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A Non-Resolution Limbo: Better Status Quo than Settled?

Georgian Territorial Integrity, Russian Security Interests, and the Status of De Facto States in the Peace Process

Introduction

December 2019 saw the 50th round of the Geneva International Discussions over the conflict in Georgia. The last year has been particularly worrisome in view of the deterioration of the peace process over the administrative boundary lines between Georgia and both Abkhazia and South Ossetia. Events such as frequent incidents and blockages due to the borderization process have often claimed lives and create an unpleasant and dangerous situation for the people who attempt to cross the lines for any reason.¹ Furthermore, despite the implementation of the Incident Prevention and Response Mechanisms in Gali and Ergneti,² the negotiation process has not seen any concrete positive development. President of Georgia Salome Zourabichvili criticized the Geneva format, saying that it has only been able to discuss technical issues and has not been oriented towards political questions.³ However, this is hardly surprising, as the decennial deadlock over the resolution of the conflict demonstrates.

As in the other unresolved conflict in the post-Soviet space, in particular those where Russia is involved as sponsor or patron state of the de facto governments in the breakaway regions, there are deep misunderstandings, or rather misrecognition of the actual role of the parties involved in the conflict. This plagues the negotiation formats, leading to the lack of a basic framework for a peaceful settlement. Georgia, like Moldova and Ukraine, insists that Russia is the other part of the conflict. Coherent with its sense of territorial integrity, Georgia has thus refused to recognize Abkhazia and South Ossetia as independent actors since the 2008 war and addresses Moscow as an occupying

Note This contribution was developed within the scientific activity of the Junior Research Group "Between Cooperation and Confrontation: the Politics of International Law in the Post-Soviet Space" at IOS Regensburg, a project funded by the German Ministry of Education and Research (BMBF).

- 1 Cf. Edward Boyle, *Borderization in Georgia: Sovereignty Materialized*, Eurasia Border Review 1/2016, pp. 1-18.
- 2 Cf. Paata Gaprindashvili/Mariam Tsitsikashvili/Gogi Zoidze/Vakhtang Charaia, *One step closer – Georgia, EU-integration, and the settlement of the frozen conflicts?*, Tbilisi 2019, p. 9, at: https://www.ecfr.eu/page/-/GRASS_Research_Draft_19.02.2019.pdf.
- 3 Cf. Thea Morrison, *Georgian President Suggests Changing Format of Geneva Int'l Discussions*, *Georgia Today*, 28 March 2019, at: <http://georgiatoday.ge/news/15022/Georgian-President-Suggests-Changing-Format-of-Geneva-Int%E2%80%99I-Discussions>.

power, liable for anything that happens under its occupation.⁴ Russia, on the other hand, sees itself as a mediator and rejects Georgian claims that those areas are occupied territories, recognizing the two breakaway regions as sovereign states. Indeed, the violation of Georgia's territorial integrity is one of the drivers of Tbilisi's interests, openly clashing with those of Moscow and irreconcilable with those of Sukhumi and Tskhinvali over their recognition as independent states as a further step towards peace.

The situation is particularly puzzling and delicate, and there are no short-term prospects of conflict resolution. Confidence-building measures are useful but too long-term oriented, fragile, and not necessarily influential at the political level. Although progress over technical issues continues, the recent deaths of Georgian citizens over the administrative boundaries with both Abkhazia and South Ossetia, and other incidents such as the Gaprindashvili case,⁵ mean that relations between Tbilisi on one side and Sukhumi and Tskhinvali on the other remain highly tense despite the engagement. Furthermore, Russian, Abkhazian and South Ossetian delegates leaving the negotiation table to hijack the discussions over the fate of internally displaced people remains problematic for the prospect of conflict resolution. This is not only highly sensitive for the Georgian side, but has strong demographic implications that could disrupt the current ethnic balance of the breakaway regions.

