are capable of fighting for a purpose other than that of a personal tragedy and/or family bereavement.

As Frazier suggests, "in order to understand what propels a woman to engage in violence during war, it is imperative to first understand the complexities of war"⁷ as well as the society it is taking place in and the roles women have played in it. Thus, the paper will first give a brief overview of the Chechen society and a woman's "place" in it. In the second part of the paper, some of the motivations for women to choose to fight will be analysed, alongside the social construction of "womanhood" in mainstream press and media. The portrayal of the Black Widows as mere victims of Russian violence or pure instruments in the hands of their patriarchal societies will be challenged further.

The paper will argue that the victimisation of the female suicide bombers does nothing but reinforce the already existent gender stereotypes. The paper will try to demonstrate that rather than being an essential part of a female nature, the "weak", "emotional" image of a woman is a socially constructed phenomenon and can have a destructive impact on the further development of gender relations in this region. As Enloe asserts, "the popularity of those phrases is *caused* in part by ideas about women, by presumptions about femininity and masculinity".⁸ While indeed some women, as well as men, join the fighting out of despair, these motivations should not be taken as gender-fixed. Therefore, in this paper I will argue in favour of recognising Black

⁴ Mia Bloom, "Female Suicide Bombers: A Global Trend," *Daedalus*, vol. 136:1 (2007): 94.

⁵ Clara Beyler, "Messengers of Death – Female Suicide Bombers," International Institute for Counter-Terrorism, February 12, 2003, <http://ict.org.il/apage/printv/10728.php> (accessed September 25, 2007).

⁶ For an excellent discussion of this issue see Jessica West, "Feminist IR and the Case of the 'Black Widows': Reproducing Gendered Divisions," *Innovations: A Journal of Politics*, vol. 5 (2005).

⁷ Lucy Frazier, "Abandon Weeping for Weapons: Palestinian Female Suicide Bombers," New York University, August 6, 2002, <http://www.nyu.edu/classes/keefer/joe/frazier.html> (accessed October 3, 2007).

⁸ Cynthia Enloe, *Globalisation and Militarisation: Feminists Make the Link* (New York: Rowman & Littlefield Publishers, Inc., 2007), 17, original emphasis.

Widows as agents, not as mere followers. Women can be victims, just like men, but they can be perpetrators equally successfully, and viewing them as simply an instrument is an underestimation of their role as active participants of the war.

Background Information: Chechnya and its Society

The first time the world ever heard about Chechnya, this very small part of a very large state, was during the so-called First Russo-Chechen War of 1994-96.⁹ The conflict began upon the collapse of the Soviet Union when Chechnya declared its independence from Russia in 1991, and soon escalated into a full-scale war, followed by the Second Chechen War in 1999-2000. However, the Chechens have been fighting against Russian oppression ever since the Tsarist Empire entered the Caucasus region in the late eighteenth century and have long established an image “of a ‘bone’ that has been lodged in the ‘Kremlin’s throat’”.¹⁰

The culture and lifestyle of the indigenous peoples of the Caucasus are quite distinct from that of Russia.¹¹ The Chechen society, in particular, has traditionally been organised around the “tribal allegiances (*teipy*) stemming from a commonality of clan and territory”.¹² *Teipy* was a closed circle where groups of people were connected based on a strictly defined patriarchal structure. The “images of the male folk-hero”¹³ were inseparable from the *teipy* culture and their history was mostly “built around tales of bravery” of their men.¹⁴ Marriages within *teipy* were strictly prohibited and in an “elaborate intertribal marital system” female bodies were largely “commoditised as objects of political exchange”.¹⁵ In other words, women were actively used for economic and/or political “*interchange*” between different tribes. Later, during the 75-year Soviet rule, the *teipy* structure of the Chechen society would be undermined but its traditions and the “Muslim customary law, or *adat*” would continue to have a significant presence in Chechnya up until the present time, especially in rural parts of the country where the majority of the population resides.¹⁶ The tradition of “stealing” a woman to make her one’s wife, or the practice

⁹ Chechnya is one of 21 autonomous republics within the Russian Federation. It occupies about 5,800 of Russia’s entire 17,075,200 square kilometre territory. According to the 1989 Soviet census, Chechnya’s population consisted of only 1,084,000 people out of Russia’s 148.3 million population. Among these, ethnic Chechens composed only 715,000 people. For more on this, see Robert Seely, *Russo-Chechen Conflict, 1800-2000: A Deadly Embrace* (London: Frank Cass, 2001), 8.

¹⁰ Weir (2004) cited in Francine Banner, “Uncivil Wars: ‘Suicide Bomber Identity’ as a Product of Russo-Chechen Conflict,” *Religion, State & Society*, vol. 34:3 (2006): 220.

¹¹ Chechnya is a predominantly Sunni Muslim region within a largely Orthodox Russian state and it has its own language which belongs to the Vainakh sub-branch of the North-East Caucasian branch of the Caucasian language family. For more, see Robert Seely, *Russo-Chechen Conflict, 1800-2000: A Deadly Embrace* (London: Frank Cass, 2001), 6.

¹² Francine Banner, “Uncivil Wars: ‘Suicide Bomber Identity’ as a Product of Russo-Chechen Conflict,” *Religion, State & Society*, vol. 34:3 (2006): 220.

¹³ Farhana Ali, “Muslim Female Fighters: An Emerging Trend,” *Terrorism Monitor*, vol. 3:21 (2005).

¹⁴ Robert Seely, *Russo-Chechen Conflict, 1800-2000: A Deadly Embrace* (London: Frank Cass, 2001), 9.

¹⁵ Francine Banner, “Uncivil Wars: ‘Suicide Bomber Identity’ as a Product of Russo-Chechen Conflict,” *Religion, State & Society*, vol. 34:3 (2006): 231.

¹⁶ *Ibid.*, 220.

of polygamy in defence of the declining demographic situation, can serve as examples of the unchanged nature of some of the traditional *teipy* lifestyle.¹⁷

It is important to note that even during Soviet rule, women continued to be exploited, but in different ways. In the USSR, regions with high birth-rates were rewarded with more employment opportunities and additional economic benefits; thus, women systematically served “as objects of economic gain”.¹⁸ Childbirth remained high even during the thirteen-year deportation period.¹⁹ However, many believe that this was Chechnya’s deliberate nationalist policy aimed against the attempted ethnocide, and that women’s bodies were engaged in enhancing the share of ethnic Chechens. In this way, women were also offering “countless generations of sons” to the fight against Soviet and later Russian rule.²⁰

Looking at the above social structure of the Chechen society and the role women played in this hybrid of tribal, Muslim, and Soviet traditions is extremely important in assessing their involvement in the Russian-Chechen conflict. More than anything else, women were perceived as objects of political and economic gain, their bodies constantly engaged in intertribal exchanges in the *teipy* system or for maintaining high birth-rates during the Soviet Union. Women’s place in society was strictly defined and limited to that of the domestic sphere and they were totally excluded from any participation in the public sphere. Therefore, it seems even more astounding that a society as highly patriarchal as Chechnya, would allow the formation of a female suicide bomber identity, that women would abandon their ultimate goal – to give life and nurture and would directly involve in probably the most masculine activity – war (and suicide bombing). In the section that follows, I examine some of the possible motivations for these women to join the fight, and myths and realities surrounding them.

Female Suicide Bombers: Myths and Realities

As Myers argues, the motivations and “the circumstances that bring women to suicidal attacks are not so simple”.²¹ This has been a hotly debated topic for many years now. Why women fight, or more importantly, why women turn to such extreme means of violence as suicide attacks has indeed raised much interest, especially taking into account the extremely patriarchal nature of the societies from which most of these women (if not all) come.

¹⁷ Francine Banner, “Uncivil Wars: ‘Suicide Bomber Identity’ as a Product of Russo-Chechen Conflict,” *Religion, State & Society*, vol. 34:3 (2006): 231.

¹⁸ *Ibid.*

¹⁹ Before the 1990s, the single most significant part of the Chechen collective memory was the deportation of 1944, when Stalin ordered to send its entire population in exile to Central Asia. This incident will later play a crucial role and over the decades will form the basis of the construction of a totally new Chechen identity of resistance. See Thomas Goltz, “Chechnya,” Conversation with History series, Institute of International Studies, University of California Berkeley, November 17, 2003, <http://globetrotter.berkeley.edu/people3/Goltz/goltz-con0.html> (accessed October 14, 2007).

²⁰ There can be some parallels made here with women’s bodies’ “reproductive”, indirect engagement in this conflict, in terms of offering “sons” to the fight on the one hand and on the other hand, using their bodies as time-bombs, when they directly get involved in destroying the enemy. For an extensive discussion on how women’s bodies have been perceived in Chechnya, see Francine Banner, “Uncivil Wars: ‘Suicide Bomber Identity’ as a Product of Russo-Chechen Conflict,” *Religion, State & Society*, vol. 34:3 (2006): 240-241.

²¹ Steven Lee Myers, “From Dismal Chechnya, Women Turn to Bombs,” *New York Times*, September 10, 2004.

Each case has its peculiarities but most analysts agree that the participation of females in suicide attacks indicates radicalisation of a particular conflict. But why is this so, one may ask? Why does it not surprise us at all if men take up arms or commit extraordinary acts of violence but when it comes to women we seem to be blown away even by the idea itself? Essentialist approaches would suggest that the answer lies in “primordial explanations”.²² Across centuries and cultures, women have been traditionally “celebrated chiefly for their ability to give and nurture life, not their ability to take it away” and even today, we tend to perceive men as by nature inclined to aggression whereas women are often, if not always, referred to as intrinsically “the better half of humanity”.²³

However, critics of this essentialist point of view argue that there is nothing “essential” about “peace loving” women and “war-prone” men. If anything else, the female suicide bombers have exploded the myth “that women are inherently more disposed toward moderation, compromise, and tolerance”.²⁴ Rather, it is the social construction of a female victim identity through everyday discourse in media, politics, and social life that is largely responsible for the continuous creation and re-creation of the so-called essentialist gender stereotypes that form the image of a “weak” woman, victimised by a “strong” man. Indeed, in the absolute majority of the cases, the portrayal of the Chechen female fighters by the media, as well as academia, is that of a victim. Even the term “Black Widows”,²⁵ coined by the Russian media, suggests that the main reason or the cause behind the fight of these females is their family bereavement, a personal tragedy; that the women who decide on a suicidal attack are mostly widows whose husbands, fathers, and/or brothers have been killed in this brutal war.

As West points out correctly, the role of mass media is especially important here due to its mythmaking capacity.²⁶ Even when discussing something as horrifying as a suicide attack, the coverage of an event will vary drastically based on a gender of an attacker. It is estimated that “attacks by women receive eight times the media coverage as attacks by men”.²⁷ Women suicide bombers are often sympathised and viewed just like the actual victims of their suicide attack. Therefore, the portrait we see on the screens of the TV or in the printed press is almost always identical: women without a choice, “acting out of their personal, private turmoil”.²⁸

Russians represent them as victims of Chechen terrorists, brainwashed, drugged and/or physically abused. On the contrary, Chechens expose them as rape-victims in the hands of the

²² Cynthia Cockburn, *The Space Between Us: Negotiating Gender and National Identities in Conflict* (London, New York: Zed Books, 1998), 13.

²³ Cindy D. Ness, “The Rise in Female Violence,” *Daedalus*, vol. 136:1 (2007): 84-85.

²⁴ Mia Bloom, “Female Suicide Bombers: A Global Trend,” *Daedalus*, vol. 136:1 (2007): 95.

²⁵ Referring to *Shakhidki* – Russian version of the Arabic word, meaning warriors who sacrifice their lives for the holy war *jihad* and become martyrs. See Steven Lee Myers, “From Dismal Chechnya, Women Turn to Bombs,” *New York Times*, September 10, 2004. Attacks by female suicide bombers are also known as the *Mujahidaat*. See Farhana Ali, “Muslim Female Fighters: An Emerging Trend,” *Terrorism Monitor*, vol. 3:21 (2005).

²⁶ Jessica West, “Feminist IR and the Case of the ‘Black Widows’: Reproducing Gendered Divisions,” *Innovations: A Journal of Politics*, vol. 5 (2005).

²⁷ Mia Bloom, “Female Suicide Bombers: A Global Trend,” *Daedalus*, vol. 136:1 (2007): 100.

²⁸ Jessica West, “Feminist IR and the Case of the ‘Black Widows’: Reproducing Gendered Divisions,” *Innovations: A Journal of Politics*, vol. 5 (2005).

Russian soldiers, whose husbands have been tortured and brutally killed by the same Russians.²⁹ The stereotypical gender assumptions that women are intrinsically “gentle, submissive and nonviolent” are so strong, and also produced and reproduced on a daily basis, that even when ready to blow themselves up, women are continued to be viewed as “innocent” and their actions as “utter despair...rather than mere cold-blooded murder of civilians”.³⁰ Even here, on the battlefields, female suicide bombers are not treated as actors and are deprived of an agency. Even while fighting side by side with men they are believed to be suitable only for secondary and subordinate roles.³¹ Seldom would one hear a question, what if these women are ready to commit a suicide bombing not *only* because of a loss of a beloved one but because they indeed seek Chechnya’s independence? Or what if women’s involvement in this conflict is partly due to the very same patriarchal character of their communities and “their intent is to make a statement...in the name of their gender”?³²

I am not denying, by any means, that some of the reasons that drive Chechen women and men in a suicide attack are indeed gender-specific, but there are many others that “are common to both female and male combatants”.³³ Motivations for joining the fight may defer *slightly* across gender (like that of gender equality in a society, for instance) but not *fundamentally*. Do not men fight more or less for the same reasons? Because they lose people they love? I further agree that many women (and men) are forced into violent actions but it would be a rather simplistic approach to argue that these women suicide bombers only follow the orders of men, perceived by many as the only political actors in the conflict.³⁴ The problem is that societies continue to be blinded by the traditional gender dichotomy, seeing women as victims and men as defenders.³⁵ These long prearranged gender attributes are reinforced on daily basis in people’s minds by the mass media as well. In almost every female suicide bombing case, there is an increasing urge to search for some personal story of this or that particular woman which is not always the case when suicide bombings involve men.³⁶

Thus, it can be argued that the Western world, accusing Islam of “the strict gendered demarcation” of a society, is itself caught in viewing the world through the very same lenses.³⁷ Aggression is still considered “the province of men” and as Ward argues, “violent women [are]

²⁹ Annika Frantzell, “The Radicalisation of Chechnya: A Case Study of the Spread of Radical Islam in Chechnya,” (Lunds Universitet, 2006, unpublished).

³⁰ Clara Beyler, “Messengers of Death – Female Suicide Bombers”, International Institute for Counter-Terrorism, February 12, 2003, <http://ict.org.il/apage/printv/10728.php> (accessed September 25, 2007).

³¹ Jessica West, “Feminist IR and the Case of the ‘Black Widows’: Reproducing Gendered Divisions,” *Innovations: A Journal of Politics*, vol. 5 (2005).

³² Clara Beyler, “Messengers of Death – Female Suicide Bombers”, International Institute for Counter-Terrorism, February 12, 2003, <http://ict.org.il/apage/printv/10728.php> (accessed September 25, 2007).

³³ Miranda Alison, “Cogs in the Wheel? Women in the Liberation Tigers of Tamil Eelam,” *Civil Wars*, vol. 6:4 (2003): 39.

³⁴ Cindy D.Ness, “The Rise in Female Violence,” *Daedalus*, vol. 136:1 (2007): 85.

³⁵ Dorit Naaman, “Brides of Palestine/Angels of Death: Media, Gender, and Performance in the Case of the Palestinian Female Suicide Bombers,” *Signs: Journal of Women in Culture and Society*, vol. 32:4 (2007): 935.

³⁶ See for example, Steven Lee Myers, “From Dismal Chechnya, Women Turn to Bombs,” *New York Times*, September 10, 2004 and Anne Nivat, “The Black Widows: Chechen Women Join the Fight for Independence – and Allah,” *Studies in Conflict and Terrorism*, vol. 28 (2005): 413-419.

³⁷ Cindy D.Ness, “The Rise in Female Violence,” *Daedalus*, vol. 136:1 (2007): 90.

considered mentally unbalanced and possessed by unimaginable evil”.³⁸ Dr. Marc Sageman correctly points out that the West has a misconception about the women perpetrating acts of violence and “rather than challenging...prejudices of women”, they are portraying them as second-class citizens.³⁹

This myth of the non-existence of female actors during wartime is distorting our understanding of violence in general and the complexities accompanying it. 19 out of 41 captors at the *Nord-Ost*⁴⁰ were women; it is believed that there were at least four females involved in the Beslan elementary school tragedy⁴¹ as well and many others ready to detonate the bombs in Moscow’s metro stations, busy streets or on airplanes, killing tens or even hundreds.⁴² Who are these women then if not actors in this brutal war?

Nonetheless, we continue to view political violence as “an overwhelmingly male arena” and see any female participation in it as an anomaly.⁴³ Societies, media, politicians, academia, even some of the feminist literature, are all actively engaged in the creation of a victimised, “passive” woman identity.⁴⁴ However, this “superficial coating” of stereotypical gender assumptions and the myth of victimisation of female fighters, does not stop the violence, it does not prevent women from getting raped, rather, it reinforces our already existent and widespread gender narrow-mindedness and makes these women even more vulnerable.

Conclusion

Mahatma Ghandi believed that due to their natural gifts of “service and sacrifice”, women, not men, “were best suited to awaken the conscious of the world” and serve as mediators in peace processes.⁴⁵ However, an unprecedented increase in the number of female fighters in different rebel groups as well as the emergence of a female suicide bomber identity in the past three decades has delivered an astounding “blow to the self-sacrificial and pacifistic trope that has widely characterised female behaviour for centuries”.⁴⁶

In the first part of this paper I have described a complex structure of the Chechen society combining traditional *teipy* customs and Islamic *adats*, intermingled with Soviet and Russian cultural influences. By doing so, I have tried to demonstrate the patriarchal nature of the

³⁸ Cited in Dorit Naaman, “Brides of Palestine/Angels of Death: Media, Gender, and Performance in the Case of the Palestinian Female Suicide Bombers,” *Signs: Journal of Women in Culture and Society*, vol. 32:4 (2007): 937.

³⁹ Cited in Farhana Ali, “Muslim Female Fighters: An Emerging Trend,” *Terrorism Monitor*, vol. 3:21 (2005).

⁴⁰ Nord-Ost siege was the seizure of a crowded Moscow theatre (Nord-Ost musical theatre) on October 23, 2002 by armed Chechen terrorists who claimed allegiance to the separatist movement in Chechnya.

⁴¹ The Beslan elementary school tragedy was a taking of more than 1,100 hostages by armed Chechen terrorists on September 1, 2004, at School Number One in the town of Beslan in the North Caucasus region of Russia, which resulted in the death of more than 300 hostages.

⁴² Steven Lee Myers, “From Dismal Chechnya, Women Turn to Bombs,” *New York Times*, September 10, 2004.

⁴³ Cindy D. Ness, “The Rise in Female Violence,” *Daedalus*, vol. 136:1 (2007): 87.

⁴⁴ See, for instance, Rosalind Marsh, “Women in Contemporary Russia and the Former Soviet Union,” in *Women, Ethnicity and Nationalism: The Politics of Transition*, eds. Rick Wilford and Robert L. Miller (London & New York: Routledge, 1998).

⁴⁵ Cited in Cindy D. Ness, “The Rise in Female Violence,” *Daedalus*, vol. 136:1 (2007): 85.

⁴⁶ *Ibid.*, 86.

Chechen society, where public and private spheres have been highly demarcated across the gender lines and women have long been viewed (and used) as means of “symbolic exchange”. However, even in such a highly hierarchical and patriarchal society, it was still possible to form a female suicide bomber identity. In the second part of the paper I have explained how our beliefs that women are essentially peaceful and men are naturally inclined to violence encourage us to construct and reproduce ideas about what is right for a woman and what is right for a man. This social construction of gender differences also blurs the line between myths and realities about female suicide bombers in Chechnya or elsewhere.

As argued by many, the emergence of a suicide bomber identity in this region, male or female, may indeed indicate the radicalisation of this conflict. However, to claim that women are willing to die and take the lives of many others because of their blind obedience to the men at the top of the Chechen military echelons, is a mistaken oversimplification of complex gender relations in this part of the world. Nonetheless, the media attention to a female suicide bomber continues to be biased. She “is often portrayed in a sympathetic light to explain – perhaps explain away – her behaviour”,⁴⁷ ascribing her actions to what Nordstrom calls “irrational emotionalism”.⁴⁸ Such an approach, I argue, is a mistake. Black Widows are not fighting *only* for revenge or a personal tragedy. Moreover, by their participation, they have indirectly (and maybe to some extent even unintentionally) challenged “symbolic gender boundaries...transgressing the deeply gendered public-private divide” in Chechnya.⁴⁹

However, by saying so, I by no means attempt to justify these or any other acts of violence. As Ness warns, this “changing relationship of females to violence should not...be construed as indicative of progress toward gender equality”.⁵⁰ One thing that violence does not bring along is gender equality and justice. What I have tried to show instead is that academia as well as media and political circles should be more careful in labelling Black Widows as mere victims. They are victims of war, but in a broader sense, like everyone else in the Chechen society. Our deeply-rooted beliefs regarding in-born characteristics of one’s gender identity should be challenged and each and every one of us should be aware how we ourselves are socially constructing (or re-enforcing) these identities through fixed stereotypes of seeing a woman as a victim and a man as a fighter. This is important in order to further prevent inequality between the two genders.

⁴⁷ Stack-O’Connor, “Lions, Tigers, and Freedom Birds: How and Why the Liberation Tigers of Tamil Eelam Employs Women,” *Terrorism and Political Violence*, vol. 19 (2007): 54.

⁴⁸ Carolyn Nordstrom, “(Gendered) War,” *Religion, State & Society*, vol. 28 (2005): 410.

⁴⁹ Nickie Charles and Helen Hintjens, “Gender, Ethnicity and Cultural Identity: Women’s ‘Places’,” in *Gender, Ethnicity and Political Ideologies*, eds. Nickie Charles and Helen Hintjens (London & New York: Routledge, 1998), 6.

⁵⁰ Cindy D.Ness, “The Rise in Female Violence,” *Daedalus*, vol. 136:1 (2007): 86.

DUTCH DISEASE IN UZBEKISTAN?

A COMPUTABLE GENERAL EQUILIBRIUM MODEL OF EFFECTS OF FOREIGN INVESTMENT INTO UZBEKISTAN'S GAS SECTOR

Michael P. Barry*

Abstract

Uzbek lawmakers have been working hard to attract foreign investors into exploration and production in Uzbekistan. This paper will describe these laws and use a computable general equilibrium (CGE) model to analyze their macroeconomic effects on Uzbekistan and beyond. This analysis does not attempt to quantify the causal relationship between Uzbek laws and the amount of investment. Instead, the focus of the paper is closer to the following questions: successful or not, is the Uzbek campaign to attract foreign investment a good idea at all? Who wins and who loses? Results of the model suggest that Uzbekistan would be better off overall from foreign investment in its natural gas sector, due mostly to improvements in overall production efficiency and terms of trade. However, the gain in the natural gas sector would come at the expense of production and net exports of non-petroleum related industries.

Keywords: *Central Asia, Uzbekistan, natural gas, CGE Model, computable general equilibrium, Dutch Disease, PSA, production sharing agreement*

Executive Summary

- The Uzbek government has been hoping to attract \$400 million of foreign investment through production-sharing agreements (PSAs). Success under PSA laws has been limited because foreign companies perceive the PSA terms as less attractive than those offered in other parts of Central Asia and Russia.
- CGE Model results suggest that Uzbekistan would be better off overall from foreign investment in its natural gas sector, due mostly to improvements in overall production efficiency and terms of trade. However, the gain in the natural gas sector would come at the expense of production and net exports of non-petroleum related industries—manufacturing, agriculture, minerals and metals, textiles and apparel, and other sectors.

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- Changes in trade balances by sector provide evidence of possible Dutch Disease in Central Asia. Increased Central Asian exports of natural gas and oil appear to come at the expense of decreased exports in every other sector. While Central Asia's natural gas exports increase by almost a half billion dollars (\$488 million), manufacturing exports fall \$229.6 billion, metals and minerals exports fall by \$126.2 million, and food exports fall by \$75 million.
- The results of this experiment suggest Uzbekistan (and any Central Asian state) should take a balanced approach to development. While increased oil and gas output would definitely increase the welfare of Uzbek citizens, the picture is not completely rosy. A unilateral focus on laws and policies designed to boost foreign investment in natural gas would come at a significant cost of decreased production and net exports of Uzbekistan's other industries.
- Uzbekistan earns a significant share of its export earnings in the cotton sector. As the "cotton producer of the former Soviet Union," Uzbekistan has considerable economic power in its cotton industries. Foreign investment in oil and gas is desirable, but given the results of this model, Uzbek lawmakers should also support growth in its existing sectors. This story is magnified in manufacturing, food, and textiles and apparel.

Introduction

Uzbekistan has approximately 600 million barrels of proven oil reserves, while its probable gas reserves are approximately 5.1–6.25 trillion cubic meters with commercial reserves of about 1.62 trillion cubic meters. Uzbekistan is the world's 10th largest natural gas producer, with commercial gas reserves double those located in Britain. Further, Uzbek national holding company Uzbekneftegaz claims the country has developed less than 23% of its gas resources.

As a country with limited capital, Uzbekistan has turned to foreign investors to explore and develop its gas resources. This has required significant legislation and adjustment of Uzbek investment law. While the results have not measured up to Uzbekistan's optimistic predictions, several PSA agreements have been signed, and more seem to be on the way. A major question comes at the intersection of law and economics: what will increased foreign investment do the Uzbek economy? Is it all good news? Or are there macroeconomic costs to development of the gas sector?

In three parts, this paper will explore that question. Part I will discuss the energy infrastructure of Uzbekistan and the legal reform program designed to bring foreign investment to the country in order to develop the gas sector. Part II will briefly summarize the results of these reforms—a list of various PSA and other agreements with foreign investors in Uzbekistan. Finally, Part III will ask whether these efforts are a net gain for the Uzbek economy or a loss. Using a computable general equilibrium model, Part III will quantify the effects of foreign investment into Uzbekistan's natural gas industry. The results will show that Uzbekistan is a net winner, but there are losers within the country and in other parts of the world.

Part I: Uzbekistan Energy: Infrastructure and Legal Reform

A. *Uzbek Energy Infrastructure*

Uzbekistan has a lot of oil and a lot of natural gas. The country is about the size of the state of California, and has a population of 24.8 million.¹ Uzbekistan is a landlocked country bordered by Kazakhstan to the north and west, Kyrgyzstan and Tajikistan to the east, and Afghanistan and Turkmenistan to the south.² Uzbekistan has so far identified 187 hydrocarbon fields, including 91 gas and gas condensate fields and 96 oil and gas, oil condensate and oil fields. The country is developing 88 of these fields; 58 fields are ready for development; nine are “held in reserve”, and 17 are in “geological exploration”.³

Uzbekistan has two older refineries at Fergana and Alty-Arik, and a newer one at Bukhara—all with a total refining capacity of 11.1 million tons per year.⁴ Uzbekistan’s natural gas has a high sulfur content which requires significant processing. The majority of Uzbekistan’s gas is produced at the Mubarek processing plant, which has a capacity of approximately 28.3 million BCM per year.⁵ A relatively new Shurtan Gas-Chemical Complex was completed at the cost of about \$1 billion, and the Kodzhaabad underground gas storage facility was completed in 1999 at the cost of \$72 million.⁶

Uzbekneftegaz is the state-owned company that may sign oil and gas exploration and production contracts, independently perform petroleum operations in certain areas, act as a participant in joint ventures, and supervise petroleum operations.⁷ Uzbekneftegaz is a holding company which is regulated under Presidential Decree No. UP-2154⁸ and COM Resolution No. 523.⁹ Uzbekneftegaz controls downstream and related activities in the energy sector, including: (1) Uznedobycha (oil extraction); (2) Uzneftegaz Pererabotka (oil and gas processing); (3) Uztransgaz (gas and oil transportation and pipelines); and (4) Uzneshneftegaz (foreign economic relations).¹⁰

In addition to its role as the nominated state co-venturer in exploration and production ventures with foreign investors, Uzbekneftegaz has also now been designated as the “Competent Body” to

¹U.S. Department of State. “Background Note: Uzbekistan,” U.S. Department of State, <http://www.state.gov/r/pa/ei/bgn/2924.htm> (accessed May 9, 2008).

²U.S. Department of Energy, Energy Information Agency, “Central Asia; Country Analysis Brief,” U.S. Department of Energy, <http://www.eia.doe.gov/> (accessed May 9, 2008).

³*Interfax*, “Uzbekistan Hopes to Be Key Gas Exporter,” October 15, 2004.

⁴World Bank, *Uzbekistan Energy Sector: Issues, Analysis, and an Agenda for Reform*, Infrastructure and Energy Services Department, Europe and Central Asia Region, (Washington: World Bank), June 2003.

⁵U.S. Department of Energy, Energy Information Agency, “Central Asia; Country Analysis Brief,” U.S. Department of Energy, <http://www.eia.doe.gov/> (accessed May 9, 2008).

⁶World Bank, *Uzbekistan Energy Sector: Issues, Analysis, and an Agenda for Reform*, Infrastructure and Energy Services Department, Europe and Central Asia Region, (Washington: World Bank), June 2003.

⁷U.S. Department of Energy, Energy Information Agency, “Central Asia; Country Analysis Brief,” U.S. Department of Energy, <http://www.eia.doe.gov/> (accessed May 9, 2008).

⁸Republic of Uzbekistan, “Presidential Decree No. UP-2154,” (issued December 11, 1998).

⁹Republic of Uzbekistan, Cabinet of Ministers resolution No. 523 (issued December 15, 1998).

¹⁰ See Uzbekneftegaz National Holding Company website, <http://www.uzneftegaz.uz>.

regulate the oil and gas industry.¹¹ Such a dual role as both a producer and regulator might be considered by foreign investors as a conflict of interest. Uzbekneftegaz was founded by the decree of the President of Uzbekistan on December 11, 1998.¹² The holding company was created out of nine companies in 1998 to unite the country's entire petroleum sector and is now a mammoth state run concern.¹³

B. General Legal Framework for Energy Investment in Uzbekistan

Articles 3-4 and 7 of the Uzbekistan “Subsoil Law” grant authority over the subsoil (including its natural resources) to: (1) President; (2) Cabinet of Ministers (the “COM”); (3) Local authorities; and (4) Specially designated state agencies.¹⁴ In addition to these powers, Article 4 of the “Law On Natural Monopolies” also gives the power of regulatory oversight for natural monopolies to the state. These regulated activities include: (i) the extraction of oil, gas condensate, natural gas, and coal, and (ii) oil, petroleum products, and gas transportation by pipeline.¹⁵

As is common in former Soviet republics, the Uzbekistan Constitution vests ownership of the subsoil in the state.¹⁶ The Law on the Subsoil of September 23, 1994 and its amendments set out Uzbekistan's framework of statutes governing the exploration and development of all subsoil resources—including hydrocarbons and other minerals. The “Subsoil Law” covers state licensing and control, rights and obligations, basic rational use rules, and other issues. It does not specify any particular form of contract favored or allowed for resource.¹⁷ There is also a new “Law on Licensing of Certain Activities” of May 25, 2000 (the “Licensing Law”),¹⁸ and the older, pre-existing Cabinet of Ministers Decree No. 215 On Licensing of Business Activities of April 14, 1994, as amended (the “Licensing Decree”).¹⁹

Approved licenses are the basis for oil and gas exploration and development in Uzbekistan. The Subsoil Law requires that a license be issued to any physical or legal persons, domestic or foreign. Specifically, under the Subsoil Law Articles 10 through 14 and the Licensing Decree, a license is required only for mineral extraction.²⁰ However, it is understood that licenses may be granted for exploration, production, or combined exploration and production.²¹

¹¹ Republic of Uzbekistan, “The Law on Subsoil, Article 7,” (issued September 23, 1994).

¹² Republic of Uzbekistan, “Presidential Decree No. UP-2154,” (issued December 11, 1998). Also see Republic of Uzbekistan, “Presidential Decree No. UP-523,” (issued December 15, 1998).

¹³ *APS Review Gas Market Trends*, “Uzbekistan Privatization,” vol. 63:15, October 11, 2004.

¹⁴ Republic of Uzbekistan, “The Law on Subsoil: Articles 3-4, 7” (September 23, 1994).

¹⁵ Republic of Uzbekistan, “Law No. 398-I: On Natural Monopolies,” (adopted April 24, 1997).

¹⁶ Republic of Uzbekistan, “The Law on Subsoil,” (September 23, 1994).

¹⁷ *Id.*

¹⁸ Republic of Uzbekistan, “Law No 71-II: On Licensing Of Specific Kinds Of Activity,” (issued June 15, 2000).

¹⁹ Republic of Uzbekistan, “Cabinet of Ministers Resolution No. 215: On Licensing Of Business Activities approving the Regulation On The Procedure For Issuing To Enterprises (Organizations) Special Permissions (Licenses) For The Right To Engage In Certain Types Of Activity,” (issued April 19, 1994).

²⁰ Republic of Uzbekistan, “The Law on Subsoil,” Articles 10-14, (issued September 23, 1994).

²¹ Jonathan Hines and Eric Sievers, “Legal Regime For Hydrocarbon Development in Uzbekistan,” *The Journal of The Centre for Energy, Petroleum and Mineral Law and Policy*, (August 11, 2001): 14-21.

Another important rule is Uzbekistan's right to terminate a license. Comparably in Russia, where the state has authorized exploration under both a production sharing agreement regime and a subsoil licensing regime, the Russian state reserves the right to terminate, suspend, or limit an investor's utilization of an approved license.²²

In Uzbekistan, the Subsoil Law (Art. 19) provides many excuses for the Uzbek authorities to terminate a license, including: (1) a finding of the user's violation of "the basic terms of the license"; (2) non-fulfillment of the Subsoil Law conditions for exploration, development, and workplace safety; (3) "necessity of confiscation of subsoil plots for other state or public needs"; (4) threat to human life or health or to the environment; (5) failure to commence work within a year of initial licensing; and (6) "systematic" non-payment of resource use payments (which are established under Art. 22).²³

If a dispute should arise regarding a license, Uzbek law provides that "in matters of use and protection of the subsoil shall be determined in court in the manner established by law."²⁴ This provision may sound a little vague to foreign investors, though other provisions of Uzbek law attempt to give priority to international law and treaties in the choice of jurisdiction for disputes. Several documents mention such priority, including: (1) Subsoil Law Article 5;²⁵ (2) provisions of the 1998 Investment Laws affording foreign investors the right to resolve disputes in international arbitration;²⁶ and (3) Uzbekistan's obligations under the Energy Charter Treaty.²⁷ Additionally, the Uzbek "Law on Concessions" mentions the right to international arbitration.²⁸

C. Background to a Production Sharing Agreement Law in Uzbekistan

Beginning in 1998 the Government of Uzbekistan conducted a program to attract foreign investors to develop oil and gas deposits in the territory of Ustyurt Plateau in the Southwest of Uzbekistan, which, according to preliminary estimates, contains 4 billion tons of oil.²⁹

On April 28, 2000 the Uzbekistan Government adopted the "Oil And Gas Investments Decree" as part of an organized plan to attract more FDI into the Uzbek oil and gas sector. The Oil And Gas Investments Decree was introduced at a press conference on May 4, 2000 and was a main attraction at a major oil and gas convention held in Tashkent on May 17-18, 2000.³⁰ The Oil and Gas Investments Decree contains several provisions of significant interest to foreign investors. First, companies which conduct exploratory work in the Ustyurt region (and possibly others) may

²² The Russian Federation, "Law No. 2395-1 on Underground Resources," (issued December 1992).

²³ Republic of Uzbekistan, "The Law on Subsoil," Article 19, (issued September 23, 1994).

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Republic of Uzbekistan, "Foreign Investment Law No. 609-I: On Foreign Investments," (issued April 30, 1998). Also see Republic of Uzbekistan, "Investment Guarantees Law: On Guarantees And Measures For Protection Of Foreign Investors' Rights," (issued April 30, 1998).

²⁷ Republic of Uzbekistan, "The Law on Subsoil," Article 26, (issued September 23, 1994).

²⁸ Republic of Uzbekistan, "Law on Concessions," Article 24 (issued August 30, 1995).

²⁹ V. Saparov and A. Frolov, "Evolution and Developments of Oil and Gas Legislation in Uzbekistan," *Russian/CIS Energy and Mining Law Journal*, (January 2003): 33-34.

³⁰ Republic of Uzbekistan, "Presidential Decree (unnumbered): On Measures To Attract Direct Foreign Investments Into Oil And Gas Extraction," (issued April 28, 2000).

be granted newly discovered oil and gas deposits for a period of up to 25 years with a “right to prolong the development period.”³¹

Oil and gas deposits may be granted to companies engaged in prospecting and exploration work “on a concession basis.” In addition, such companies are to benefit from an investment regime which includes a number of rights, including: (1) the exclusive right to prospect and explore various territories with a right to further develop any deposits found in these territories, either through a joint venture or through a concession; (2) a preemptive right to acquire new territory for further prospecting and exploration if no valuable industrial resources have been found there; (3) a right of ownership and a right to freely export extracted hydrocarbons and their products processed on a tolling basis, as set out in the foundation documents of a joint venture or a concession agreement; and (4) a guarantee that actual expenses arising from prospecting and exploration will be reimbursed in the event that deposits “of industrial interest” are discovered and then transferred to Uzbekneftegaz for future development.³²

Foreign companies engaged in prospecting and exploring oil and gas deposits in Uzbekistan (along with their contractors and subcontractors) are exempted from “all types of taxes, deductions, and payments” in force in Uzbekistan during the period of prospecting and exploration, as well as customs duties (except for those for payment of customs formalization) when importing equipment, material, and technical resources and services needed to conduct prospecting, exploring, and related activities.³³

On May 25, 2000 the Oliy Majlis (Parliament) of the Republic of the Uzbekistan adopted the Law “On Licensing Of Specific Kinds Of Activity” (“Licensing Law” published on June 15, 2000). The Licensing Law is effective from September 1, 2000 and provides the general legal framework for licensing.³⁴

D. The Uzbek PSA Law

With all the positive influences on the oil and gas sector provided by Decree UP-2598, its effect on further development of contractual relationships in the sector was limited. This led to enactment of a full-fledged PSA Act at the end 2001. On December 7, 2001 Oliy Majlis (Parliament) of the Republic of Uzbekistan adopted Resolution No. 312-II On Enactment of the Act “On Product Sharing Agreements” (“PSA Act”).³⁵

A key concept of a PSA (according to the PSA Act itself) is that the Uzbek state grants to a foreign investor for a certain period of time exclusive rights to search for, explore deposits and extract minerals in a specified segment of subsoil. In return the investor is obliged to fulfill work

³¹ Republic of Uzbekistan, “Presidential Decree (unnumbered): On Measures,” op. cit.

³² Id.

³³ Id.

³⁴ Republic of Uzbekistan, “Law No 71-II: On Licensing Of Specific Kinds Of Activity,” (issued May 25, 2000).