The First Sparks of the Conflict: Legal and Armed Skirmishes at the Collapse of the Soviet Union

Just as in the other parts of the Soviet Union, the turmoil in Georgia started during the process that led to the collapse of the federation in 1991, although its historical roots date back to the Sovietization of the Southern Caucasus in 1920-21.⁶ As in the rest of the socialist bloc, anti-Soviet rhetoric paved the way to independentist and nationalist mobilization across many of the Union Republics, Georgia included. Such a position was perceived by the local autonomous administrative entities – the Abkhaz ASSR, the Adjar ASSR and the South Ossetian AO⁷ – as a direct threat to their prerogatives and survival. Basing their claims on historical reasons, societal security and leaning towards

4 Cf. The Law of Georgia on Occupied Territories, 23 October 2008, Article 7, available at: <https://smr.gov.ge/en/page/21/strategic-documents>.

5 Cf. Georgian Doctor Vazha Gaprindashvili Released from Tskhinvali Custody, *Civil.ge*, 28 December 2019, at: <https://civil.ge/archives/333211>.

6 Cf. Arsène Saparov, *Aux origines de l'autonomie sud-ossète*, in: Aude Merlin/Silvia Serrano, *Ordres et désordres au Caucase*, Brussels 2010, pp. 27-45.

7 ASSR is the acronym for Autonomous Soviet Socialist Republic, which was an autonomous administrative unit with the status of a republic within one of the 15 Union Republics. AO stands for Autonomous Oblast (region, in Russian), which benefited from a lower degree of autonomy compared to the ASSR. ASSRs and AOs usually included in their names the ethnic minorities which populated them and their status often depended on their degree of loyalty to the Union Republic they belonged to, on Moscow or on other historical reasons, such as the active participation and support to the Bolshevik Revolution and/or the process of Sovietization, as well as deliberate personal decisions of the Soviet leaders.

a pro-Soviet polarization in opposition to the nationalists, these republics began to mobilize. Abkhazia and South Ossetia tried to raise their legal status (to a Soviet Socialist Republic/SSR and ASSR respectively) and supported their permanence in the USSR, which was seen from Tbilisi as a threat to the territorial integrity of the Republic.⁸

In March 1990, the Supreme Soviet of Georgia declared the sovereignty of the Republic. In an attempt to prevent the secession of the Union Republics, a series of laws were passed in Moscow in April 1990 that established the same prerogative for each subject of the federation, regardless of their status, including secession from their SSR.⁹ This led to a series of legal battles between Tbilisi on the one hand, and Tskhinvali and Sukhumi on the other that eventually escalated into a series of demonstrations and clashes, during which the new nationalist president Zviad Gamsakhurdia failed to impose the Georgian constitutional order on the breakaway regions. Gamsakhurdia was eventually ousted in a coup in January 1992, allowing the Chairman of the Parliament and former Soviet minister of foreign affairs, Eduard Shevardnadze, to take his place. An agreement was reached with South Ossetia, with the establishment of the Joint Control Commission which included Russian, Georgian, and North and South Ossetian personnel.¹⁰

If the new Georgian leadership temporarily settled the odds with Tskhinvali, it escalated the conflict with Abkhazia, which had previously negotiated a solution with Gamsakhurdia. Abkhazia vigorously campaigned for secession and independence, having been a Union Republic before its association and integration with Georgia in 1931 on Stalin's orders.¹¹ Against the backdrop of the turmoil that started after the coup against Gamsakhurdia and the civil war between its supporters and Tbilisi, Georgian forces entered Abkhazia in August 1992. The Abkhaz reaction, supported by volunteers from Northern Caucasus, was unexpectedly powerful and led to a massive exodus, or cleansing, of ethnic Georgians from the region: More than 200,000 people fled or were expelled from Abkhazia, bringing about the end of the conflict and the establishment of a Russian peacekeeping mission under the mandate of the Commonwealth of Independent States (CIS) and UN observation in June 1994, after Tbilisi joined the CIS in December 1993 and ratified its charter in April 1994.¹² The conflict, however, remained unresolved.

8 Cf. Christoph Zürcher, *The Post-Soviet Wars: Rebellion, Ethnic Conflict, and Nationhood in the Caucasus*, New York and London 2007, pp. 123-124.