³⁵ Republic of Uzbekistan, “Law No. 312-II: On Agreements on the Division of Products,” (issued December 7, 2001).

plans determined by the agreement at its own risk and expense, as well as to transfer a share of the extracted product or its monetary equivalent to the State.³⁶

The Uzbek government has been hoping to attract \$400 million of foreign investment through production-sharing agreements (PSAs). Of the 80 fields offered under PSA arrangements, 78 fields are located in 16 exploration blocks. Eight individual fields, with total reserves of some 1.2 billion barrels of oil equivalent, have been opened up for potential foreign participation. Those fields include four in the south-western Gissar Basin and four in the Amu Darya region.³⁷ However, success under PSA laws has been limited because foreign companies perceive the PSA terms as less attractive than those offered in other parts of Central Asia and Russia. Investors readily cite increased political risks in Uzbekistan due to Islamic opposition to President Karimov.³⁸

Such lack of success has serious implications for Uzbekistan. Uzbek government targets in their long-term resource development plans are rarely achieved. Under a program started in the 1990s, the Uzbek government predicted that Uzbekistan's oil production should reach 450,000 b/d by 2001. However, in 2001 the actual production of oil and condensate averaged only about 171,000 b/d.³⁹

E. Provisions of the Uzbek PSA Law

The following are selected provisions of the December 7, 2001 Uzbekistan PSA law:

- Rights to the promising subsoil segments without proven mineral resources shall be granted subject to the conditions of the PSA.⁴⁰ Rights to the subsoil segments with proven mineral resources shall be granted on the PSA basis only in the following instances: (i) the State lacks necessary financial and technical means for exploration; (ii) attraction of special modern technology is necessary; or (iii) it is necessary to decrease the level of technological losses of minerals and prevention of possible negative socio-ecological consequences.⁴¹
- Subsoil segments shall be granted on the basis of the PSA through open tenders. However, in certain instances the PSA can be negotiated directly with the authorized agency.⁴²
- A license for use of subsoil under the PSA shall be issued to the investor according to the procedure established by the Cabinet of Ministers or its authorized body within five working days after conclusion of the agreement.⁴³
- Uzbek citizens should comprise 80% of all workers under the PSA (calculated on an average annual basis).⁴⁴

³⁶ Republic of Uzbekistan, "Law No. 312-II," *op. cit.*

³⁷ *APS Review Gas Market Trends*, "Uzbekistan: Privatization," vol. 63:15, (October 11, 2004).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Republic of Uzbekistan, "Law No. 312-II: On Agreements on the Division of Products," (issued December 7, 2001).

⁴¹ *Id.*, Article 5.

⁴² *Id.*, Article 6.

⁴³ *Id.*, Article 9.

⁴⁴ *Id.*, Article 12.

F. Possible Problems with the Provisions of the Uzbek PSA Law

As Russia found with its PSA Law (and probably most other countries using a PSA regime), the chosen PSA legislation is not immediately perfect. Several provisions of the 2001 Uzbekistan PSA Law have been cited as either problematic or at least candidates for improvement from the prospective of foreign investors. One major problem with the PSA law (at least in investors' eyes) is Article 5, which limits PSA-eligible fields only to those which do not have proven mineral resources. Essentially, this clause keeps the most promising fields under the control of Uzbek officials, while the riskiest fields are left open to foreigners. Because a major portion of Uzbek land has been already surveyed, locations of proven reserves are largely determined already. The attractiveness of the Uzbek PSA scheme is thus severely reduced.

While Article 5 provides one problem, there are others. First, at least one clause of the act appears to reserve *carte blanche* control for the Uzbek authorities in the event of unforeseen developments or disputes. Article 26 of the PSA LAW stipulates that, “the Cabinet of Ministers of the Republic of Uzbekistan or authorized agencies execute state control over implementation of the agreement, including over terms of execution of work by the investor in keeping with the legislation.”⁴⁵

Second, while it is clear that licensing remains crucial in Uzbek oil and gas exploration, the licensing regime remains less than transparent for foreign investors. The PSA Law is incomplete in terms of subsoil licensing. Although the PSA Law provides for issuance of a subsoil use license within five days,⁴⁶ Uzbek legislation that regulates the procedure of issuance of such a license does not exist. Another act, “On Subsoil,” agrees that a license is necessary but fails to completely spell out how to obtain one.⁴⁷

Decree No. UP-2598 is the only legal act that clarifies the State agency that is responsible for issuance of a license. The decree authorizes the National Holding Company Uzbekneftegaz to issue licenses for prospecting, exploration and extraction of minerals in Uzbekistan, although the decree also fails to define the procedure for obtaining a license.⁴⁸

Third, while the PSA regime provides for expense reimbursement for foreign exploration and production, a peculiarity of the 2001 Act seemed to mean a large portion of expenses would not be reimbursed. Under the original 2001 PSA law, expense compensation was limited to one year—a rule that significantly reduced the attractiveness of PSA agreements to foreign investors. In particular, Article 14 of the Act says that that “recoverable expenses should be compensated from the recovery product in the same calendar year that the expenses were accrued.”⁴⁹ The problem with such a rule is that it prevents investing developers from carrying exploration and production

⁴⁵ Republic of Uzbekistan, “Law No. 312-II,” Article 26, *op. cit.*

⁴⁶ *Id.*, Article 9.

⁴⁷ Republic of Uzbekistan, “The Law on Subsoil,” (September 23, 1994).

⁴⁸ V. Saparov and A. Frolov, “Evolution and Developments of Oil and Gas Legislation in Uzbekistan,” *Russian/CIS Energy and Mining Law Journal*, (January 2003), p. 34.

⁴⁹ Republic of Uzbekistan, “Law No. 312-II: On Agreements on the Division of Products,” Article 14, (issued December 7, 2001).

expenses over from one calendar year to the next—which often would lead to no compensation at all for this portion of expenses.⁵⁰ In addition, Article 14 explicitly lists out many inventory expenses for which the PSA Law does not provide compensation to investors.⁵¹

Finally, Saparov and Frolov of Baker and McKenzie point out several other problems with the Uzbek PSA Law, including: (1) the law contains little or no provisions as to the tax treatment of the operator—meaning the operator and the investor might not be applied to the operator; and (2) the PSA law does not spell out regulation of foreign companies' branch offices located inside Uzbekistan—causing further uncertainty in investors' tax liability.⁵²

G. So Many Laws to Follow

Possibly the most significant problem with Uzbek investment law is the uncertainty created by having so many investment laws controlling oil and gas FDI into Uzbekistan. Several of these laws are described below.

First, The Law on Concessions of August 30, 1995 (the "Concession Law") provides the legislative basis for this common contractual form of mineral resource development. This Law has not yet been applied widely in practice. A PSA is normally considered a form of a concession, while the Concession Law (like the Subsoil Law) does not expressly provide for PSAs.⁵³ Second, Presidential Edict No. UP-1652 of November 30, 1996, as amended, "On Additional Incentives and Privileges for Enterprises with Foreign Investments" (the "Foreign Investment Edict") offers reduced tax rates to enterprises that attract substantial amounts of foreign investment.⁵⁴

The Law on Foreign Investments of April 30, 1998, as amended, (the "FIL") and the Law on Guarantees and Measures to Protect the Rights of Foreign Investors, also of April 30, 1998 (the "IGL"—together, the "Investment Laws"), provide some basic guarantees to foreign investors meeting certain threshold requirements.⁵⁵ Finally, the Presidential Edict No. UP-2598 of April 28, 2000 "On Measures to Attract Direct Foreign Investments into Oil and Gas Exploration and Production" (the "Petroleum Investment Edict") hoped to increase foreign investment in Uzbekistan for the exploration of hydrocarbon fields in the Ustyurt and other areas. This law provided a number of valuable concrete rights, preferences, and tax benefits for foreign companies and their joint venture and concession form investments.⁵⁶

⁵⁰ V. Saparov and A. Frolov, "Evolution and Developments of Oil and Gas Legislation in Uzbekistan," *Russian/CIS Energy and Mining Law Journal*, (January 2003), p. 34.

⁵¹ Republic of Uzbekistan, "Law No. 312-II: On Agreements on the Division of Products," Article 14, (issued December 7, 2001).

⁵² V. Saparov and A. Frolov, "Evolution and Developments of Oil and Gas Legislation in Uzbekistan," *Russian/CIS Energy and Mining Law Journal*, (January 2003), p. 34.

⁵³ Republic of Uzbekistan, "Law On Concessions," (issued August 30, 1995).

⁵⁴ Republic of Uzbekistan, "Presidential Decree No. 1652: On Additional Incentives and Privileges Granted To Enterprises With Foreign Investments," (issued November 30, 1996).

⁵⁵ Republic of Uzbekistan, "Law No. 609-I: On Foreign Investments," (issued April 30, 1998).

⁵⁶ Republic of Uzbekistan, "Presidential Decree (unnumbered): On Measures To Attract Direct Foreign Investments Into Oil And Gas Extraction," (issued April 28, 2000).

H. Efforts to Improve the Uzbek PSA Regime

In July of 2003 the government of Uzbekistan decided to create a special state commission to examine feasibility studies of projects to be conducted under PSA, determine the conditions for using subsurface resources by investors, and make decisions on specific agreements. The plan of the Commission was to determine the payments for the use of subsurface resources, terms of taxation, procedures for sharing product, and will handle other matters pertaining to PSA projects. The goal was to improve PSA law.⁵⁷

Later in 2003, formal amendments were made to the PSA Law in the hopes of addressing investor concerns. The October 31, 2003 amendments were hoped to make it possible to attract even the most demanding investors into PSAs in Uzbekistan. Specifically addressing the concern on expense reimbursement, one of the amendments gave investors in-kind compensation for funds spent on field development under a PSA, beginning in the calendar year when commercial production begins. The new version of the PSA law states that spending by an investor not reimbursed in the current calendar year will be reimbursed in subsequent calendar years during the implementation of the project.⁵⁸

I. Uzbek Oil and Gas Privatization

The Uzbek privatization program has run parallel to the development of the PSA regime. On March 9, 2001 Uzbekistan's Government announced a mass privatization in the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "In Respect of Further Measures for Denationalization and Privatization of Enterprises with Participation of Foreign Investors in 2001-2002" (the "2001 Privatization Program"). The 2001 Privatization Program is intended to be carried out in part with the support of funds provided by a World Bank loan.⁵⁹

There have been two previous mass privatization programs in Uzbekistan, the first announced in late 1998 and the second in late 1999. Neither was particularly successful, largely due to continued foreign currency exchange restrictions and the Uzbekistan Government's reluctance to allow foreign investors to obtain control over the most attractive enterprises offered for privatization.⁶⁰ Many of the enterprises listed in the 2001 Privatization Program have been previously subject to privatization, including the seven joint stock companies of Uzbekneftgaz and the Uzbekneftgaz Holding Company. With one exception, as previously, all of the Uzbekneftgaz companies are slated to remain majority controlled by the state.

⁵⁷ *Interfax Petroleum Report*, "Uzbekistan Working to Speed Up PSA Projects," (July 30, 2003): 11-14.

⁵⁸ Republic of Uzbekistan, "Amendments to the PSA Act," (issued October 31, 2003).

⁵⁹ On March 9, 2001, the Uzbekistan Government announced a mass privatization in the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "In Respect of Further Measures for Denationalization and Privatization of Enterprises with Participation of Foreign Investors in 2001-2002".

⁶⁰ Lina Braude, "Information Uzbekistan Natural Resource Law" (working paper, Coudert Brothers LLP, Washington D.C., July 23, 2003).

In the oil and gas sector the Uzbek government has been offering a 49% stake in UzbekNefteGaz (UNG), but until recently, little progress seems to have been made.⁶¹ To improve its chances of a sale, the government is again restructuring UNG to make it more profitable. The government has also been offering to sell its 44% stake of Uzneftegazdobycha (UNG's oil and gas exploration arm), 44% of UzTransGaz (in charge of gas transport and the country's gas pipelines), 39% of UzNeftePereRabotka (oil refining), and 39% of UzBurNefteGaz (a drilling company).⁶²

Part II: Results of Uzbekistan's FDI Campaign

Though Uzbekistan has not yet seen a massive inflow of dollars from the United States or other countries of the West, a number of recent deals suggest that foreign investors do consider Uzbekistan a possible choice for hydrocarbons investment. A few PSA deals have taken place under the new regime, and hopes remain high in Tashkent that this is only the start. This section will briefly outline some of Uzbekistan's limited success in attracting investors through the PSA.

A. 2001 UzPEC Deal

In March of 2001, the National Holding Company "Uzbekneftegaz" signed Uzbekistan's first agreement on product sharing ("PSA") with the British company "UzPEC Limited" to conduct prospecting and exploration of deposits in the territories of Central Ustyurt and Southwest Gissar.⁶³

The Decree of the President No. UP-2598 "On Measures on Attraction of Direct Foreign Investment in Prospecting and Development of Oil and Gas" of April 28, 2000 ("Decree No. UP-2598") served partially as a legal basis for signing the PSA.⁶⁴ Although Decree No. UP-2598 did not actually mention the PSA deal with UzPEC, the wording of the decree made it clear that the legislation was at least partially intended to facilitate the specific deal—especially provisions on granting most favorable regime status to foreign companies indirectly allowed the use of the decree for purposes of drafting the PSA.⁶⁵

There was then a Cabinet of Ministers Decree No. 97 of February 27, 2001, "On Cooperation with UzPEC Ltd. (Great Britain) in Exploration and Production of Hydrocarbons in the Ustyurt and Hissar Areas of the Republic of Uzbekistan (the "UzPEC Decree").⁶⁶ This special legislation gave a particular foreign investor (a subsidiary of Trinity Energy) the special right to continue with exploration and development of certain oil and gas fields under a PSA arrangement. The deal was

⁶¹ APS Review Gas Market Trends, *Uzbekistan: Privatization*, vol. 63:15, (October 11, 2004).

⁶² *Id.*

⁶³ V. Saparov and A. Frolov, "Evolution and Developments of Oil and Gas Legislation in Uzbekistan," *Russian/CIS Energy and Mining Law Journal*, (January 2003), p. 33.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Republic of Uzbekistan, "Cabinet of Ministers Decree No. 97: Approving an Investment by UzPEC Ltd. (a subsidiary of the UK company Trinity Energy), (issued February 27, 2001).

given priority treatment under terms of the Petroleum Investment Edict of April 2000.⁶⁷ While this legislation did not appear to apply to all PSA deal in general, it did seem to give an indication of the Uzbek government's hopes for the future of PSAs.⁶⁸

B. Restructuring and Development of UzPEC

UzPEC itself has been undergoing a restructuring. Yury Shafranik, member of UzPEC's board of directors and the head of Russia's union of oil and gas industrialists announced that "Company capital structure is being rejuvenated and its management in full." He would not reveal the identity of the new shareholders, but reported that "American-English-Russian capital" is now represented in UzPEC."⁶⁹

UzPEC now holds two licenses: a five-year one for prospecting work at Central Ustyurt with three-year extension rights, and a 25-year license with 15-year extension rights to work the gas condensate Adamtash and South Kyzylbairak oil and gas deposits in Southwest Gissar.⁷⁰ In 2003 UzPEC invested approximately \$13 million in Uzbekistan's oil and gas complex, including around \$1 million invested in exploration work in Central Ustyurt. Other funds were used in locating and developing oil and gas deposits in Southwest Gissar. Deposits there produced around 40,000 tons of liquid hydrocarbons in 2003.⁷¹ In December of 2003 there was a well accident at South Kyzylbairak causing from \$10 million to \$20 million in losses. Including expenses in cleaning up after the accident, UzPEC has so far invested around \$40 million in the country's oil and gas complex since 2002.⁷²

C. UzPEC Takeover by Soyuzneftegaz

SoyuzNefteGaz, a Russian company, in July 2004 took control of UzPEC for an undisclosed amount. The takeover creates some uncertainty as to the future of UzPEC development of the fields in Gissar and Ustyurt. Under the PSA signed in May 2001, the company committed to \$420m in investments - with \$200m to be spent during the first five years.⁷³ Other fields being developed by UzPEC include Yuzhny-Kyzylbairak which is rich in oil, and Adamtash which contains over 30 BCM of natural gas and 5m tons of condensate.⁷⁴ Under the PSA with UNG, UzPEC as operator obtained a 70% share of production. It was said in 2001 that the percentage may be increased if new significant hydrocarbon reserves are discovered.⁷⁵

⁶⁷ Republic of Uzbekistan, "Presidential Decree (unnumbered) On Measures To Attract Direct Foreign Investments Into Oil And Gas Extraction," (issued April 28, 2000).

⁶⁸ See also: Republic of Uzbekistan, "Cabinet of Ministers Directive No. 217-F: Approving signature of the UzPEC PSA," (issued April 18, 2001).

⁶⁹ U.S. Department of Commerce, Business Information for the Newly Independent States (BISNIS), "Commercial News Update for Uzbekistan," (June 2007).

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ *APS Review Gas Market Trends*, "Uzbekistan: Privatization," vol. 63:15, (October 11, 2004): 14-22.

⁷⁴ Id.

⁷⁵ Id.

After resolving a dispute, Soyuzneftegaz signed a new 36-year PSA with Uzbekneftegaz in February 2007 and intends to invest \$462 million for development of gas fields in the Ustyurt plateau region and the Southwest Gissar blocks. In February 2008 LUKoil, another Russian energy company, acquired a controlling interest in this PSA and targets 106 Bcf/y (3 Bcm/y) of production.⁷⁶

D. Restructuring of UzbekNefteGaz

According to Interfax, Uzbekistan has completed restructuring Uzbekneftegaz.⁷⁷ Shareholders in Uzbekneftegaz and the joint stock company Uzneftegazstroi, which was previously part of the holding company, decided on a new structure for a unified company with a charter capital of Sum 172.14 billion (approximately \$172 million), in shares with a par value of Sum1,000.⁷⁸ The state plans to hold on to a controlling stake of 51%.⁷⁹ Four of the company's eight former subsidiaries have retained their status: Uznefteprodukt, Uztransgaz, Uzneftegazmash and the newly formed Uzgeoburneftegazdobycha. The latter is being set up based on the drilling company Uzburneftegaz and the exploration and production company Uzgeoneftegazdobycha.⁸⁰

In October of 2003, the Uzbek Cabinet of Ministers decided to restructure Uzbekneftegaz to improve its investment attractiveness so as to attract foreign investors to its privatization. The restructuring scheme was developed with support from a French consultant, an international consortium headed by BNP Paribas. The company is being privatized with support from the International Bank for Reconstruction and Development.⁸¹

E. LUKoil Deal

LUKoil, Russia's second largest oil company, on June 16, 2004, signed with UNG a PSA for the Kandym-Khauzak-Shady complex of fields, under which the two partners will produce natural gas in the Bukhara-Khiva region of south-western Uzbekistan. LUKoil will own 90% and UNG will hold the remaining 10% of an operating company that will develop the area. In return for UNG's agreement to raise LUKoil's stake from 70 to 90%, LUKoil will take on responsibility for all investment, which will amount to about \$1 bn. The share of production will depend on the profitability of the project and will fluctuate "from 50% to 80%, and the PSA will last 35 years."⁸² The deposits are estimated to hold roughly 8 Tcf (250 Bcm) of natural gas. The company hopes to begin producing around 210 Bcf/y (6 bcm/y) beginning in 2011.⁸³

⁷⁶ U.S. Department of Energy, Energy Information Agency, "Central Asia; Country Analysis Brief," U.S. Department of Energy, <http://www.eia.doe.gov/> (accessed May 9, 2008).

⁷⁷ U.S. Department of Commerce, Business Information for the Newly Independent States (BISNIS), "Commercial News Update for Uzbekistan," (June 2007).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *APS Review Gas Market Trends*, "Uzbekistan: The Lukoil Project," (October 11, 2007).

⁸³ Energy Information Administration, Central Asia: Natural Gas, (April 19, 2008).

F. Gazprom Deal

In another deal, LUKoil has agreed to sell to Gazprom the natural gas that it plans to produce in Uzbekistan during the implementation of the Kandym-Khauzak-Shady project under its PSA. During the first stage of the project, Gazprom would buy gas to be resold either on the Russian market or abroad. LUKoil will own 90% and Uzbekneftegaz 10% of an operating company that will deliver the project.⁸⁴

The Uzbek side agreed to increase the LUKoil share from the previously agreed 70% to 90%, as LUKoil will take on responsibility for all investment, which will amount to about \$1 billion. The property contains a proven 283 billion cubic meters (bcm) of gas. Kandym, the biggest of the fields, holds more than 150 bcm. Production will peak at around 9 bcm annually, and the project should yield 207 bcm in all.⁸⁵ Uzbekneftegaz subsidiary UzLITIneftegaz drafted the feasibility study and U.S. law firm Baker & McKenzie the PSA.⁸⁶

Uzbekneftegaz signed a 15-year PSA with Gazprom to develop the Shakhpakhty gas condensate field in the Ust Yurt district of Uzbekistan. Gazprom pledged \$15 million of direct investment between 2004 and 2007. It is anticipated that Uzbekneftegaz will sign a second PSA with Gazprom to develop condensate fields in the Ust Yurt region by the end of 2004. It is thought that the second project will cost around \$1 billion.⁸⁷

In December 2006 Gazprom received exploration licenses from Uzbekneftegaz to develop 7 gas blocks with combined reserves of 35 Tcf (1 Tcm). Gazprom expects to invest \$400 million by 2011 and \$1.5 billion over the contract life. The companies will pump between 480 and 580 Bcf/y (13.6 and 16.4 bcm/y) of gas from the fields.⁸⁸

G. Asian Companies

Asian companies such as Petronas are also part of a consortium including LUKoil, CNPC, and South Korea's KNOC to explore Uzbekistan's sector of the Aral Sea and central Ustyurt plateau. The parties signed a 35-year PSA in late 2006 and estimate reserves at roughly 14 Tcf (0.4 Tcm). In addition, Daewoo International (Korea) signed a contract in 2008 to operate fields in northwestern Uzbekistan for 5 years. China signed an accord with Uzbekneftegaz in May 2007 to participate in a joint gas exploration project in the eastern Namangan province.

⁸⁴ U.S. Department of Energy, Energy Information Agency, "Central Asia; Country Analysis Brief," U.S. Department of Energy, <http://www.eia.doe.gov/> (accessed May 9, 2008).

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id.

Part III: A CGE Model for Gas Investment

A. Background of General Equilibrium Models

Computable General Equilibrium (CGE) modeling specifies all economic relationships in mathematical terms and puts them together in a form that allows the model to predict the change in variables such as prices, output and economic welfare resulting from a change in economic policies. To do this the model requires information about technology (the inputs required to produce a unit of output), policies and consumer preferences. The key of the model is “market clearing,” the condition that says supply should equal demand in every market. The solution, or “equilibrium,” is that set of prices where supply equals demand in every market— goods, factors, foreign exchange, and everything else.⁸⁹

B. The Global Trade Analysis Project (GTAP)

GTAP is a multi-regional CGE model which captures world economic activity in 57 different industries of 66 regions. The underlying equation system of GTAP includes two different kinds of equations. One part covers the accounting relationships which ensure that receipts and expenditures of every agent in the economy are balanced. The other part of the equation system consists of behavioral equations based on microeconomic theory. These equations specify the behavior of optimizing agents in the economy, such as demand functions.⁹⁰ Input-out tables summarize the linkages between all industries and agents.

The mathematical relationships assumed in the GTAP model are simplified, though they adhere to the principle of “many markets.” In short, thousands of markets are “aggregated” into groups. For example, ‘transport and communications services’ appear as a single industry. In principle all the relationships in a model could be estimated from detailed data on the economy over many years. In practice, however, their number and parameterization generally outweigh the data available. In the GTAP model, only the most important relationships have been econometrically estimated. These include the international trade elasticities and the agricultural factor supply and demand elasticities.

C. Structure of this Paper’s Model

The model employed in this paper is that of the GTAP project. While the core database has 57 sectors and 66 regions, I have aggregated the matrices to simplify the world into just 10 sectors, eight regions, and five factors of production. This aggregation is described in Table 1.

⁸⁹ T. Hertel, R. Keeney, M. Ivanic, and Alan Winters, “Distributional effects of WTO agricultural reforms in rich and poor countries,” *Economic Policy*, (April 2007): 289-337.

⁹⁰ Id.

Table 1
Aggregation used in the Model

Regions	Sectors	Factors
United States	Cotton	Land
European Union	Oilseeds	Unskilled Labor
Russia	Textiles and Apparel	Skilled Labor
Central Asia	Oil	Capital
China	Gas	Natural Resources
India	Metals and Minerals	
Japan	Food	
Rest of World	Manufacturing	
	Services	
	Capital Goods	

Source: Generated by author

The data is first “calibrated,” meaning the model is solved for its original equilibrium prices and volumes in all markets. This baseline is meant to represent the economy as is, before any shock takes place. Thousands of equations are created, each representing supply and demand conditions in markets inside each region, including markets for goods, services, factors of production, savings, government expenditure, and more. The “shock” in this model is the introduction of foreign investment into the natural gas sector of Central Asia. That investment is assumed to increase the productivity and output of the natural gas sector in that country. The goal of the model is to measure what effects such a productivity change would have on the region and the world.

While the focus of the paper is investment in Uzbekistan, the GTAP database has not yet disaggregated all of the Central Asian states into separate economics. For this reason, the model is actually measuring the effects of foreign investment into Central Asian natural gas as a whole and not that of Uzbekistan’s individually.

D. Model Results

The foreign investment into Uzbekistan’s natural gas sector results in changes to trade balances. Overall, Central Asia experiences a decrease in its trade balance despite a now stronger gas sector. As shown in Table 2, Central Asia’s trade balance decreases by \$34.9 million dollars. Interestingly, Russia, a major partner in Uzbekistan’s oil and gas sector, experiences a \$127.8 million decrease in its trade balances. All other regions of the world see an improvement in trade balances. While these effects are not very large in relation to the size of these economies, the significance of the changes in trade is better seen by examining trade in individual sectors.

Table 2
Change in Trade Balances
 (In millions of US\$)

	Change
US	73.18
EU	38.45
Russia	-127.8
Central Asia	-34.9
China	13.34
India	5.59
Japan	35.29
ROW	-3.14

Source: Generated by author

Changes in trade balances by sector provide evidence of possible Dutch Disease in Central Asia. Increased Central Asian exports of natural gas and oil appear to come at the expense of decreased exports in every other sector. As presented in Table 3, Central Asia's natural gas exports increase by almost a half billion dollars (\$488 million). Meanwhile, manufacturing exports fall \$229.6 billion, metals and minerals exports fall by \$126.2 million, and food exports fall by \$75 million.

Table 3
Change in Trade Balances by sector
 (In millions of US\$)

DTBALi	US	EU	Russia	Centr. Asia	China	India	Japan	ROW
Cotton	1.35	0.43	-0.5	-4.65	0.1	0.06	-0.01	3.3
OilSeeds	0.68	-0.01	-0.01	-2.15	0.17	0.09	-0.02	1.24
TextilesApp	0.85	7.04	2.87	-35.3	7.62	1.9	0.71	13.97
Oil	-3.83	-2.28	-11.11	1.99	0.64	-0.31	-1.55	16.32
Gas	44.51	65.94	-271.19	488.13	-1.04	-0.07	43.63	362.94
MetalsMin	3.53	26.79	46.21	-126.22	6.82	1.83	7.32	35.55
Food	2.48	7.48	13.45	-51.89	2.24	1.16	1.41	22.55
Manufactures	23.74	-49.39	59.87	-229.58	-8.43	-0.29	-22.44	221.98
Services	-0.12	-17.55	32.6	-75.22	5.22	1.22	6.23	44.88

Source: Generated by author

Outside of Central Asia, the trade effects are also significant. While Central Asia's trade balance in natural gas expands, trade balances in natural gas decline in Russia (-\$271.2 million) and the rest of the world (-\$362.9 million). It would appear the increased Central Asian productivity in gas comes at the expense of gas sales from Russia and the Middle East.

Exports and imports can be individually examined. In Central Asia the productivity shock results in a 15.4 percent increase in gas exports, accompanied by significant decreases in exports of textiles and apparel (-1.3 percent), manufactures (-1.0 percent), metals and minerals (-1.0 percent), and cotton (-0.6 percent). Changes in aggregate exports are presented in Table 4.

Table 4
Change in Aggregate Exports by sector
 (Percent)

Qxw	US	EU	Russia	Centr. Asia	China	India	Japan	ROW
Cotton	0.06	0.12	-0.22	-0.60	0.09	0.08	0.07	0.08
OilSeeds	0.01	0.02	-0.05	-1.00	0.04	0.04	0.02	0.01
TextilesApp	0.00	0.01	0.04	-1.34	0.01	0.02	0.00	0.01
Oil	0.03	0.01	-0.07	-0.04	0.04	0.03	0.02	0.01
Gas	-1.53	-0.59	-0.89	15.44	-4.37	-20.82	-4.98	-0.61
MetalsMin	0.01	0.02	0.21	-1.03	0.01	0.03	0.03	0.02
Food	0.00	0.01	0.14	-0.94	0.01	0.02	0.01	0.01
Mnfcs	0.00	0.00	0.15	-1.04	0.00	0.00	0.00	0.02
Svces	0.00	0.00	0.17	-0.43	0.01	0.01	0.01	0.01

Source: Generated by author

Global import patterns are also affected. In Central Asia, while imports of natural gas decrease, imports increase in every other sector, including food (0.6 percent), textiles and apparel (0.6 percent), oil seeds (0.6 percent), manufactures (0.5 percent), metals and minerals (0.4 percent), and services (0.5 percent). (See Table 5.) Natural gas imports increase significantly in Russia (10 percent), India (9.7 percent), and China (2.3 percent).

Changes in output reflect the same patterns. In Central Asia, total domestic production increases in natural gas but decreases in almost every other sector of the economy. Central Asian natural gas production increases by 14.3 percent, while output falls in cotton (-0.2 percent), textiles and apparel (-0.3 percent), metals and minerals (-0.3 percent), and manufactures (-0.2 percent). Across the globe, natural gas output declines in Russia (-0.35 percent), the United States (-0.3 percent), the EU (-0.3 percent), and the rest of the world (-0.3 percent). The results are presented in Table 6.

Table 5
Change in Aggregate Imports by sector
 (Percent)

Qiw	US	EU	Russia	Centr. Asia	China	India	Japan	ROW
Cotton	0.00	0.00	-0.07	0.19	-0.01	-0.01	0.00	-0.02
OilSeeds	-0.01	0.00	-0.05	0.58	0.00	-0.06	0.00	-0.01
TextilesApp	0.00	0.00	-0.08	0.59	0.00	0.00	0.00	0.00
Oil	0.00	0.00	0.10	-0.16	-0.01	0.00	0.00	0.01
Gas	0.08	0.07	10.00	-0.57	2.28	9.71	0.02	0.11
MetalsMin	0.00	0.00	-0.17	0.43	-0.02	-0.01	0.00	0.00
Food	0.00	0.00	-0.11	0.60	-0.01	0.00	0.00	0.00
Mnfcs	0.00	0.00	-0.07	0.50	0.00	0.00	0.00	0.00
Svces	0.00	0.00	-0.10	0.49	0.00	0.00	0.00	-0.01

Source: Generated by author

Table 6
Change in output volume by Sector
(Percent)

Qo	US	EU	Russia	Centr. Asia	China	India	Japan	ROW
Cotton	0.02	0.11	-0.04	-0.21	0.01	0.01	0.00	0.03
OilSeeds	0.01	0.01	-0.01	-0.03	0.00	0.00	0.00	0.01
TextilesApp	0.00	0.01	0.03	-0.27	0.01	0.01	0.00	0.01
Oil	0.00	0.01	0.01	-0.10	0.00	0.00	0.00	0.01
Gas	-0.28	-0.31	-0.35	14.33	-0.20	0.00	-0.26	-0.31
MetalsMin	0.00	0.01	0.20	-0.33	0.00	0.01	0.00	0.02
Food	0.00	0.00	-0.01	0.03	0.00	0.00	0.00	0.00
Mnfcs	0.00	0.00	0.09	-0.15	0.00	0.00	0.00	0.01
Svces	0.00	0.00	0.02	0.07	0.00	0.00	0.00	0.00
CGDS	0.00	0.00	0.12	0.43	0.00	-0.01	0.00	0.00

Source: Generated by author

Changes in output and trade reflect changes in market prices. In Central Asia, the productivity shock in gas creates a premium on owning gas reserves. While the extra supply of Central Asian gas pushes the market price for gas down by 1.5 percent, the demand for Central Asian natural resources (including gas reserves) increases by a dramatic 13.3 percent (see Table 7). The market prices of all other factors and output increase marginally. Globally, the expanded supply of natural gas pushes its market price down in all regions.

Table 7
Change in Market Price by Sector
(Percent)

Pm	US	EU	Russia	Centr. Asia	China	India	Japan	ROW
Land	0.00	0.01	0.02	0.38	0.00	0.00	0.00	0.00
UnSkLab	0.00	0.00	0.06	0.33	0.00	0.00	0.00	0.00
SkLab	0.00	0.00	0.06	0.36	0.00	0.00	0.00	0.00
Capital	0.00	0.00	0.00	0.36	0.00	0.00	0.00	0.00
NatRes	-0.15	-0.24	-1.09	13.30	-0.01	0.00	0.00	-0.31
Cotton	0.00	0.00	0.06	0.20	0.00	0.00	0.00	0.00
OilSeeds	0.00	0.00	0.03	0.23	0.00	0.00	0.00	0.00
TextilesApp	0.00	0.00	0.02	0.20	0.00	0.00	0.00	0.00
Oil	0.01	0.01	0.02	0.01	0.01	0.01	0.01	0.01
Gas	-0.58	-0.60	-0.71	-1.48	-0.44	-0.01	-0.52	-0.61
MetalsMin	0.00	0.00	-0.03	0.18	0.00	0.00	0.00	0.00
Food	0.00	0.00	0.01	0.23	0.00	0.00	0.00	0.00
Mnfcs	0.00	0.00	-0.01	0.17	0.00	0.00	0.00	-0.01
Svces	0.00	0.00	-0.05	0.18	0.00	0.00	0.00	0.00
CGDS	0.00	0.00	-0.04	0.14	0.00	0.00	0.00	0.00

Source: Generated by author

Finally, a basic issue for any shock to the economy is the overall welfare effect on the citizens of that region (Table 8). The global economy experiences a net gain in welfare of \$350.5 million dollars. The biggest winners in the global economy include Central Asia (\$445 million), the European Union (\$134.7 million), and the United States (\$61.7 million). The biggest losers include Russia (-\$135.6 million) and the Rest of the World (-\$189.7 million). Central Asia gains from the technology-driven increase in productivity and a significant improvement in its terms of trade. The terms of trade gain come at the expense of Russia and the rest of the world, two regions which themselves pay for the right to explore gas in Central Asia.

In conclusion, the results suggest that Uzbekistan would be better off overall from foreign investment in its natural gas sector, due mostly to improvements in overall production efficiency and its overall terms of trade. However, the gain in the natural gas sector would come at the expense of production and net exports of non-petroleum related industries—manufacturing, agriculture, minerals and metals, textiles and apparel, and other sectors.

Table 8
Welfare Decomposition
 (In millions of US\$)

WELFARE	Allocation Efficiency	Technology Gain	Terms of Trade	Savings and Investment Efficiency	Total
1 US	-0.6	0	46	16.3	61.7
2 EU	24.5	0	115.3	-5	134.7
3 Russia	-8.4	0	-137.6	10.4	-135.6
4 Central Asia	19.3	322.4	104.8	-1.5	445
5 China	0.7	0	1.7	-5.8	-3.4
6 India	-0.6	0	-1.4	-0.3	-2.3
7 Japan	-0.3	0	45.3	-5	40
8 ROW	-6.5	0	-174.1	-9	-189.7
Total	28.1	322.4	0	0	350.5

Source: Generated by author

E. Policy Implications

The results of this limited experiment suggest Uzbekistan (and any Central Asian state) should take a balanced approach to development. While increased oil and gas output would definitely increase the welfare of Uzbek citizens, the picture is not completely rosy. A unilateral focus on laws and policies designed to boost foreign investment in natural gas would come at a significant cost of decreased production and net exports of Uzbekistan’s other industries.

In particular, Uzbekistan earns a significant share of its export earning in the cotton sector. As the “cotton producer of the former Soviet Union,” Uzbekistan has considerable economic power in its cotton industries. Foreign investment in oil and gas is desirable, but given the results of this model,

Uzbek lawmakers should also support growth in its existing sectors. This story is magnified in manufacturing, food, and textiles and apparel. Increased gas output appears to hit these sectors even more negatively than the cotton sector. In conclusion, Uzbekistan should continue its pursuit of foreign investment in oil and gas. But it should also use its laws, policies, and development strategies to support its other industries.

HOW THE WEST WAS WON: CHINA'S EXPANSION INTO CENTRAL ASIA

Henryk Szadziewski*

Abstract

In the People's Republic of China, the Great Western Development Drive has been promoted as a solution to the economic inequalities that exist between the eastern and western regions of the country. Although the initiative has overt economic objectives, these are accompanied by political objectives of internal security in the Xinjiang Uyghur Autonomous Region, an area also known as East Turkestan. The Great Western Development Drive also works in conjunction with China's economic and political objectives for the Shanghai Cooperation Organization. As a bridge to the markets of Central Asia, the Great Western Development Drive in East Turkestan has built an infrastructure with which China can export goods and import natural resources. Greater economic cooperation between Central Asia and China has also permitted the silencing of Uyghur dissent in Shanghai Cooperation Organization member states. The net result of China's expansion into Central Asia for Uyghurs in the region and in East Turkestan has been economic and political marginalization, most notably in the visible exclusion from the policies and projects of the Great Western Development Drive.

Keywords: *China, East Turkestan, Xinjiang, Uyghur, Shanghai Cooperation Organization, Western Development, Security, Economy*

Introduction

Signs of China's presence abound in Central Asia. Walk down a street in Almaty, Tashkent or Bishkek, and evidence of China is not difficult to find. Chinese goods fill the stores, people dress in Chinese-manufactured clothes, and vehicles imported from over the Chinese border navigate the traffic. Although this scene may be somewhat familiar in developing nations across the world as the People's Republic of China (hereinafter China) expands its markets and strategic interests, the difference with Central Asia¹ is the extent of China's reach. Central Asia is arguably the biggest success story of China's forays into global influence.

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¹ Understood, in this work, as the nations of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. While a more common definition of Central Asia would also include Turkmenistan, it has been omitted in this article as it is not a member of the Shanghai Cooperation Organization.