9 These laws were respectively issued on 3, 10, and 26 April. Article 1 of the 26 April law explicitly mentioned "free self-determination" for the subjects of the federation. Cf. James Hughes, *Chechnya: From Nationalism to Jihad*, Philadelphia 2007, p. 16.

10 Cf. Zürcher, cited above (Note 8), pp. 124-126.

11 Cf. Viacheslav A. Chirikba, *The International Legal Status of the Republic of Abkhazia*, Ministry of Foreign Affairs of the Republic of Abkhazia, Sukhum 2014, pp. 4-5.

12 Cf. Zürcher, cited above (Note 8), p. 131.

A New Round of Escalation: From the Rose Revolution to the Russo-Georgian War

As they say in Georgia nowadays, a president (or a ruling political formation) does not last two mandates. Eduard Shevardnadze, who was elected president in 1995, was peacefully ousted at the end of 2003 by Mikheil Saakashvili during the protests which became known as the Rose Revolution. The new political establishment, formed by many young personalities, energetically sought the modernization of the country, a pro-Western foreign policy trajectory, and the full establishment of Georgia's territorial integrity. One of the first steps towards this latter aim was bringing back the Autonomous Republic of Adjara, at the time a personal administration of Aslan Abashidze, under constitutional order. Although Adjara had never declared its secession from Georgia, Tbilisi had never been able to exercise its sovereignty over the region before Saakashvili took over the Autonomous Republic. Despite being filled with tensions, the process was relatively peaceful due to a series of missteps taken by Abashidze, and the support of the Adjarian people for the new president of Georgia. Abashidze resigned in May 2004 and fled in exile to Moscow. The Sukhumi and Tskhinvali perceived this as a threat to their own de facto independence. Although Georgia had started to become more attractive to the breakaway regions in terms of economic performance,¹³ Saakashvili remained determined to preserve the territorial integrity of Georgia by any means, although the military option always remained the last resort, albeit still an option.

2008 was an unfortunate year for Georgia, culminating in the unresolved situation we are still witnessing today. One of the crucial moments for the re-escalation of the conflict with Abkhazia and South Ossetia could be found in the unilateral declaration of independence of the Republic of Kosovo on 17 February 2008, and subsequently recognized by most of the Western countries, but strongly opposed by the Russian Federation, both in support of Serbia and in opposition to the NATO intervention against Yugoslavia in 1999, which was not approved by the UN Security Council and which Russia has always considered a violation of international law. The recognition of Kosovo became, in the Russian vision, the precedent for justifying the recognition of other de facto states.¹⁴ But the NATO Bucharest Summit was also held in 2008, at which Ukraine and Georgia were promised that one day, they would eventually become members of the transatlantic alliance.¹⁵ Interpreted by Saakashvili as giving full support to Georgia's agenda, and by Russia as a direct threat to its influence and security in the post-Soviet space, the tensions between Tbilisi

13 Cf. The World Bank, Data on Georgia, at: <https://data.worldbank.org/country/Georgia?view=chart>.

14 Cf. Sam Cage, Russia issues new warning over Kosovo independence, *Reuters*, 12 February 2008, at: <https://www.reuters.com/article/us-serbia-kosovo/russia-issues-new-warning-over-kosovo-independence-idUSL1262709220080212>.

15 Cf. David Brunnstrom/Susan Cornwell, NATO promises Ukraine, Georgia entry one day, *Reuters*, 3 April 2008, at: <https://www.reuters.com/article/us-nato/nato-promises-ukraine-georgia-entry-one-day-idUSL0179714620080403>.

and Moscow came to a climax, exacerbated by a policy of “passportization” of Abkhazia and South Ossetia which resulted in 90 per cent of the inhabitants of these regions holding Russian citizenship.¹⁶