China's economic and political successes in Central Asia have been realized through two Chinese Communist Party (CCP)-led initiatives: the Great Western Development Drive (GWDD)² and the Shanghai Cooperation Organization (SCO). This article illustrates how the GWDD in Xinjiang Uyghur Autonomous Region, an area also known as East Turkestan,³ has served as a bridge for China to expand its economic and political influence in Central Asia through the SCO. The work explains how GWDD objectives in East Turkestan parallel and drive China's SCO objectives in Central Asia to create a consistent economic and political policy that encompasses the entire region. It also demonstrates that the GWDD in East Turkestan serves to establish physical links between eastern China and Central Asia, which China has utilized to realize its SCO objectives. This article will compare and contrast GWDD and China SCO objective operationalization to highlight the salient parallels, and examine the increase in the physical capacity required in East Turkestan, through the GWDD, to build a physical link between eastern China and Central Asia. This work will subsequently analyze the consequences of the GWDD for the Uyghur people of East Turkestan. Finally, the article concludes that the GWDD in East Turkestan and the SCO are fundamentally connected in fulfilling China's policies of regional economic and political dominance, and that China has ignored the interests and voices of Uyghur people in pursuit of these policies.

The GWDD and the SCO

The State Council of China adopted the GWDD as policy in January 2000 through the establishment of a Leadership Group for Western China Development. The Chinese government characterized the policy as an initiative that would raise the level of economic development in the western region⁴ to be at least equal to the one experienced in China's thriving coastal areas.⁵ The driving force of this proposed economic transformation in East Turkestan was specifically planned as mass investment in large-scale projects to exploit the natural resources of the region, which would, according to the architects of the plan, alleviate high levels of poverty by a trickle-down effect.

Economic indicators from the entire GWDD target area illustrate why the Chinese central government moved to address growing economic disparities between its eastern and western regions. Despite the fact that the western region comprises more than 71% (6.85 million square

² In this author's opinion, the Great Western Development Drive most closely matches the Chinese name of the policy, Xībù Dàkāifā. Variants in translation include: Developing the Western Region, Go West, Open up the West, West Region Development, Western Development Program, and Western Development Strategy.

³ Use of the term East Turkestan does not define a pro-independence position. Instead, Uyghurs wishing to assert their cultural distinctiveness from China proper use this term. Xinjiang, meaning "new boundary" or "new realm", was adopted by the Manchus in the Qing dynasty (1644 -1911) and reflects the perspective of those who gave it this name. This use of this terminology, either Xinjiang or East Turkestan, is often compared by Uyghurs to the use of the term Tibet by Tibetans. That is, Tibetans use the name they choose instead of a translation of the Chinese Xizang, meaning "western treasure-store". Uyghurs also choose to use a name other than the one designated by the Chinese authorities.

⁴ The western region includes five autonomous regions: the Guangxi Zhuang Autonomous Region, the Inner Mongolia Autonomous Region, the Ningxia Hui Autonomous Region, the Tibet Autonomous Region, and Xinjiang Uyghur Autonomous Region; six provinces – Gansu Province, Guizhou Province, Qinghai Province, Shaanxi Province, Sichuan Province, and Yunnan Province; and one municipality – that of Chongqing.

⁵ Asian Development Bank, *The 2020 Project: Policy Support in the People's Republic of China* (Manila: Asian Development Bank, 2004), xxiii.

kilometers) of China's total landmass and more than 28% of China's total population, it only accounts for 17% of the national gross domestic product (GDP).⁶

The GWDD does not appear to be a codified plan of economic development with measurable predetermined goals. Holbig states that the initiative “appears as a highly diffuse decision-making process shaped by dynamic interactions between numerous actors at central, provincial and local levels”,⁷ with five areas of priority:

- Quest for equality
- Foreign investment
- Infrastructure investment
- Sustainable development
- Tackling the nationalities issue⁸

The five areas of priority Holbig outlines appear to indicate that the Chinese central government is attempting to tackle a complex mixture of regional economic and political issues through the GWDD. The quest for equality, foreign investment, infrastructure investment and sustainable development areas of priority address the economic objectives underpinning the GWDD initiative; however, these four priority areas can also be viewed as influential in the final priority area of tackling the nationalities issue, which is a much more political objective than the others.

The entire GWDD target area contains the majority of China's minority groups and includes all five of China's ethnically arranged autonomous regions. In East Turkestan, Chaudhuri explains that areas containing high densities of Uyghurs⁹ experience elevated levels of poverty compared to areas with high densities of Han Chinese (see Table 1 below).¹⁰ The GWDD has been planned to stimulate growth in high minority group regions to preempt already aggravated minority group grievances stemming from unequal development and a number of other issues. Managing minority group discontent through economic policies designed to boost income is but one method employed by China in “tackling the nationalities issue”; the GWDD has also permitted an influx of Han Chinese in-migrants to minority group areas with the result that strong cultural identities have been diluted.

⁶ Ding Lu and William Neilson, *China's West Region Development* (Singapore: World Scientific Publishing, 2004), 1.

⁷ Heike Holbig, “The Emergence of the Campaign to Open Up the West: Ideological Formation, Central Decision-making and the Role of the Provinces,” *China Quarterly*, vol. 178 (2004): 335-357.

⁸ *Ibid.*

⁹ Variants include: Uygur, Uigur, and Uighur. The spelling used in this article, Uyghur, is based on: Reinhard F. Hahn, *Spoken Uyghur* (Seattle: University of Washington Press, 1991).

¹⁰ Debasish Chaudhuri, “A Survey of the Economic Situation in Xinjiang and its Role in the Twenty-first Century,” *China Report*, vol. 41:1 (2005): 1-28.

Table 1: Ethnic Distribution and Per Capita GDP at Current Price (2002)

City	% in Total Population		Per Capita GDP (Yuan)
	<i>Uyghur</i>	<i>Han</i>	
Khotan	96.8	3	1,977
Kashgar	89	9.4	2,650
Aksu	72.8	25.9	5,429
Turpan	69	24.2	13,059
Kizilsu	63.7	5.9	2,468
Hami	18.4	68.8	7,815
Karamay	13.8	77.6	45,033
Urumchi	12.7	73.5	17,780
Shihezi	1.2	94.7	10,973

Source: Debasish Chaudhuri, “A Survey of the Economic Situation in Xinjiang and its Role in the Twenty-first Century,” *China Report*, vol. 41:1 (2005): 6.

Given that the GWDD was conceived as a center-led initiative for the “peripheral” western regions, official employment policy has reflected this by importing human capital from eastern China to shore up a perceived shortfall of skilled workers in the local labor market.¹¹ In East Turkestan, a 2003 Chinese government white paper details how “other provinces, autonomous regions and municipalities have provided immense amounts of aid for Xinjiang in terms of technology and skilled people.”¹² More specifically, civil service appointments in East Turkestan to administer the GWDD have favored the hiring of Han Chinese. In 2005, all of the 500–700 new civil service appointments made by the regional and central government in the Uyghur majority area of southern East Turkestan were reserved for members of the Han Nationality.¹³

As a result, the GWDD has been perceived among Uyghurs as a concerted effort to assimilate East Turkestan firmly into China, and as a mechanism by which China’s concerns over sovereignty in the region are being addressed. In essence, the claimed economic character of the GWDD masks a more controversial one of consolidating internal security. Moneyhon adds that “[a]lthough construed as an effort to alleviate poverty and bridge the growing gap of economic disparity between the eastern and western regions, Go West is actually an attempt to quell ethnic unrest, solidify the nation, and legitimize the current regime by taming the ‘wild west’ ”.¹⁴

The security objectives of the SCO, as mentioned above, are closely intertwined with China’s implementation of the GWDD. The SCO was founded in 2001 and is a multi-lateral organization

¹¹ Gardner Bovington, *Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent* (Washington: East-West Center, 2004), 25-26.

¹² Chinese Government, *History and Development of Xinjiang* (Beijing: Information Office of the State Council of the People’s Republic of China, 2003), 658.

¹³ Congressional-Executive Commission on China, *Annual Report 2005* (Washington DC: US Government Printing Office, 2005), 20.

¹⁴ Matthew Moneyhon, “China’s Great Western Development Project in Xinjiang: Economic Palliative, or Political Trojan Horse?” *Denver Journal of International Law and Policy*, vol. 31:3 (2004): 491-523.

comprised of China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan;¹⁵ however, its origins are found in the Shanghai 5, which was itself established in 1996. The Shanghai 5 comprised the aforementioned states, except Uzbekistan, and had at its core the objective of building consensus between Central Asian nations and China on a number of internal and regional security issues.

At the time of the post-Soviet fallout, China viewed the Central Asian states' new freedom as a possible threat to its territorial sovereignty over East Turkestan. From China's perspective, the Shanghai 5 operated as an arrangement to manage pro-independence advocacy by the sizeable Uyghur Diaspora in Central Asian states and to curtail possible pro-independence leanings of China-based Uyghurs. This internal Chinese security objective of the Shanghai 5 was transferred to the declaration that established the SCO:

*“The purposes of the SCO are: strengthening mutual trust and good-neighborly friendship among the member states; encouraging effective cooperation among the member states in political, economic and trade, scientific and technological, cultural, educational, energy, communications, environment and other fields; devoting themselves jointly to preserving and safeguarding regional peace, security and stability; and establishing a democratic, fair and rational new international political and economic order”.*¹⁶

This paragraph of the declaration outlines an ambitious agreement on economic and political ties between China and the Central Asian states. Although the language is dominated by security issues, the paragraph also mentions the development of trade and economic cooperation as an important aspect of SCO objectives. This language of combined economic and political objectives reflects a similar combination found in the GWDD areas of priority, with the difference being on emphasis. Political objectives and security issues appear much more prominently in SCO than in GWDD literature. Nevertheless, the SCO security-dominated objectives have manifested in an enlarged role for trade between China and the Central Asian states, just as the economic-dominated objectives of the GWDD have manifested in an enlarged role for security in East Turkestan.

The following table relates how China has successfully increased exports to Central Asia since the establishment of the SCO:

Table 2: Trade between China and Other Members of the SCO (In US\$1,000)

Country	2001	2005	Growth
Russia	10,670,550	29,103,140	173 %
Kazakhstan	1,288,370	6,810,320	429 %
Kyrgyzstan	118,860	972,200	718 %
Tajikistan	10,760	157,940	1,368 %
Uzbekistan	58,300	680,560	1,067 %

Source: Jia Qingguo, “The Shanghai Cooperation Organization: China’s Experiment in Multilateral Leadership” in *Eager Eyes Fixed on Eurasia: Russia and its Eastern Edge*, ed. Iwashita Akihiro (Sapporo: Slavic Research Center, Hokkaido University, 2007), 116.

¹⁵ Observer nations include: India, Iran, Mongolia and Pakistan.

¹⁶ Shanghai Cooperation Organization, “Declaration on Establishment of SCO,” Shanghai Cooperation Organization, http://english.scosummit2006.org/en_bjzl/2006-04/20/content_85.htm (accessed March 4, 2009).

The table shows in all cases, and especially in the cases of the Central Asian states, trade has increased sharply. Uzbekistan, which prior to 2001 had not been a member of the Shanghai 5/SCO, experienced one of the most notable spikes in growth.

In his historical survey of East Turkestan, James Millward describes the character of China's relationship with Central Asia as one of "expan[sion] westward into Xinjiang as part of its campaign against the steppe empire".¹⁷ While this particular observation was made in relation to the Qing Empire (1644-1911), it may equally apply to current China policies.

East Turkestan contains an estimated 20.9 billion tons of oil and 10.8 trillion cubic meters of gas¹⁸, which accounts for approximately 25% of China's reserves.¹⁹ Benson explains that investment in the GWDD "appears earmarked for major construction projects, including roads and highways, pipelines for oil and natural gas, and other infrastructure needed to exploit Xinjiang's natural resources".²⁰ By 2006, extraction of oil from East Turkestan had grown to 20 million tons per year.²¹

Sznajder reports that "Xinjiang has developed a comprehensive 86,000-kilometer road network, including highways linking various border gateways".²² GWDD investment in building transportation infrastructure not only appears to be directed at the movement of human capital and natural resources within China, but also to link eastern China through East Turkestan to the markets and natural resources of the Central Asian states.

China has long seen the potential of economic expansion into the Central Asian states and Premier Li Peng's visit to Kazakhstan in 1994 was an important milestone in that objective. On his visit to Kazakhstan, Premier Li "called for the construction of a new 'Silk Road,' connecting Central Asia with China".²³ Construction of this "new Silk Road" is now in full swing largely due to large-scale projects stimulated by the GWDD in East Turkestan. Current or proposed road and rail arteries now link China with all the Central Asian states on its borders, and Jia states that "[i]ncreasing economic relations are accompanied by enhanced efforts to build transportation links between China and other SCO members". Jia outlines the following upgrades to the transportation network:

"(1) Railways: in 1990, the rail line between Urumuqi (China) and Aqtoghay (Kazakhstan) was opened. Another line has been under negotiation between China, Kyrgyzstan, and

¹⁷ James Millward, *Eurasian Crossroads* (New York: Columbia University Press, 2007), 79.

¹⁸ Sina, "Xinjiang becomes China's second largest crude oil producer," January 2, 2009, <http://english.sina.com/business/2009/0102/208741.html> (accessed April 16, 2009).

¹⁹ China Internet Information Center, "Xinjiang 2004: The Year In Review," China Internet Information Center, <http://german.china.org.cn/english/features/ProvinceView/156243.htm> (accessed November 8, 2006).

²⁰ Linda Benson, "Education and Social Mobility Among Minority Populations in Xinjiang," in *Xinjiang: China's Muslim Borderland*, ed. S. Frederick Starr (New York: M.E. Sharpe, 2004), 190-215.

²¹ Xinjiang Capital Attraction Network, "Present Economic Status," Xinjiang Capital Attraction Network, <http://www.xjdcg.gov.cn/english/environment/Economic.htm> (accessed March 4, 2009).

²² Ariel P. Sznajder, "China's Shanghai Cooperation Organisation Strategy," *Journal of International Political Sociology*, vol. 5 Spring (2006): 93-102.

²³ Jia Qingguo, "The Shanghai Cooperation Organization: China's Experiment in Multilateral Leadership" in *Eager Eyes Fixed on Eurasia: Russia and its Eastern Edge*, ed. Iwashita Akihiro (Sapporo: Slavic Research Center, Hokkaido University, 2007), 113-123.

*Uzbekistan. (2) Highways: In addition to the five hard-surfaced roads crossing between Xinjiang and Kazakhstan, several highways are either under construction or under improvement. According to a Xinhua news report, China plans to invest 2.3 billion Yuan (\$294 million) in the next five years to upgrade highways linking border-trading areas in the Xinjiang Uyghur Autonomous Region. On top of this, an agreement to build a highway linking nine Asian countries—South Korea, China, Japan, Uzbekistan, Vietnam, Sri Lanka, Myanmar, Cambodia, and Azerbaijan—took effect on July 4, 2005. (3) Airlines: After years of growth, China already has thirty-eight regular passenger flights with member states of the CAREC (Central Asia Regional Economic Cooperation). These plus efforts to build oil pipelines and telecommunication optical fiber cables are laying a firm, solid foundation for further rapid expansion of economic relations among SCO member states.”*²⁴

China has utilized the GWDD to reach Central Asia through East Turkestan. It has done so by establishing transport networks first in East Turkestan, and then in Central Asia to not only expand its markets and extract natural resources from East Turkestan and mineral-rich Central Asia to fuel China's economy, but also to ensure greater oversight over domestic security issues in East Turkestan.

Outcomes for Uyghurs

On the surface, the GWDD objective to bring economic prosperity to East Turkestan appears on course. Not only does the initiative seek to increase employment opportunities in the private sector, but it also requires government investment in the public administration needed to oversee it. By 2004, the Chinese central government announced that this two-pronged investment in East Turkestan's economy had seen a rise of 11.1% in East Turkestan's GDP over the previous year. Moreover, 7.39 million residents were employed (a rise of 2.5% compared to 2003), and the unemployment rate now stood at 3.8%, 0.4% below the national rate.²⁵

As the evidence indicates, employment opportunities are increasing in East Turkestan under the GWDD; however, the ethnic distribution of these opportunities is unequal. Already stated is the preferential treatment Han Chinese receive in securing employment in both the public and the private sectors. One of the sources of this discrimination can be traced to the Han Chinese-ethnic minority relationship, which is dominated by the discourse of Han Chinese management over ethnic minority development. The traditionally patrician approach taken by Han Chinese to minority relations has also created a linguistic dimension to the discrimination facing Uyghurs in the domestic labour market. Mandarin Chinese, a language unrelated to Turkic Uyghur, is often a requirement for gaining employment. This was confirmed in a 2003 survey conducted by Wang, wherein 67% of people questioned stated that high competency in Mandarin Chinese was necessary for finding a job in East Turkestan.²⁶

²⁴ Ibid.

²⁵ China Internet Information Center, "Xinjiang 2004: The Year In Review," China Internet Information Center, <http://german.china.org.cn/english/features/ProvinceView/156243.htm> (accessed November 8, 2006).

²⁶ Wang Jianjun, "Kaizhan shehui diaocha peiyang shiyingxing hege rencai," [Develop Social Surveys, Train Qualified Talent] *Advanced Scientific Education*, vol. 6 (2003): 64-67.

While the growth of oil and gas industries are raising the GDP of East Turkestan, the large-scale projects involved are often disconnected from the everyday lives of Uyghurs. To underline this point, Pomfret writes that the “[oil] industry is now almost completely run by Han. The China National Petroleum Co. has brought most of its workers here from other parts of China, all but bypassing the provincial Xinjiang Petroleum Bureau in carrying out exploration.”²⁷ Compounded with the arrival of Han Chinese administrators in the public sector, the GWDD has been “tackling the nationalities issue” by diluting, through sheer force of numbers, Uyghur unease over CCP administration. The following quote from a correspondent succinctly describes the economic conditions for Uyghurs under the GWDD:

*“I have clearly seen that development benefits only the Chinese. Development is to attract those people. Jobs are being created for them, not for us. There are a very, very limited number of Uyghurs getting jobs. Uyghurs are forced to sell their land cheaply to immigrants. The difference between poor and rich is getting larger. Uyghurs are losing fast”.*²⁸

Additionally, the containment of Uyghur advocacy in Central Asia has been largely successful through the GWDD and the SCO. China has ensured that Uyghur dissidents and Uyghur groups among the Uyghur Diaspora in SCO member states are unable to carry out their work. According to Oresman, the “diaspora is predominantly concentrated in Kyrgyzstan and Kazakhstan, with 50,000 and 180,000 Uyghurs respectively”.²⁹ Oresman continues by adding: “[t]he Central Asian states are loath to offend China and have been proactive in appeasing Chinese worries about the Uyghur populations living in their countries. As one analyst put it, China is having the Central Asians do its ‘dirty work’ in the region”.³⁰ Extradition of Uyghurs to China from SCO member countries is another method by which pressure is applied to Uyghurs critical of China. The most well-known and controversial case is of Huseyin Celil, who was extradited in 2006 from Uzbekistan to China, despite his Canadian citizenship.

Conclusion

China has effectively used the GWDD as a bridge to expand its influence into the Central Asian states through the SCO. While the publicly stated objectives of the GWDD have been largely framed in economic terms, there are clear security objectives attached to the initiative. On the other hand, the SCO was created as a multi-lateral agreement on security, but with provisions on trade, which has seen a rapid growth in Chinese exports to Central Asia. China has achieved an expansion of its markets in Central Asia in addition to quelling dissent in East Turkestan through the application of pressure on Uyghur advocates in SCO member states. Boosts in transportation infrastructure funded by investment in the GWDD has aided China’s economic expansion into Central Asia, as well as established cross-border possibilities for importing natural resources from

²⁷ John Pomfret, “Go West Young Han,” *Washington Post*, September 15, 2000, Section A, 1.

²⁸ The quote is taken from a September 4, 2006 e-mail sent to this author by a Uyghur in East Turkestan. The sender of the e-mail wishes to remain anonymous.

²⁹ Matthew Oresman, “Beyond the Battle of Talas: China’s Reemergence in Central Asia,” in *In the Tracks of Tamerlane: Central Asia’s Path to the 21st Century*, eds. Daniel L. Burghart and Theresa Sabonis-Helf (Washington: Center for Technology and National Security Policy, National Defense University, 2004), 401-424.

³⁰ *Ibid.*, 421-424.

Central Asia. This GWDD investment has also been effective in extracting from East Turkestan the natural resources that eastern China requires to fuel its economy. The building of this infrastructure and the large-scale projects required to extract natural resources in East Turkestan has brought with it a huge in-migration of Han Chinese workers, which has proved effective in diluting concentrations of Uyghurs.

Amongst all this activity, the Uyghur population of East Turkestan has been intentionally overlooked. Subjected to increased political pressure from within and without East Turkestan's borders, Uyghurs have so far been unable to participate in the decision-making processes that have such a profound effect on their region. Consequently, Uyghurs have been excluded from the opportunities afforded by the GWDD and the newly opened markets of Central Asia. In addition, the indications for the future do not look promising for Uyghurs, as closer cooperation between China and Central Asia increases the severity of Uyghur disenfranchisement. Oresman states "[o]n the basis of geography and economic realities alone, China appears well placed to expand its influence in the region over the long run. Central Asian states will continue to seek robust engagement with China as their transportation infrastructure and developing economies become more intertwined".³¹

In conclusion, this article argues that the GWDD and SCO have been detrimental to Uyghur economic, social and political interests. A move by Chinese government toward engagement with its Uyghur population, and the prospect of genuine participation for Uyghurs in shaping their economic and political future in the region, would be a critical but necessary strategic adjustment to GWDD and SCO policies in achieving stability and prosperity for all of the residents of East Turkestan.

³¹ Ibid, 402.

SPLIT IN THE RUSSIAN POLITICAL TANDEM PUTIN-MEDVEDEV?

COMMENT BY
Eberhard Schneider*

Abstract

There are signs that the Russian President Dmitry Medvedev is gaining his own profile rather than wishing to remain forever Vladimir Putin's hand-picked successor. The catalyst for this process is the financial and economic crisis. Different individuals and groups surrounding the president and the prime minister play an important role in this process, since they try to ensure that their patrons demonstrate a greater political profile. Putin's dilemma: If he remains in office, he runs the risk of being held responsible by the people for his government's failure to properly address the crisis. This could lead to the loss of his reputation, which could cost him the election victory in the case of his renewed candidacy for the presidency in 2012. If he resigns as prime minister, he would disappear from the public eye, which would make his election as president impossible. This would mean that Medvedev would re-run for the presidency in 2012 and get re-elected for another six-year term in accordance with the latest constitutional amendment.

Keywords: *Russia, Putin, Medvedev, division of power, financial crisis, issues of conflict.*

Introduction

On March 2, 2008 Dmitry Medvedev, then First Deputy Prime Minister, was elected president in the first round of the Russian presidential elections, after being proposed by Putin as a candidate in December 2007. Many wondered why Putin did not change Article 81.3 of the Constitution, which doesn't allow to be elected to more than two terms consecutively. In order to do so, two-thirds of the Duma votes, three-quarters of the Federation Council's votes and two-thirds of regional parliaments' votes would have been required for a constitutional amendment to take place, which Putin would have easily achieved. Most probably, Putin preferred to take a four-year break to recover from the stress of the presidential office and to stand for office once again after four years, which is in accordance with the Constitution. Putin might have wanted to concentrate in the meantime on the chairmanship of the ruling "United Russia" party. Putin decided against a

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constitutional amendment largely due to trying to avoid being seen as another Alexander Lukashenka (President of Belarus), who changed the Belorussian Constitution in 2004 in order to be allowed to run for the presidency for a third time.

The arrest of some high-ranking officers at Moscow airport Domodedovo on October 1, 2007 – which exposed a long-standing fight amongst the Russian security services – prompted Putin to change his mind. He was concerned that once he retreated from politics the several power groups which he held together would start fighting with one another and that the *siloviki* (people from the secret services, the Ministry of the Interior and the military) following different interests would win at the expense of the other. There was also a risk as to whether his predecessor could govern the *siloviki* or whether they would challenge him.

If Putin did not seek a constitutional amendment, then which other high office could he assume? The choice fell on the office of Prime Minister. Putin was required to carefully assess under which president he could work, since the President of Russia is not only the formal Head of State but also has strong executive powers. He decided that Dmitry Medvedev would be the ideal candidate.

At a press conference on February 14, 2008 Putin said, responding to a question about whether there would be any major differences between him as prospective Prime Minister and President Medvedev, that both he and Medvedev have had a 15-year working relationship through which they have learned to listen and to understand one another. He simply trusts Medvedev. Therefore, “it would not be terrible” if he transferred him the “essential executive powers to govern the country”. If he became Prime Minister, he would not alter his relations with the head of state and he would not be “hostile” towards him or “counterproductive”.

Medvedev and Putin are both from St. Petersburg and are both lawyers by profession. Nevertheless, there are also differences between them such as the 13-year age gap; in other words, half a generation. Putin was born in 1952, whereas Medvedev was born in 1965. Further differences include their socio-economic background. Putin grew up in a working class family and was the son of a factory worker. The family lived in a communal flat (20m²) where they had to share the bathroom and the kitchen with other families. On the other hand, Medvedev grew up in a family of professors. During the Brezhnev years, professors with a high academic grade were well paid and enjoyed a high social standing.

Division of Power between President and Prime Minister

According to the Constitution, the Russian President is responsible for foreign policy. He defines “the basic domestic and foreign policy guidelines” (Article 80.3), decides on foreign policy (Article 86) and is the commander-in-chief.

On the other hand, according to the Constitution, the Prime Minister is responsible for the “implementation of foreign policy of the Russian Federation” (Article 114.1). This means that Putin cannot contradict foreign policy as defined by the President without the consent of the Foreign Minister. He can nonetheless remain the authority over the implementation of foreign policy because the Ministry of Foreign Affairs is an integral part of the government

despite its subordination to the President. According to the Constitution, the portfolio of the government includes the economy, financial policy, culture, education, science, health and environment. Regarding foreign and defence policy, as well as national security, the government is only responsible for the implementation of policy set by the President.

During an interview on December 24, 2008 Medvedev explained – following a question on the extent of cooperation between the President and the Prime Minister – that both he and Putin exchange policy ideas on a regular basis. They not only discuss economic issues but also political ones. Medvedev described their teamwork as “comfortable”. On the question concerning the war in Georgia, Medvedev emphasised that as commander-in-chief he alone made the decision to begin the operation.

Medvedev’s “Battalion”

On which elite groups and other power bases can Medvedev rely? The following table will attempt to identify several state, political and economic structures that the President and the Prime Minister rely upon. However, it should be noted that the extent to which these players influence Medvedev and Putin is schematic and not completely verifiable.

	<i>Closer to Medvedev</i>	<i>Closer to Putin</i>
Parliament	Federation Council	State Duma
Chairman	Federation Council: Sergey Mironov	State Duma: Boris Gryzlov
Government	Justice Minister: Alexander Kononov (directly subordinate to the President, loyal to Medvedev)	All other ministers (excluding Foreign Minister Lavrov)
Presidential Administration	Head of administration department: Constantin Tishchenko	All the others
Foreign Policy	Foreign Minister: Sergei Lavrov (directly subordinate to the President)	Deputy Head of the Apparatus of the Government: Yuri Ushakov
Security Policy	Security Council (President is the Chairman)	Secretary of the Security Council: Nikolai Patrushev
Investigative bodies	Chief State Prosecutor: Yuri Tshajka	Head of Investigative Committee: Alexander Bastrykin
Political Parties	“Just Russia”	“United Russia”
Economy	Small to medium-sized enterprises	Large-scale industry, raw material industry
Trade Associations	Association of small and medium-sized enterprises “Opora Rossi” (Stanchion of Russia)	“Russian Association of Entrepreneurs and Manufacturers” and “Delovaya Rossiya” (“Business Russia”)
Elite Groups	Lawyers/ Judges	Siloviki

<i>Secret Services</i>		FSB
<i>Political Key Issues</i>	Fight against corruption	
<i>Socio-economic Base</i>	Middle-class	

Given the above-mentioned distribution of power bases between Medvedev and Putin, it can be concluded that Medvedev has several power bases at his disposal. His “battalion” can be found above all in the judiciary, not only because several members of the judiciary were former students of his such as the Chairman of the Higher Arbitration Court Anton Ivanov. Improving the rule of law in Russia, which Medvedev had consistently highlighted during his presidential campaign, would democratize the entire political system sustainably. Moreover, Russia’s deficient legal system has frequently been subject to Western criticism of the Kremlin regime.

Issues of Conflict

Putin and Medvedev have diverging opinions on three different policy issues: foreign policy, domestic affairs and economic policy.

Foreign Policy

By creating new institutions Putin tried to ensure certain access to foreign policy-making. Moreover, he occasionally engaged in foreign policy debates which are constitutionally Medvedev’s domain.

Institutions

Putin created his own “foreign minister” within the government in the form of Deputy Head of the Apparatus of the Government Yuri Ushakov, who is responsible for the “implementation of foreign policy”. Until 2008 he was Russia’s ambassador to the US and he is known for his harsh anti-Western rhetoric. In May 2008 Putin announced new changes in Russia’s CIS (Commonwealth of Independent States) policy by creating a “Federal Agency for CIS affairs”. Thus, the CIS policy was taken out of the Foreign Ministry’s day-to-day responsibilities, although the new agency remains formally a structure subordinate to the Ministry, and should work in tandem with it. By creating the Federal Agency Putin makes it inadvertently clear that the CIS states do not represent a “normal” abroad for him and are not considered by him as states independent from Russia.

Activities

Prior to his inauguration as President, Medvedev announced in April 2008 that his first visit overseas would be to Paris, since France was going to take over the rotating EU Presidency on July 1, 2008. However, Putin forestalled Medvedev’s planned visit and paid a visit to Paris in May 2008. Medvedev took revenge on Putin’s visit by convening a constitutive meeting of the Security Council – of which Putin is a member – on May 31, 2008, whilst Putin was visiting Paris.

On November 24, 2008 Putin gave a speech at an international human rights conference

held in St. Petersburg. The Parliamentary Assembly of the CIS and the ICRC (International Committee of the Red Cross) organized the conference to mark the 140th anniversary of the St. Petersburg Declaration of 1868, which was initiated then by Russia to ban the use of certain weapons in war. In his speech, Putin commented on several foreign policy issues, which fall under the President's powers. He took up the proposal of Medvedev concerning the creation of a Pan-European Security Pact which the latter had already presented in Berlin on June 5, 2008 and specified at the World Policy Conference held in Evian, France, on October 8, 2008. At the conference in St. Petersburg, Putin elaborated on Medvedev's third "no", i.e. from "no development of military alliances that would threaten the security of Parties" to "no development and expansion of military alliances at the expense of other Parties". Putin's reformulation of Medvedev's third "no" illustrates more clearly the meaning of the statement: to prevent NATO accession for Georgia and particularly for Ukraine, since in Putin's eyes such an accession would take place at the expense of Russia which still regards the latter two states as its exclusive sphere of influence.

Domestic Affairs

At the beginning of June 2008 Medvedev stopped a media bill put forward by Robert Schlegel, a member of the State Duma from the "United Russia" party, through a letter to the Chairman of the State Duma Boris Gryzlov. The bill aimed at allowing local officials to close down newspapers and television stations without a court order, if a libel case was brought by a person against the said newspaper or television station.

In his first State of the Nation speech before the Federation Assembly which includes the Federation Council and the State Duma on November 5, 2008 Medvedev announced a ten-point plan implicitly aiming at lifting some of the anti-democratic restrictions introduced incrementally by Putin during his presidency:

1. The 7% threshold which political parties must overcome in order to gain seats in the State Duma should be reduced;
2. The appointment of candidates for the office of regional governor should be the prerogative of the parties that obtain the majority of votes in regional elections;
3. The rule which obliges the political parties to provide a deposit to the electoral commission before they are allowed to campaign should be repealed. Moreover, the existing minimum requirement of signatures needed to register a party for participation at the elections should be decreased;
4. Only people who were elected in their respective municipalities should be allowed to become Senators in the Federation Council;
5. The minimum number of party members required for registration of a political party should also be reduced;
6. Key positions within the political parties should rotate;
7. Representative bodies of local self-governments should have the power to control the heads of municipalities more effectively and, if necessary, to depose them from office;
8. "Public Chambers" made up of representatives of civil society rather than politicians, and NGOs should permanently be involved in the law-making process on issues regarding individual freedoms, health and property;
9. Political parties represented in the parliament should be guaranteed the right to report on their activities in the mass media; and

10. Freedom of speech should be ensured through technological innovation, specifically through the Internet and digital television.

Furthermore, the President introduced a new law compelling the Prime Minister to provide an annual report to the State Duma, which will then be discussed by parliamentarians. Putin fulfilled this obligation for the first time on April 6, 2009.

At the end of January 2009 Medvedev intervened in the drafting of a bill introduced by the government in December 2008 to the State Duma. The bill was designed to extend the definition of state secrets in the criminal code and criminal procedure (Article 151). If the bill had passed, the FSB (Federal Security Service) would have been permitted to suspect any citizen who is in contact with foreigners of espionage and treason.

At a meeting with the leadership of the “United Russia” party at the presidential residence of Barvikha near Moscow on April 8, 2009, Medvedev, emphasising his bipartisanship, warned that decisions made by the president cannot be prejudged. The Chairman of the State Duma and deputy leader of the party Boris Gryzlov attended the meeting instead of party chairman Putin. A new rule lies behind this warning, which stipulates that the largest political faction in the regional parliament should recommend a candidate for the office of regional governor to the president. Medvedev however underlined that “the final decision in these matters will not be taken by the party but by the President of the Russian Federation, and there should be no confusion about this.”

Economic Policy

At the end of October 2008 Medvedev created a “Council for the Development of the Financial Markets of the Russian Federation under the auspices of the President of the Russian Federation” and allocated the portfolio of financial policy to his array of powers, though financial policy is not the responsibility of the president. The Council was not created by the Prime Minister and it did not get allocated to the Prime Minister, even though financial policy in conjunction with economic policy is the main responsibility of the government. Putin is not a member of the Council.

The Council is chaired by First Deputy Prime Minister Igor Shuvalov, who is also the head of the Anti-Crisis Committee of the government. Shuvalov is regarded in the government as the “technical” prime minister, while Putin is seen as the “strategic” prime minister, which implies that concrete economic issues are not of much interest for Putin. Members of the Council include Medvedev’s consultant on economic affairs Arkadij Dvorkovich, Deputy Prime Minister and Finance Minister Alexei Kudrin, Minister for Economic Development and Trade Elvira Naibullina, Chairman of the Central Bank Sergei Ignatjev, Chairman of the High Court of Arbitration Anton Ivanov and Chairmen of the Finance Committees of both chambers of the parliament, Minister for the Interior Rashid Nurgaliyev and the Head of the FSB Alexander Bortnikov. The very fact that both the Minister for the Interior and the Head of the FSB are members of the Council illustrate Medvedev’s thinking that living standards will decrease drastically as a result of the financial and economic crisis with the potential outcome of demonstrations, whereby security measures need to be taken.

Putin was fuelled with anger in January 2009 after he received an analysis on the economic

situation in Russia provided by the President's experts, which he considered as an intrusion by the President to his government responsibilities. Medvedev accused the government, not Putin himself, of a too slow implementation of the financial stimulus plan, which had cost \$200 billion to date.

In an interview with the Bulgarian national television on January 30, 2009 Medvedev praised his good relationship with Putin. He said that "this however does not mean that the President must turn a blind eye to existing problems". Any criticism exposing existing problems in meetings with the government and ministers is "absolutely normal".

In Medvedev's speech at a meeting of the chairmanship of the State Council in Irkutsk on February 20, 2009, which was attended by regional governors, businessmen, CEOs and the government, he announced that the financial crisis had not reached its peak yet, and that the Russian economy needed to undergo fundamental reforms in order to meet the challenges of the following 7 to 15 years. He criticised the regions and companies for not providing enough information on the financial situation. He said that "we work too slowly and negligently given it is a crisis". Russia's economic problems are due to "our negligence to work swiftly and efficiently" rather than macroeconomic problems or difficulties in the world's financial system.

At the 6th Economic Forum in February 2009 Medvedev's economic advisor Arkadij Dvorkovich criticised indirectly the government the members of which were participating at the forum for being insufficiently prepared to deal with the financial crisis. According to him, "preparedness of both the authorities and society to overcome a long crisis period is very small". At an economic gathering at Moscow on March 4, 2009 Medvedev demanded that the government make policies more comprehensible to the public.

Conclusion: Putin's Dilemma

"Kompanija", a weekly magazine owned by Russian entrepreneurs, claimed on February 23, 2009 that the Medvedev-Putin partnership will soon break down. In principle, President Dmitry Medvedev could let Putin go; Putin however does not have this option. If Putin cannot manage the consequences of the financial and economic crisis, Medvedev will have to find a replacement in order to maintain public support for his presidency. Recently, there have been signs that Medvedev is gaining prestige, the catalyst of which has been the financial and economic crisis, which serves as an indication that he does not wish to remain Putin's hand-picked successor.

In this context, the role of the individuals and elite groups surrounding the president and the prime minister should not to be overlooked. Even if Medvedev and Putin hardly would wish to get involved in a personal confrontation, those surrounding them will probably try to ensure that their patrons demonstrate a higher profile, even if it might entail some confrontational elements.

Putin faces a dilemma: if he stays in office, he runs the risk of being held responsible for the government's lack of response to the negative consequences of the financial crisis which could possibly derail his ambition to run for the presidency in 2012. In addition, it is obvious that Putin cannot reconcile two different economic concepts in his cabinet.

Shuvalov wants to increase the government spending to master the crisis. His opponent is the Finance Minister and Deputy Prime Minister Alexei Kudrin, who opts for a strict fiscal discipline and a policy of resource accumulation.

If Putin resigns from public life, he will also disappear from the public eye, making his re-election in 2012 impossible. Moreover, if Putin seriously considered to step down and concentrate on his leadership of “United Russia” party, he has undoubtedly missed the right moment to do so, since that moment was last October amidst the unfolding of the international financial crisis. If he decided to resign now, the public would assume that if a “strong man” like Putin cannot cope with the crisis, then no one can. Since Putin is still regarded as *the* strong politician, the psychological impact of his resignation would only exacerbate the crisis.

The financial and economic crisis is expected to last for another three years, and it is unlikely for Putin to steer clear of its implications; thus his chances of a victory in the 2012 presidential elections are slim. In such an event, Putin may decide not to run for office. It could also mean that Medvedev could re-run for presidency and get re-elected and allowed to govern, this time for six years in accordance with the recent constitutional amendments.

GEORGIA & RUSSIA: THE “UNKNOWN” PRELUDE TO THE “FIVE DAY WAR”

COMMENT BY
Martin Malek*

Abstract

The Russian Armed Forces not only expelled invading Georgian troops from the separatist region South Ossetia, but they also entered Abkhazia and marched deep into Georgia proper over the course of the “five day war” in August 2008. The following report analyses Russia’s military preparations since spring 2008, an aspect hitherto almost unknown among politicians, the media and the public in Western Europe and North America. They included the shooting down of a Georgian drone by Russian fighter jets over Abkhazia, a massive increase of Russian “peacekeeping troops” along the Georgian-Abkhaz armistice line, the deployment of Russian railway troops to Abkhazia and the “Kavkaz 2008” military exercises. These developments occurred against the backdrop of political events, such as demands made by the Russian State Duma to recognise South Ossetia and Abkhazia as independent states, Russia’s decision to withdraw from the CIS economic embargo against Abkhazia and NATO’s refusal to offer membership to Georgia.