What happened afterwards is still debated. Georgia attacked South Ossetia as a reaction to the heavy shelling of some Georgian villages on the administrative border and faced a disproportionate reaction from Moscow, which claimed it was intervening to protect its citizens and prevent a genocide.¹⁷ The ceasefire was mediated by France as the rotating Presidency of the Council of the European Union at that time. The Russo-Georgian war had a clear outcome: Saakashvili failed to restore the constitutional territorial integrity of Georgia, and the Russian Federation recognized Abkhazia and South Ossetia as independent states.¹⁸ However, in having these entities internationally recognized, Russia was not as successful as the West had been in the case of Kosovo: Only Nicaragua, Venezuela, Tuvalu, Nauru, and Vanuatu recognized the breakaway regions as sovereign states (followed by Syria in 2018). However, Vanuatu and Tuvalu withdrew their recognition as their governments changed.¹⁹ The independence of the two breakaway regions is still strongly opposed internationally, as it is considered in violation of the norms of *jus cogens*, which deem their recognition as invalid.²⁰

At the Negotiation Table: A Process of Risks and Tricks Stuck in a Deadlock

As called for by the Protocol of Agreement signed by the parties to the conflict, as well as by France on behalf of the European Union, the international discussions over the resolution of the conflict were started in Geneva in October 2008. The Geneva International Discussions (GID) are co-chaired by the EU, the OSCE, and the UN, and involve Georgia, Russia, and the United States, as well as delegates from Abkhazia and South Ossetia in their personal capacities, participating in the working groups on security and human rights.²¹ Despite the technical achievements and the fact that the GID remains the only platform for

16 This is especially true for South Ossetia; cf. Kristopher Natoli, *Weaponizing Nationality: An Analysis of Russia’s Passport Policy in Georgia*, Boston University International Law Journal, Summer 2010, pp. 389-417. The ethnic composition of Abkhazia saw Georgians/Megrelians hold their Georgian citizenship.

17 Cf. Dmitri Medvedev, *Why I had to recognise Georgia’s breakaway regions*, *Financial Times*, 26 August 2008, <https://www.ft.com/content/9c7ad792-7395-11dd-8a66-0000779fd18c>.

18 Cf. *Ibid.*

19 Cf. Donnacha Ó Beacháin/Giorgio Comai/Ann Tsurtsumia-Zurabashvili, *The secret lives of unrecognised states: Internal dynamics, external relations, and counter-recognition strategies*, *Small Wars & Insurgencies* 3/2016, pp. 440-466.

20 Cf. Lina Laurinavičiūtė/Laurynas Biekša, *The relevance of remedial secession in the post-Soviet “frozen conflicts”*, *International Comparative Jurisprudence* 1/2015, pp. 66–75, available at: <https://www.sciencedirect.com/journal/international-comparative-jurisprudence/vol/1/issue/1>.

21 Cf. Office of the State Minister of Georgia for Reconciliation and Civic Equality, *Geneva International Discussions*, at: <https://smr.gov.ge/en/page/26/jenevis-saertashoriso-molaparakebebi>.

discussion on the Georgian conflicts at the international level, the Geneva talks are not status-related: This is one of the first major problems in terms of conflict resolution prospects. Second, there are two main practical issues related to the status issue that imply changes to the military and demographic status quo: the problem of internally displaced people (IDPs) caused by the conflicts, and the ban on the use of force to achieve a peaceful solution.

The issue of internally displaced people is still a particularly sensitive topic in the context of the resolution of the conflict in Georgia, although the GID are aimed at dealing with the consequences of the 2008 war with Russia. The UNHCR estimated the number of Georgian IDPs at 282,381 as of the end of 2018,²² most of whom are ethnic Georgians and come from the breakaway regions. It is worth noting that the number of IDPs alone is roughly equal to the total population living in Abkhazia and South Ossetia,²³ and the number of IDPs from each region is more or less equal to their actual estimated population. Although there are also IDPs from Abkhazia and especially Ossetia, the return of the ethnic Georgian IDPs to the breakaway regions would result in a disproportionate demographic imbalance in favour of ethnic Georgians. This population – whether in its entirety or in part – must be added to those ethnic Georgians already living under the de facto administrations. In 2015, these amounted to around 43,000 people for Abkhazia, mostly concentrated in the Gali district (in southern Abkhazia, contiguous to the territory under Tbilisi administration).