Keywords: *Russia, Georgia, South Ossetia, Abkhazia, preparations to war*

Introduction

At midnight on August 7-8, 2008 Georgian armed forces advanced to Tskhinvali, the capital of South Ossetia. Georgia’s leadership therefore revealed its intention to forcefully reintegrate South Ossetia which since the beginning of the 1990s had not been under the control of the government in Tbilisi. The Russian Armed Forces immediately launched a military operation in South Ossetia, Abkhazia and other parts of Georgia, which was aimed at more than just securing the position of the separatists and damaging Georgian military potential. Numerous statements from senior officials in politics and the military, as well as in media coverage, left no doubt that Russia sought to prevent Georgia’s restoration of its territorial integrity, humiliate President Mikheil Saakashvili, intimidate the entire Georgian nation and damage Georgia’s economy and civilian infrastructure, thereby undermining its relevance as a gas and oil transit country. Furthermore, Russia intended to send a strong signal to the US, NATO and the EU with the subtext not to “meddle in” regions belonging to the former Soviet Union, because Moscow officially considers them as “zone of vital interests”.

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The August 2008 crisis in South Ossetia took many policymakers and journalists from Western Europe and North America by surprise. Obviously, many heard about this desolate and barely populated area for the first time. In many cases, speculations, assumptions and prejudices replaced well-substantiated information regarding the background of the crisis. Many politicians, media outlets and “experts” asked the question “who started the war” – Russia or Georgia? Influential voices from Western Europe and North America blamed both sides equally for escalating the conflict and committing war crimes, whilst others made “Saakashvili and his supporters in Washington” responsible for the war.

At the same time, Russia’s military preparation over the last few months did not receive much attention. The debate appears even more astonishing, considering the fact that clearly Russia launched a military incursion into Georgian territory, not vice versa.

Russian Preparations

On March 6, 2008 the Russian Ministry of Foreign Affairs announced its decision to unilaterally withdraw from the economic sanctions imposed by the presidents of the member states of the Commonwealth of Independent States (CIS) against Abkhazia in 1996. However, this was merely a symbolic action, since Moscow had never implemented these sanctions. Abkhazia, in fact, was already economically tied to Russia: its currency is the Russian Rouble, not the Georgian Lari. On March 11, 2008 *Kommersant*, Russia’s prominent daily newspaper not controlled by the Kremlin, said that “the gradual recognition of Abkhazia and South Ossetia is being prepared in Moscow”.¹ Ten days later the State Duma, the lower house of the Russian Parliament, overwhelmingly passed a resolution which, referring to Kosovo and its secession from Serbia, asked the President and the Government to “investigate the usefulness of the recognition of independence of Abkhazia and South Ossetia”.²

NATO, under pressure from Germany and France, denied Georgia a Membership Action Plan (MAP) during its summit in Bucharest at the beginning of April 2008. By this, the Kremlin, according to the Russian journalist Yulia Latynina, “understood of having received a blank cheque”.³ On April 16 outgoing President Vladimir Putin advised the government to strengthen Russia’s relations with Abkhazia and South Ossetia in the realms of trade, social policy, science, culture and information policy. Even though both separatist regions, according to international law, are de jure part of Georgia, they were elevated to almost the same status held by Russia’s own regions. *Kommersant* commented that Putin aims to annex Abkhazia and South Ossetia.⁴ In its statement the Russian Ministry of Foreign Affairs

¹ Olga Allenova, “Russia Armed with Rebel Republics. For the NATO summit next month,” *Kommersant Online*, March 11, 2008, http://www.kommersant.com/p865374/NATO_breakaway_republics/ (accessed April 14, 2009).

² Zayavlenie Gosudarstvennoy Dumy No.245-5GD – O politike Rossiyskoy Federacii v otnoshenii Abkhazii, Yuzhnoy Osetii i Pridnestrovya [Declaration of the State Duma No. 245-5GD – About the policy of the Russian Federation vis-à-vis Abkhazia, South Ossetia and the Dnestr region], May 21, 2008, http://www.pnp.ru/chapters/rights/rights_6094.html (accessed April 14, 2009).

³ Juliya Latynina, “‘Samoe vazhnoe – byla li kolonna tankov?’ Kak nachinalas rossiysko-gruzinskaya voyna” [‘The most important thing – was there a column of tanks?’ How the Russian-Georgian War Started], *Novaya gazeta*, no. 36, September 2, 2008, 8.

⁴ Vladimir Solovyov, “Priznatelnye prikazaniya. Vladimir Putin nametil kurs na integratsiyu Abkhazii i Yuzhnoy Osetii v sostav Rossii.” [Thankful Orders. Vladimir Putin Outlines a Track to the Integration of

showed no concern at all about Georgia's rights and anxieties and justified Putin's actions on the grounds of "protecting the interests of the Abkhaz and South Ossetian population and its Russian citizens".⁵

On April 20 a Russian MiG-29 jet fighter shot down an unarmed Georgian drone over Abkhazia.⁶ The apparent aim of this operation was to prevent the observation of Russia's military preparations on the territory of Abkhazia. Only a few days later, Moscow increased the number of "CIS peacekeepers" in the Georgian-Abkhaz conflict zone from 2,000 to 3,000 – without permission from Tbilisi, which subsequently protested but without any success. The "peacekeepers" had been stationed in Abkhazia since 1994, though without any UN mandate, and were comprised exclusively of Russian troops. In fact, they had always acted as "border troops" of "independent Abkhazia". On May 31 Russia, again without Tbilisi's consent, sent railway troops into Abkhazia. Officially, the 400 soldiers were on a "humanitarian mission". But much of the repaired infrastructure was subsequently used by 10,000 Russian soldiers during its invasion in western Georgia in August.

In mid-July 2008 the Russian Armed Forces launched the military exercise "Kavkaz-2008" near the Georgian border. According to Russian media reports, 8,000 soldiers, 30 fixed-wing aircrafts and helicopters and 700 vehicles rehearsed "scenarios of a military operation in Abkhazia and South Ossetia".⁷ The main force involved was the 58th Army which also played a key role during the Russian invasion into Georgia. "Kavkaz-2008" officially ended on August 2, only a few days before the outbreak of the war; yet the 58th Army remained on high alert.⁸ At the same time, the Railway Troops completed their work in Abkhazia.

Since August 2, pro-Russian South Ossetian separatist forces had been shelling several ethnic Georgian villages inside South Ossetia. On August 5 a tripartite monitoring group, which included Organization for Security and Cooperation in Europe (OSCE) observers and representatives of Russian peacekeeping forces in the region, issued a report. This document, signed by the commander of the Russian "peacekeepers" in the region General Marat Kulakhmetov, stated that there was evidence of attacks against several ethnic Georgian villages. It also claimed that South Ossetian separatists were using heavy weapons against the Georgian villages, which was prohibited by a 1992 ceasefire agreement.⁹

Abkhazia and South Ossetia], *Kommersant*, April 17, 2008, <http://kommersant.ru/doc.aspx?DocsID=883332> (accessed April 13, 2009).

⁵ Civil Georgia, "Russian Foreign Ministry's Statement on Putin's Instruction to Boost Ties with Abkhazia and South Ossetia," Civil Georgia, April 16, 2008, <http://www.civil.ge/eng/article.php?id=17593> (accessed April 30, 2009).

⁶ The MiG-29 took off from the Gudauta military base in Abkhazia which, according to repeated Russian claims, was "closed" several years ago.

⁷ Aleksandr Gabuev, Georgij Dvali, "Moskva i Tbilisi obmenyalis ucheniyami" [Moscow and Tbilisi Trade Exercises], *Kommersant*, July 17, 2008, 6.

⁸ Margarete Klein, "Militärische Implikationen des Georgienkrieges. Zustand und Reformbedarf der russischen Streitkräfte" [Military Implications of the War in Georgia. State and Need For Reforms in the Russian Armed Forces]. *SWP-Aktuell*, 74, October 2008, 2.

⁹ Eka Tsamalashvili, Brian Whitmore, "Eyewitness Accounts Confirm Shelling Of Georgian Villages." *RFE/RL*, November 14, 2008, <http://www.rferl.org/articleprintview/1349256.html> (accessed April 14, 2009).

On August 6 a pro-Kremlin Russian daily newspaper came out with the headline: “Don Cossacks prepare to fight in South Ossetia”.¹⁰ And the next day, state-run (and de facto Kremlin-controlled) television channel *Rossiya* showed Abkhaz separatist leader Sergei Bagapsh stating at a meeting of the Abkhaz National Security Council: “I have spoken to the President of South Ossetia. It [situation] has more or less stabilized now. A battalion from the North Caucasus District has entered the area.”¹¹

According to official Russian statements, its Armed Forces merely launched “counter-attacks” to “protect Russian citizens in South Ossetia” on August 8. This, however, was challenged by reports in the Russian newspaper *Permskie novosti* on August 15: it interviewed soldiers from the 58th Army who served in Georgia but were allowed to leave the war zone on August 10 at the request of their parents. The newspaper quotes a young soldier saying, “we have been [in South Ossetia] since August 7. [...] Today we went from Tskhinvali to Vladikavkaz¹² to pick up weapons”. The article “Life will go on” in *Krasnaya zvezda* (*Red Star*), the newspaper of the Russian Ministry of Defence, was particularly traitorous. It cited Captain Denis Sidristy (who was decorated with the Russian Defense Ministry’s order of bravery for his performance in the war against Georgia) saying that “we were training near the capital of South Ossetia. [...] On August 7 we received the order to advance on Tskhinvali. [...] We arrived, cantoned, and on August 8 the place was on fire and many lost their heads.”¹³ Evidently, Sidristy witnessed the Georgian shelling of Tskhinvali on the night of August 8, which could happen only from the Southern side of the Caucasian mountains i.e. already on the territory of Georgia. As a result of the increased interest in this article, the editorial staff of *Krasnaya zvezda* removed it from its website,¹⁴ and it did not reappear again.¹⁵ Sidristy later had to deny his comments in *Krasnaya zvezda* by claiming that his unit left for Tskhinvali “a little bit later” than originally alleged.¹⁶

Long-term Pre-planning

Even observers unfamiliar with military affairs should comprehend that not even the most effective military organisation is able to mobilise 25,000 soldiers, 1,200 tanks and dozens of aircrafts, and deploy them in a mountainous region literally within a few hours. This consideration leads one to the conclusion that Russia’s military operation against Georgia had been carefully planned in advance. Modest Kolerov, former head of the Department for

¹⁰ Mariya Bondarenko, Ivan Sas, “Shashki nagolo. Donskie kazaki gotovyatsya voevat v Yuzhnoy Osetii” [Draw the Sword. The Don Cossacks Are Ready to Fight in South Ossetia], *Nezavizimaya gazeta*, August 8, 2008, http://www.ng.ru/regions/2008-08-06/1_kazaki.html (accessed April 13, 2009).

¹¹ As quoted in: Nikolaus von Twickel, “Moscow Claims Media War Win,” *The Moscow Times Online*, November 17, 2008, <http://www.themoscowtimes.com/article/600/42/372391.htm> (accessed November 17, 2008).

¹² The capital of the Russian autonomous republic North Ossetia (Alania).

¹³ “Soldaty govoryat, chto pribyli v Yuzhnuyu Osetiyu eshche 7 avgusta” [The Soldiers Say That They Arrived in South Ossetia already on August 7], *Polit.ru*, September 10, 2008, <http://www.polit.ru/news/2008/09/10/seven.html> (accessed 14 April, 2009).

¹⁴ “S sayta ‘Krasnoy zvezdy’ udaleno intervyyu kapitana Sidristogo o vtorzhenii rossiyskikh voysk v YuO do napadeniya Gruzii” [The Interview With Captain Sidristy About the Intrusion of Russian Troops into South Ossetia before the Georgian Attack was removed from the Site of *Krasnaya zvezda*], *NEWSru.com*, September 15, 2008, http://www.newsru.com/russia/15sep2008/udaleno_print.html (accessed April 14, 2009).

¹⁵ Cf. *Krasnaya zvezda*, September 11, 2008, http://www.redstar.ru/2008/09/11_09/index.shtml (accessed April 13, 2009).

¹⁶ Ralf Beste et al., “Wetlauf zum Tunnel” [The Footrace to the Tunnel], *Der Spiegel*, no. 38, 2008, p. 132.

inter-regional and cultural ties with foreign countries of the President's Office in Moscow, admitted to a respectable Russian newspaper that "the Kremlin had a clear plan of actions in the case of a conflict. The expediency with which the military operation was executed confirms that".¹⁷ Andrei Illarionov, former economic advisor to Putin and now one of his most outspoken opponents, took the same line. According to him, the Russian invasion of Georgia "had been long prepared and successfully executed".¹⁸ Even in Western Europe, where most of the politicians were very careful "not to alienate Russia," this point did not go totally unnoticed. French Foreign Minister Bernard Kouchner said in an interview with a Moscow-based newspaper that "you [Russia] without question were prepared. [...] Russian troops, by some miracle, turned up on the border at the right time".¹⁹

Finally, Putin, Prime Minister since May 2008 and still Russia's "strongman," "flubbed" when he told his audience at the Valdai Discussion Club in September 2008 about his meeting with Chinese officials on the day of the opening ceremony of the Olympic Games in Beijing. In these talks, Putin "recognised China's problem with Taiwan and therefore did not press China to recognise the independence of Abkhazia and South Ossetia".²⁰ Hence, Putin admitted that he considered the possibility of "recognising the independence" of Georgia's separatist regions, at the latest, on the day of the beginning of fighting in South Ossetia and possibly already decided on it. On August 26 it was announced by President Dmitri Medvedev.

According to Moscow-based security analyst Pavel Felgenhauer, Russia

*"...declared that it was forced to go to battle by the initial Georgian attack in South Ossetia. But there is sufficient evidence that this massive invasion was pre-planned beforehand for August [2008]. The swiftness with which large Russian contingents were moved into Georgia, the rapid deployment of a Black Sea naval task force, the fact that large contingents of troops were sent to Abkhazia where there was no Georgian attack all seem to indicate a rigidly prepared battle plan. This war was not an improvised reaction to a sudden Georgian military offensive in South Ossetia, since masses of troops cannot be held for long in 24-hour battle readiness. The invasion was inevitable, no matter what the Georgians did."*²¹

¹⁷ Ivan Preobrazhensky, "Est li u nikh plan?" [Do They Have a Plan?], *Vedomosti*, August 13, 2008, <http://www.pankisi.info/media/?page=ru&id=13503> (accessed April 14, 2009).

¹⁸ As quoted in: Brian Whitmore, "Did Russia Plan Its War In Georgia?" *RFE/RL*, August 15, 2008, <http://www.rferl.org/articleprintview/1191460.html> (accessed April 13, 2009).

¹⁹ Michail Tsygar, "Bernar Kushner: ya, naverno, menee diplomatichnyy i bolee chestnyy" [Bernard Kouchner: I am, probably, less diplomatic and more honest], *Kommersant Online*, October 10, 2008, <http://www.kommersant.ru/doc.aspx?DocsID=1048686> (accessed October 30, 2008).

²⁰ As quoted in: Andrei Kolesnikov, "Tak davayte zhe dogovarivatsya. Vladimir Putin prodemonstriroval voinstvuyushchiy patsifism" ['So, Let's Negotiate for It! Vladimir Putin demonstrated belligerent pacifism], *Kommersant Online*, September 12, 2009, <http://www.kommersant.ru/doc.aspx?DocsID=1024665> (accessed April 14, 2009).

²¹ Pavel Felgenhauer, "The Russian-Georgian War Was Preplanned In Moscow," *Eurasia Daily Monitor* (The Jamestown Foundation), August 14, 2008, vol. 5:156, [http://www.jamestown.org/programs/edm/single/?tx_ttnews\[tt_news\]=33888&tx_ttnews\[backPid\]=166&no_cache=1](http://www.jamestown.org/programs/edm/single/?tx_ttnews[tt_news]=33888&tx_ttnews[backPid]=166&no_cache=1) (accessed April 30, 2009).

Conclusion

Saakashvili is seen in Western Europe as “pro-American,” and mainly due to America’s – and not only former President George W. Bush’s – unpopularity this has become a liability not only for him but for all of Georgia. It is therefore, from a subjective point of view, traceable that many European and North American media outlets (such as the German weekly *Der Spiegel*) argued that Georgia was responsible for the outbreak of the “five day war”. However, they put the focus on the question of which state moved troops into South Ossetia first, thereby ignoring Russia’s military preparations since the beginning of 2008 as well as the pivotal question: who deployed troops on whose territory? And it is incontestable that Russia intervened on Georgian soil (and not vice versa), which, according to international law, constitutes an aggression. Little attention was paid to Russia’s recognition of Abkhazia and South Ossetia as “independent states” in the West, albeit this amounted to a forceful alteration of Georgia’s borders.

Responses from governments in Western Europe and North America indicated that the relations with Russia are considered too important as to risk a worsening relationship over “tiny and insignificant” Georgia. One often hears the argument in Western policymaking circles and the media that Russia “should not be isolated” because without it, “international problems cannot be solved.” The same voices, however, cannot name even a single example of an international problem which has been jointly solved by Russia and the West. Especially in the South Caucasian separatist conflicts, Russia for two decades has been a huge part of the problems – and not of the solutions. In most Western capitals – and not only in Berlin which pursues a policy of “rapprochement through entwinement” (“*Annäherung durch Verflechtung*” in German) with Russia – policymakers obstinately ignore this fact.

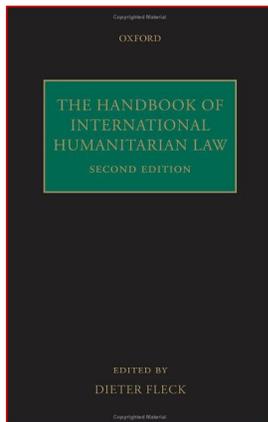
BOOK REVIEW

THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW

BY DIETER FLECK (ED)

(Oxford: Oxford University Press, 2008, Pp. Xvii-770. ISBN 978-0-19-923250-5)

Review by Pierre-Emmanuel Dupont



In the *Handbook's* Introduction, Dieter Fleck mentions that the first edition, published in German in 1994¹, was built upon the German Armed Forces's (*Bundeswehr*) Manual of international humanitarian law (IHL), an account of Germany's long-standing involvement in the implementation of IHL². Yet the present edition, 'no longer connected to a single national manual, [...] aims at offering a best practice manual to assist scholars and practitioners worldwide' (p. xiv).

Dr. Fleck draws a contrasted picture of the current implementation of IHL around the world. He highlights, among the recent achievements in this field, the fact that 'the interrelationship between humanitarian law and the protection of human rights in armed conflicts is largely accepted and better understood today than ever before'. He also observes that: 'A progressive development of international criminal law has led to increased jurisprudence on war crimes and crimes against humanity by national courts, international ad hoc tribunals, and finally to the establishment of the International Criminal Court (ICC). States and international organizations have shown a growing awareness of their obligation under Article 1 common to the Geneva Conventions to ensure respect of international humanitarian law, to better implement its rules, and to enforce compliance by state and non-state actors in all armed conflicts. The Geneva Conventions have reached global acceptance and Additional Protocol I to these Conventions (AP I) is now in force for 167 states' (pp. xi-xii). But at the same time, he mentions that these

¹ Dieter Fleck (Ed.), *Handbuch des humanitären Völkerrechts in bewaffneten Konflikten* (München: C.H. Beck, 1994).

² It is to be noted that even before the creation of the *Bundeswehr* in 1956, the German Army contained a legal office, investigating the breaches of the 'laws of war' during both World Wars. See Alfred M. de Zayas, *The Wehrmacht War Crimes Bureau, 1939-1945* (Lincoln and London: University of Nebraska Press, 1989).

achievements are met today by new challenges, mainly as a result of the spread of the phenomenon of ‘asymmetric conflicts’, characterized by ‘unlimited methods of fighting by the poor, and by excessive acts performed even during precision strikes by the rich’ (p. xii).