It is thus no surprise that the breakaway regions are not interested in welcoming all these people back since it would constitute a direct threat to their de facto independence. Until Georgia pushes for discussing this severe issue vis-à-vis Abkhazia and South Ossetia, or the de facto authorities allow the IDPs to return, is hard for the negotiations to progress. The last decade showed that Georgia is still pursuing a policy in favour of returning IDPs to their home territories, as it has repeatedly proposed – and approved – resolutions on the issue at the UN General Assembly since 2008.²⁴ Nevertheless, demographic balances can shift over time, although Abkhazia has failed to achieve a demographic shift in its favour beyond forms of ethnic cleansing against Georgians, as the de facto authorities have tried to attract the Abkhaz diaspora, mostly from Turkey and the Middle East, but without true results.

22 UNHCR The UN Refugee Agency, UNHCR Statistics, Georgia, at: http://popstats.unhcr.org/en/overview#_ga=2.247651847.1819197378.1578493796-1063448361.1578493796.

23 In 2015, the presidency of Abkhazia estimated that 242,756 people lived in the region – only half of which was counted as Abkhaz – while in South Ossetia the estimated population was of 53,559 as of 2015. Cf. President of the Republic of Abkhazia, Brief Information, 2015, at: http://presidentofabkhazia.org/en/respublika_abkhazia/respublika-abkhaziya-obshchaya-informatsiya/; *UNPO Unrepresented Nations and Peoples Organization*, 16 February 2015, at: <https://unpo.org/members/7854>; How many people live today in South Ossetia?, *Jam News*, 20 February 2016, at: <https://jam-news.net/how-many-people-live-today-in-south-ossetia/>.

24 Cf. UN General Assembly passes Georgia IDP Resolution, *Georgian Journal*, 5 June 2019, at: <https://www.georgianjournal.ge/politics/35879-un-general-assembly-passes-georgia-idp-resolution.html>.

The question of IDPs, however, is not unresolvable, nor that of the ethnic balance of the region. Yet, given the impact that their return could theoretically have on the de facto regions, the negotiations are destined to hit a brick wall. Any resolution of the issue implies a clear understanding of what would be the final asset of the Georgian territory. This is a problem that any negotiation format would be unable to address, given the situation Georgia finds itself in. Whether the recognition of Abkhazia and South Ossetia by the Russian Federation (and others) is legally founded and valid or not, the symbolic value of such a recognition has irremediably doomed the conflict to remain unresolved. Any solution for one of the breakaway regions is tied to the same solution for the other one, and South Ossetia, more than Abkhazia, is located in a geographical area which Georgia does not consider divisible. Georgia simply cannot accept losing the territory of South Ossetia to Russia or a new independent state for security reasons: The Tskhinvali region is located at the very heart of Georgia, just a few miles away from Tbilisi. This, coupled with the fact that South Ossetia is pursuing an irredentist policy of integration with North Ossetia and Russia, makes any theoretical recognition of the two breakaway regions from Georgia unthinkable.

This is not to say that the Geneva International Discussions are useless, on the contrary: They are currently necessary, since they are the only discussions at the international level. However, they are not suitable for addressing a range of issues besides technical ones, which are still important and represent those “islands of agreement” that help to pave the way to normalization.²⁵ Moreover, at this very moment, any theoretical solution from the Georgian side regarding the recognition of the breakaway territories is pure speculation. Yet, it is precisely for this reason that such a negotiation format is not suitable for conflict resolution: Fundamental issues must be addressed to reconcile what is truly at stake, namely the independence, territorial integrity, and sovereignty of Georgia, and that of the breakaway regions.

Another issue with regard to the GID is that the parties involved do not recognize Russia in the same manner: Moscow does not recognize its role as a part of the conflict, with all the consequences that such a role entails. For instance, by recognizing Abkhazia and South Ossetia as independent states at the expense of Georgia, Russia does not consider itself liable for what happens on the territories of the de facto states, while Georgia does consider Russia responsible, as stated in its Law on Occupied Territories.²⁶ Moscow, instead, argues that their negotiations and agreements with the breakaway regions are based upon their own sovereign decisions. This, for Tbilisi and its supporters,

25 “Islands of agreement” is a concept developed by Gabriella Blum, defined as “areas of asylum from which the conflict may be excluded and within which the rivals may be able to exchange some mutual commitments and be reminded of their respective interests”. Gabriella Blum, *Islands of Agreement: Managing Enduring Armed Rivalries*, Cambridge, MA, 2007, p. 19.

26 Cf. The Law of Georgia on Occupied Territories, Article 7, cited above (Note 4).

contradicts the provisions of the six point-Protocol of Agreement between Russia and Georgia regarding the withdrawal of Russian troops. Nevertheless, such a provision remains ambiguous, since point 5 of the Protocol also states: “While awaiting international protection, Russian security forces shall implement additional security measures.”²⁷ The military treaties signed by Russia with the de facto authorities of Abkhazia and South Ossetia respect this provision, at least from the Russian point of view. Yet Georgia and its supporters consider these treaties invalid.

There is, however, another ambiguity that plagues the Protocol of Agreement. Point 6 states that: “International discussions shall begin on security and stability measures to be taken in Abkhazia and South Ossetia.”²⁸ This led to the establishment of the GID. However, the original version of the Protocol is in French and Russian, and the two versions of point 6 have a different meaning: While the French version (as in the English translation here provided), calls for the “ouverture de discussions internationales sur les modalités de sécurité et de stabilité en Abkhazie et en Ossetie du Sud”, the Russian version provides for “п. начало междunarodного обсуждения путей обеспечения прохной безопасности Южных Осетии и Абхазии”²⁹ using the genitive case for South Ossetia and Abkhazia. This makes a crucial difference because, according to the Russian version, the security is that *of* South Ossetia and Abkhazia, which Russia recognised as independent, and not merely *in* the region. This nuance is relevant because the Russian version, which was signed by President Medvedev, is just as official as the French one. Although the de facto states are not mentioned with their alleged official names, the Russian Federation, recognizing them as sovereign states, gives a crucially different interpretation of these provisions compared to Georgia and the United States.

Russia’s self-appointed role of mediator also has negative effects on the other aspect contributing to the deadlock in the negotiations: the commitment to the non-use of force to resolve the conflict. To avoid recognizing Abkhazia and South Ossetia by signing a treaty with them, Georgia unilaterally declared its commitment to the non-use of force in 2010.³⁰ Russia does not see itself as a part of the conflict and does not recognize any need to commit to such declarations. Instead, it supports bilateral agreements between the de facto states and Georgia, although unilateral declarations have been recognized by the

27 Protocol of Agreement, 12 August 2009, point 5, as translated by the University of Edinburgh, available at: <https://www.peaceagreements.org/view/724>.

28 Ibid., point 6.

29 Protocole d’accord (in French and Russian), available at: <https://www.peaceagreements.org/view/724>.

30 Rati Fazisari, “Georgia Will Never Use Force to Restore Its Territorial Integrity and Sovereignty”, *Georgian Journal*, 25 November 2010, at: <https://www.georgianjournal.ge/weekly-digest/1520-georgia-will-never-use-force-to-restore-its-territorial-integrity-and-sovereignty.html>.

International Court of Justice and the International Law Commission as binding.³¹ From the Georgian point of view, signing such agreements means implicitly recognizing Abkhazia and South Ossetia as independent states, which Tbilisi considers an unacceptable solution. Indeed, the status of the breakaway regions is one of the disrupting issues concerning technical procedures too, since technical discussions are easily susceptible to the politicization of the status issue.³²

Prospects for Resolution? Better Unresolved than Any Disadvantageous Settlement

Currently, there are no concrete prospects for a positive resolution of the dispute, at least not under the current international legal framework and in today's geopolitical setting. Although each side claims its position is legally grounded, they are all subject to different interpretations of the international legal norms.