Taking into consideration the density of the book, it would be irrelevant to attempt to review all the developments contained in its 14 chapters, all of them well-structured, offering many bibliographical references and emanating from leading specialists. Chapter 1 is devoted to the historical development and the legal basis of IHL, but it begins with a condensed overview of the legal framework regulating the right to resort to armed force under the UN Charter (‘*ius ad bellum*’, as opposed to the ‘*ius in bello*’ which corresponds to IHL). The author discusses various recent justifications advanced for the use of force – such as ‘anticipatory self-defence’ and humanitarian emergency (see pp. 5 sq.). The author seems to admit the existence of a right of anticipatory self-defence (p. 7), but doesn’t endorse the distinction made by some scholars between ‘anticipatory’ or ‘incipient’ self-defence (which refers to the recourse to force in front of an attack actually mounted and about to begin) and the broader doctrine of ‘preemptive self-defence’ permitting the use of force in the case of a remote or even hypothetical threat³. Chapter 2 revisits the notion of ‘armed conflict’ – which conditions the application of IHL – in light of the fact that there exists ‘no sharp dichotomy between peace and armed conflict in international law such as used to exist between peace and war’ (n. 201).

Chapter 3 pays special attention to challenges to combatant status in recent conflicts. It discusses in detail the issue of ‘unlawful combatants’, but only briefly addresses, under the heading ‘Civilian contractors’, the growing phenomenon of the outsourcing of tasks belonging to the military domain: the emergence of private military companies or private security companies (see n. 320)⁴, which raises crucial questions with respect to IHL, as evidenced e.g. by recent events in Iraq, such as the killing of 17 civilians by Blackwater employees in September 2007.

Chapter 4 on ‘Methods and Means of Combat’ explores the multiple dimensions of the core principle of IHL, i.e. that the right to choose methods or means of warfare is not unlimited (a rule contained in Article 35, AP I). Among the applications of this general principle is the prohibition, under the terms of Article 2 of the 1980 Protocol on Prohibition or Restrictions on the Use of Incendiary Weapons, to use incendiary weapons against military objectives located within a concentration of civilians, as the Israeli

³ The author notes, however, that ‘although the U.S. has advanced the position that states may enjoy a right of pre-emptive military action even when no armed attack is imminent [with reference to the *National Security Strategy* 2006], this theory has attracted very little support and is difficult to reconcile with state practice or academic commentary’. He quotes Lord Goldsmith, Attorney-General of England and Wales, stating [with respect to the 2003 invasion of Iraq] that ‘international law permits the use of force in self-defence against an imminent attack but does not authorize the use of force to mount a pre-emptive strike against a threat that is more remote’ (p. 7, note 38). On the above-mentioned distinction, see e. g. Mary Helen O’Connell, M. E., ‘The Myth of Preemptive Self-Defence’, *ASIL Task Force Papers*, August 2002.

⁴ See e.g. Simon Chesterman and Chia Lehnhardt, (Eds), *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (Oxford University Press: Oxford, 2007).

Defence Forces (IDF) did, according to the Red Cross, during the December 2008-January 2009 offensive on Gaza. Analogous remarks on the conduct of military operations by belligerents in many other recent conflicts around the world can be made after reading the section devoted to the protection of civilian objects (n. 451), and Chapter 5 on ‘Protection of the Civilian Population’ (n. 501 sq.). Chapter 4 also usefully emphasizes the growing concern over protection of the environment from the effects of armed conflict, an issue neglected until the Vietnam war, that prompted the adoption of the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD Convention), as well as the inclusion in Article 35, AP I of prohibition of severe environmental damage (see n. 403). As the author points out, the extent of application of the provisions of the ENMOD Convention and the environment-related provisions contained in AP I, is still subject to debate, partly because of the uncertainties surrounding the definitions of ‘widespread’, ‘long-lasting’ and ‘severe’ damage to the environment, which serve as criteria of application of both treaties. It is understandable, in this context, that many commentators expressed the wish that the ENMOD Convention be reviewed in order to correct the shortcomings of its text and take into account recent technological advances⁵.

The issue of protection of the civilian population encompasses, among others, the law of belligerent occupation, which has been the subject of renewed attention from academics in the past few years in the context of the occupation of Iraq⁶. The main criterion of application of the international law on belligerent occupation (that of ‘actual control’ of a territory by the occupant State, found in Article 42, Hague Regulations of 1907) is the subject of comprehensive developments, related – among others – to the issue of the applicability of the fourth Geneva Convention of 1949 (GC IV) to the occupied Palestinian territories (OPT). While the author reminds us rightly that Israel’s position ‘on the (non)applicability of GC IV to the territories occupied in 1967 has been rejected by all other states parties to the Geneva Conventions, acting individually and through international organizations, in particular through various UN bodies including the General Assembly, by the ICRC and other non-governmental organizations and by academic writing’ (n. 527), he doesn’t take into account the renewal of the debate following the Israeli ‘disengagement plan’ of the Gaza strip implemented in 2005. Since then, experts are indeed divided on the legal status of Gaza: while Israeli officials claim that the disengagement dispels claims regarding Israel’s responsibilities as occupying power on the territory, some argue on the contrary that it continues to exercise effective control on the strip⁷. However, as the author of this chapter states in a general way, ‘the issue of the legal status and of the fate of occupied land is a question which must be kept distinct from the humanitarian purposes of Geneva Law’ (n. 527).

⁵ Despite the fact that Article 8 of the ENMOD Convention provides that review conferences are to be held at intervals of not less than five years, the last review conference of the ENMOD Convention dates back to 1992.

⁶ See e.g. Marco Sassoli, “Legislation and Maintenance of Public Order and Civil Life by Occupying Powers”, *European Journal of International Law*, vol.16:4 (2005), 661-694

⁷ The debate is well summarized in Y. Shany, *The Legal Status of Gaza after Israel's Disengagement*, Hebrew University International Law Research Paper No. 12-06 (2005).

It is noteworthy that the long Chapter 10, devoted to ‘The Law of Armed Conflict at Sea’, while it mentions the growing criticism vis-à-vis the law of naval warfare, the provisions of which supposedly ‘do neither meet the necessities of modern operations, as e.g. maritime interception operations or non-military enforcement measures decided upon by the UN Security Council, nor do they offer operable solutions to the naval commander’ (p. 475), does not explicitly address the issue of the legality of the Proliferation Security Initiative (2003), under which the United States and some of their allies have sought new means to interdict shipments of Weapons of Mass Destruction in international waters⁸. The author argues in this respect that ‘Maritime interception operations aimed at combating transnational terrorism or the proliferation of weapons of mass destruction and related components do have a legal basis that is independent from the law of naval warfare’ (p. 475). In our view, it remains that the interdiction principles contained in the PSI shall be put in harmony, through a multilateral binding instrument, with the existing law of the seas.

The last chapter is entitled ‘Enforcement of International Humanitarian Law’. As regards this issue of great importance, it would have been worthwhile had the author further elaborated on the implications of the 1998 establishment of the ICC for ensuring respect of IHL, since, as Dr Fleck rightly points out, ‘there is an urgent and continuing need for investigatory and punitive measures as well as for reparation and for activities to prevent future violations’ (p. xiii).

Let us finish by mentioning that the work under review, which has no equivalent at the present day, and is therefore absolutely necessary to everyone interested in IHL, also contains a useful Table of International Instruments and a Table of Judgments and Decisions, as well as a comprehensive Bibliography.

⁸ For a detailed discussion of this issue, see Andreas Persbo and Ian Davis, *Sailing Into Uncharted Waters? The Proliferation Security Initiative and the Law of the Sea*, BASIC Research Report (2004), available at <http://www.basicint.org/pubs/Research/04PSI.htm>.

“FEDERALISATION REMAINS THE BEST WAY FOR GEORGIA TO AVOID OUTBREAKS OF FURTHER INTERNAL DISPUTES”

Interview with Prof. George Hewitt**

Professor, London School of Oriental & African Studies (SOAS)

Conducted by Jesse Tatum

CRIA: In light of a tumultuous past—but with a view to the immediate future—would you give your thoughts on national reconciliation between Tbilisi, Sukhum and Tskhinval (and other parts of Georgia), and how progress might be best achieved?

Hewitt: Sukhum and Tskhinval as metonyms for the Abkhazians and (South) Ossetians respectively, would strenuously object to the implication that Abkhazia and South Ossetia represent “parts” of a Georgia wherein they could be parties to any “national” reconciliation.

Tbilisi has had no say in South Ossetian affairs since the war instigated there by Georgia’s first post-communist leader, the late Zviad Gamsakhurdia, ended with the Dagomys Agreement in June 1992, just as it has had no say in Abkhazian affairs since the war imposed on the republic by Eduard Shevardnadze on 14th August 1992 ended with the expulsion of Georgian forces at the end of September 1993. Georgia, thus, effectively lost ‘de facto’ control over these one-time autonomous entities in 1992/3 — South Ossetia became an Autonomous District within Georgia in 1922, whilst Abkhazia was downgraded by Stalin from being a full republic with treaty-ties to Georgia to become a mere Autonomous Republic *within* Georgia in 1931. After the events of August 2008 there can be no realistic prospect of their reintegration within Georgia.

Even if one accepts the definition followed in Georgia since circa 1930 as to who is correctly categorisable as a “Georgian”, “Georgians” constituted only around 71% of Georgia’s population in 1989, when the last Soviet census was taken. Even with Abkhazia and South Ossetia out of the equation, there are still potential ethno-territorial problems within Georgia proper. In July 1989 fatal clashes occurred not only in Abkhazia

* *Prof. George Hewitt is a leading scholar of Abkhazian and Georgian languages and culture, and author of: Georgian, a Structural Reference Grammar (John Benjamin, 1995), and A Georgian Reader (SOAS, 1996); Hewitt is also a contributor to OpenDemocracy.net. Some of his other works include ‘Peoples of the Caucasus’ (in F. Fernández-Armesto, ed. Guide to the Peoples of Europe (Times Books, 1994)); and The Abkhazians, a handbook (as author & editor, Curzon Press, 1999).*

* The views expressed in this interview do not represent the views of the Editors of CRIA.

but also in the southern Dmanisi-Marneuli region, which is heavily populated by Azerbaijanis, whose high levels of fertility were openly described in objectionable articles in Georgia as a threat to country's demography.

Georgia's state-relations with Azerbaijan have been good in recent years; in part no doubt as a result of the decision to export Caspian oil and gas through pipelines that cross Georgian territory, but one should not ignore the reports of problems on the ground in Azerbaijani-populated areas of Georgia, leading in recent years to an outflow of Azerbaijanis from the republic. As for the Armenians, Georgians and Armenians have been rivals in many spheres for centuries, and the predominantly Armenian-populated district of Dzhavakheti in south-western Georgia looks more to Yerevan than to Tbilisi: Armenian is spoken, and the Armenian flag is flown. Tbilisi's insistence on the closure of a Russian military base in Dzhavakheti has caused local unemployment to rise. Armenia does not want a dispute with another neighbour (sc. in addition to its disputes with Azerbaijan and Turkey), but Dzhavakheti could easily prove another flashpoint for Georgia. For some years Armenians in the region itself have accused the Georgian authorities of ignoring their needs; attempts to take over Armenian churches and graveyards have been seen as an extension of the policy to "georgianize" non-Georgians that started on the eve of the collapse of the former USSR with the move to introduce a language law in 1988 that would have denied access to higher education in Georgia to anyone unable to pass a test in Georgian language and literature — Georgian was/is not widely known amongst Armenians and Azerbaijanis outside the capital (and in Abkhazia in general).

Given the demographics, federalisation was the obvious way to restructure the state when Georgia gained the opportunity to control its own affairs. Instead, the dangerous flames of nationalism were fanned, which antagonised many/most of the ethnic minorities living within the country's Soviet borders. Had the sensible course been followed, one could hypothesise that the S. Ossetian and Abkhazian conflicts (not to mention the civil war that was conducted in Gamsakhurdia's home-region of Mingrelia following his ousting in January 1992) might have been avoided with the result that Georgia might have proceeded to peaceful and prosperous independence with no shrinkage of borders.

However pointless it is to engage in speculation about how different history would have been with more sensible politics being followed in late- and post-Soviet Tbilisi, federalisation remains the best way for Georgia to avoid outbreaks of further internal disputes.

CRIA: How does Tbilisi re-earn the trust of these regions? How would the Abkhazian and South Ossetian leadership promote the return of displaced refugees (IDPs) and rights for ethnic Georgians and the other minorities in the areas?

Hewitt: If Georgia were prepared to accept federalisation and also to reverse the denial of language-rights for example to Mingrelians, such a demonstration of equitable treatment for those living within Georgia proper might persuade Sukhum and Tskhinval

that Georgia's yearning for regional "overlordship" no longer presented a danger. Most of the refugees from S. Ossetia following the events of August 2008 are ethnic Georgians, whilst most of those who fled from Abkhazia after Georgia's defeat in 1993 were ethnic Mingrelians (and local residents who abandoned their homes when Georgian military personnel were finally ejected from Abkhazia's Upper K'odor Valley on 12th August 2008 were mainly ethnic Svans).

Emotions are undoubtedly still too raw to envisage an imminent return of Georgians to S. Ossetia; the Abkhazians have raised no objections to Mingrelians staying in, or returning to, the south-easternmost province of Gal, where, whatever the (disputed) ethnic origins of these locals, there had been a preponderance of Mingrelian-speakers for decades, and Svans who did not take up arms against Abkhazians during the war or thereafter are free to live in their homesteads in the K'odor Valley. Sadly for the refugees themselves, failure on the part of the Georgian authorities to recognise the post-1992/3 realities and to pretend that re-establishing control over the lost territories and a mass-return of the refugees have been ever imminent has only resulted in extra misery for the people concerned, for whom no adequate housing has been built or found despite the fact that large numbers have migrated out of Georgia since independence, presumably vacating many domiciles into which refugees could easily have been moved.

With particular reference to Abkhazia, the exiles in whose repatriation the Abkhazians are most interested are the descendants of those Abkhazians who migrated to the Ottoman Empire at the end of the great Caucasian War (1864) or following the Russo-Turkish war of 1877/8, a population-shift which denuded Abkhazia of its native inhabitants and created the opportunity for the start of large-scale inward Mingrelian migration, something which became state-policy under Stalin's anti-Abkhazian campaign from the late 1930s and which had such a disastrous consequence for the republic's ethnic balance, Abkhazians forming only 17.8% of Abkhazia's population by 1989.

As regards the denizens of the Gal District who view themselves as Mingrelians/Georgians, the question of citizenship is certainly problematic. Any dual Abkhazian-Georgian citizenship is, for obvious reasons, out of the question.

CRIA: How widely spoken are Mingrelian, Laz and Svan in (and outside) Georgia? And how far apart are groups of speakers in geographic terms?

Hewitt: Georgian, Mingrelian, Laz and Svan are the four members of the South Caucasian (or Kartvelian) language-family. This family cannot be demonstrated to be related to any other language or language-family spoken today or at any time in the past. The compact area in which these languages are spoken is concentrated on Georgia (proper) and extends into eastern parts of modern-day Turkey, where the bulk of the Laz are to be found. Within Georgia, because of census-practices since circa 1930, no-one knows how many Mingrelians or Svans there are or, amongst each of those ethnic groups, how widespread is the knowledge of Mingrelian and Svan — there are only negligible numbers of Laz in Georgia. It is anecdotally believed that there are perhaps 50,000+

speakers of Svan, whilst half a million would be the maximum for speakers of Mingrelian, though the number of ethnic Mingrelians would exceed this. Since there were no Russian-language schools in Svanetia, all Svans brought up in Svanetia will have been educated through the medium of Georgian, learning and speaking Svan at home. As there were Russian-language schools during Soviet times in Mingrelia, it can be concluded that not all Mingrelians will necessarily be fluent in Georgian, though most probably are; however, by no means all ethnic Mingrelians know Mingrelian, as many were brought up in a purely Georgian-speaking environment. Over many years Georgian has been extending its range westwards at the expense of Mingrelian, whilst Mingrelian extended its range westward at the expense of Abkhaz, but that process has now ended. Laz, given the geographical position of its speakers (along the east Turkish coast from the Soviet/Georgian border as far as Rize), has been influenced by both Greek and Turkish. The number of Laz speakers is unknown, estimates ranging between 100,000 and a quarter of a million. As with both the closely related Mingrelian and Svan within Georgia, the language has not been taught or officially encouraged. Only between Laz and Mingrelian is there any degree of mutual intelligibility.

CRIA: *What are some links between language, identity and citizenship in modern Georgia?*

Hewitt: Since Mingrelian, Svan and Laz were not regarded as official languages from c.1930, it has been impossible to see in census-returns the level of their retention as 1st or 2nd languages of the local populations. As Mingrelians, Svans, Laz and, most ridiculously of all, the North Central Caucasian speaking Bats community, which lives in the one east Georgian village of Zemo Alvani, have been classified as ‘Georgians’, it is extremely difficult to answer such questions as how they identify themselves in their own minds and how important they feel preservation of their mother-tongue to be. The Bats (their language being related to Chechen and Ingush) are reported no longer to be teaching their language to their children, and this language has been heavily influenced by Georgian for almost two centuries at least. Whilst most Svan lived secluded in the highlands of Svanetia, their language (with a bewildering variety of local variations) was pretty secure. But after a disastrous winter at the end of the 1980s, many were relocated from Upper Svanetia to lowlands in west Georgia, in some cases to villages where non-Georgians lived in the expectation that a Svan presence would georgianise [*sic*] them! The extent to which Svan can be preserved as populations move out of the mountains must be open to doubt. Back in the days of *glasnost*’ some Mingrelians living in Abkhazia voiced their concerns at the way their language/culture was ignored for the greater good of Georgian, and the backlash that such talk occasioned was not confined to verbal assaults. The issue of language-rights for Mingrelian has for some time been and still remains a very sensitive issue, as Georgian authorities seem incapable of distinguishing between language-rights and political rights, fearing that granting the former would lead to separatist-demands for Mingrelia. This is indeed a possible, but by no means inevitable, corollary, and my suggestion for meaningful restructuring of the state along federal lines is in part meant to avoid such a consequence. However, because of the situation that has evolved since c.1930 the fascinating question of the link between language, identity and

citizenship with reference to the Mingrelians, who are the largest of the minorities living within Georgia, plainly cannot be easily answered.

CRIA: You've met and worked with the last speaker of Ubykh Tevfik Esenc, who passed away in 1992. Can you summarise what this experience meant to you and any subsequent implications?

Hewitt: I had the immense privilege of meeting Tevfik Esenc in Istanbul in 1974 and of making recordings with him over the course of one week that summer. Travelling, courtesy of the British Council, to Tbilisi the following year to spend the academic year 1975-76 learning Georgian and gaining a familiarity with Abkhaz, Avar and Chechen (plus Mingrelian and Svan), I realised just how precarious was the future for several of the other indigenous languages of the Caucasus, which had by then become my area of specialisation. I determined that I had to do whatever I could to try to prevent any other such language following Ubykh to the grave. It was with this thought in mind that I decided to make a statement on the developing conflict between Georgians and Abkhazians as nationalism, directed against a number of local minorities, which began to explode in Georgia from late 1988. It seemed to me that the opinions being expressed in Georgian papers to which I had access in England could lead to a dangerous situation. I had hoped to persuade any open-minded reader who was prepared to read the Open Letter that I submitted in Georgian to the weekly 'Literary Georgia' in the summer of 1989 that the nationalism being championed by those leading the struggle to rid Georgia of communist rule could lead to disaster not only for the Abkhazians but also for the future of the Georgian state itself. The attempt signally failed ...