One of the biggest issues at stake is Georgia's territorial integrity. From the Georgian point of view, as for any state, territorial integrity is not only one of the defining criteria of statehood.³³ It is also necessary for ensuring the right to self-determination of its people,³⁴ as one of the utmost prerogatives of states such as their survival and their sovereignty. Conversely, separatism and secession often represent some of the biggest threats to the survival of a state as such. It is true that, in some limited cases, secession has been beneficial to the stability of a country (for instance, when Malaysia forced Singapore to abandon the federation in 1965). Georgia fears that allowing any secession from its territory would inevitably lead to the disintegration of the country itself.³⁵ Even though ethnic Georgians represent the majority of the population of the country, the biggest minority groups are Armenians and Azeri,³⁶ mostly located in the southern areas of Georgia closer to the Armenian border. In fact, there would not be such a strong presence of Abkhaz and Ossetian in a unified Georgia to significantly affect the demographic balance of the small multinational

31 Cf. United Nations, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto. Text adopted by the International Law Commission at its Fifty-eighth session, in 2006, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/61/19), New York 2006, at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf.

32 Cf. Gaprindashvili/Tsitsikashvili/Zoidze/Charaia, cited above (Note 2), p. 9.

33 Cf. Montevideo Convention on the Rights and Duties of States, Montevideo, 26 December 1933 (in force as of 26 December 1934), at: <https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml>.

34 Cf. Martti Koskenniemi, The Politics of International Law, European Journal of International Law 1/1990, pp. 4-32, here: p. 30; Allen Buchanan, Theories of Secession, Philosophy and Public Affairs 1/1997, pp. 31-61.

35 Cf. Karli Storm, Language, Law and Nation-Building in Georgia, in: Rico Isaacs/Abel Polese (eds.), Nation-Building and Identity in the Post-Soviet Space: New tools and approaches, London and New York 2016, pp. 118-137.

36 Cf. CIA World Factbook, Georgia, <https://www.cia.gov/library/publications/the-world-factbook/geos/gg.html>.

country. Yet, in practice, the return of IDPs to their hometowns would be a game-changer in such a context.

It would be possible to spend a long time speculating on possible solutions for a unified Georgia, such as a federative structure where ethnic minorities, as well as the breakaway regions, are strongly represented, or on solutions for state associations between Georgia and separatist de facto states, or indeed an autonomous status for Abkhazia and South Ossetia based on other models, such as South Tyrol in Italy.³⁷ However, these speculations ceased to have any meaning once the war in 2008 broke out, and the Russian Federation recognized the independence of Abkhazia and South Ossetia. For the identity and goals of the de facto states, this represents a game-changer. Moreover, the fact that Russia actively lobbies for other states to recognize the breakaway regions as independent gives Abkhazia and South Ossetia sufficient grounds for asserting their status as subjects of international law, and provides justification for their claim to sovereignty.³⁸

Georgia, however, contests such claims, and finds support well beyond its Western partners.³⁹ It also adheres to policies of counter-recognition and reconciliation/reintegration through its tentative, albeit active, engagement with the two breakaway regions and their citizens, who, according to Georgian law, are formally Georgian nationals.⁴⁰ Nonetheless, Tbilisi has not been able to persuade Moscow to respect the commitment of the Protocol of Agreement to withdraw its troops from the breakaway regions, nor to respect Georgian territorial integrity despite the policy of normalization pursued since the Georgian Dream coalition came into power. This is particularly true in the case of South Ossetia, which is geographically located in a sensitive and strategic area of Georgia.

Thus, it is no surprise that Georgia continues to pursue its pro-NATO and pro-EU foreign policy, even though there is little prospect of complete integration with the transatlantic community in the short- and mid-term. Nor is any true rapprochement with Russia a popular option in the country, especially considering that Moscow responds harshly to any political development that could indirectly affect its interests, let alone the anti-government protests which took place in June.⁴¹ In any case, Russia also made clear that it is in its

37 Such a solution has been shyly pledged by Abkhaz delegates visiting the Italian region with Georgian authorities in 2005. Cf. Abkhazia and Georgia Debates "South-Tirol Model", *UNPO Unrepresented Nations and Peoples Organization*, 13 April 2005, at: <https://unpo.org/article/2320>.

38 Cf. Chirikba, cited above (Note 11); see also Political and legal foundation of sovereignty of South Ossetia, *Renaissance, Special Issues*, HDIM.NGO/0254/11, 30 September 2011.

39 Georgian policymakers, academics, and think-tank researchers often point to Cuba as one of the most respectful states holding this position, arguing that Cuba has a particular interest in and commitment to conducting its diplomacy according to international law. Information from private conversations of the author with a Georgian MP and former government official.

40 Cf. Nina Caspersen, *Recognition, Status Quo or Reintegration: Engagement with de facto States*, *Ethnopolitics* 4/2018, pp. 373-389, here: p. 376.

41 Despite being labelled as anti-Russian, Georgian current and former policy-makers and politicians from the opposition claim the June protests were anti-government, arguing that allowing Sergei Gavrilov, a member of the Russian Duma, to sit in the chair of the Speaker

security interest to prevent Georgia from joining NATO, and maintaining a Russian presence in Abkhazia and South Ossetia guarantees that this will not happen, even if Georgia recognizes the two breakaway regions as independent states.⁴² Nor is it in the Georgian interest to do so. Recognizing South Ossetia as independent would mean that it would join the Russian Federation, even though Moscow has shown little enthusiasm for the region, as Russia would face more costs than benefits. South Ossetia is not as politically, historically, and strategically important as Crimea. Moreover, without Georgian recognition, the political costs for annexing South Ossetia would be extremely high vis-à-vis the international audience. Finally, since its military presence in the breakaway regions gives Moscow great influence over Tbilisi, the truly important piece of the geopolitical chessboard, Russia has no interest in changing the status quo.

As for Abkhazia, which has higher strategic importance for Moscow due to its location on the Black Sea, the status issue remains the true key question. The small republic is not satisfied with its relations with Russia: Georgia may have some room for manoeuvre if it were able to reach an agreement with Abkhazia. Yet, maintaining status-neutral agreements hardly works, as the views on the future relations between Tbilisi and Sukhumi are irreconcilable: Abkhazia maintains recognition as its priority goal.⁴³ Although Georgia could theoretically (and, perhaps, pragmatically) agree on Abkhazian independence, and only on certain conditions (such as the return of IDPs), such a move would have irremediable consequences for South Ossetia. Finally, it is important to remember that Tbilisi views only Moscow as the other side of the conflict, also arguing that Russia has de facto annexed Abkhazia and South Ossetia – a situation that is ongoing. In these conditions, Tbilisi has no interest in unfreezing the situation for any solution that could compromise its territorial integrity, which is internationally recognized by almost all the members of the United Nations, and is coherent with international legal norms and practices on state recognition. Moscow, and Sukhumi and Tskhinvali in particular, see things differently, and none of them is interested in taking a step back, whether for geopolitical, strategic, or status-related reasons.

of the Parliament during the meeting of the Inter-parliamentary Assembly on Orthodoxy and to address the audience in Russian with no formal protest was but the last act of submission to Russia. Cf: Thousands of protesters try to storm Georgia parliament, *Euractiv*, 21 June 2019, at: <https://www.euractiv.com/section/europe-s-east/news/thousands-of-protesters-try-to-storm-georgia-parliament>.

42 Cf. Andrew Osborn, Russian PM warns NATO admission of Georgia could trigger “terrible conflict”, *Reuters*, 6 August 2018, at: <https://www.reuters.com/article/us-russia-nato-georgia/russian-pm-warns-nato-admission-of-georgia-could-trigger-terrible-conflict-idUSKBN1KR1UQ>.

43 Cf. Gaprindashvili/Tsitsikashvili/Zoidze/Charaia, cited above (Note 2), p. 19.