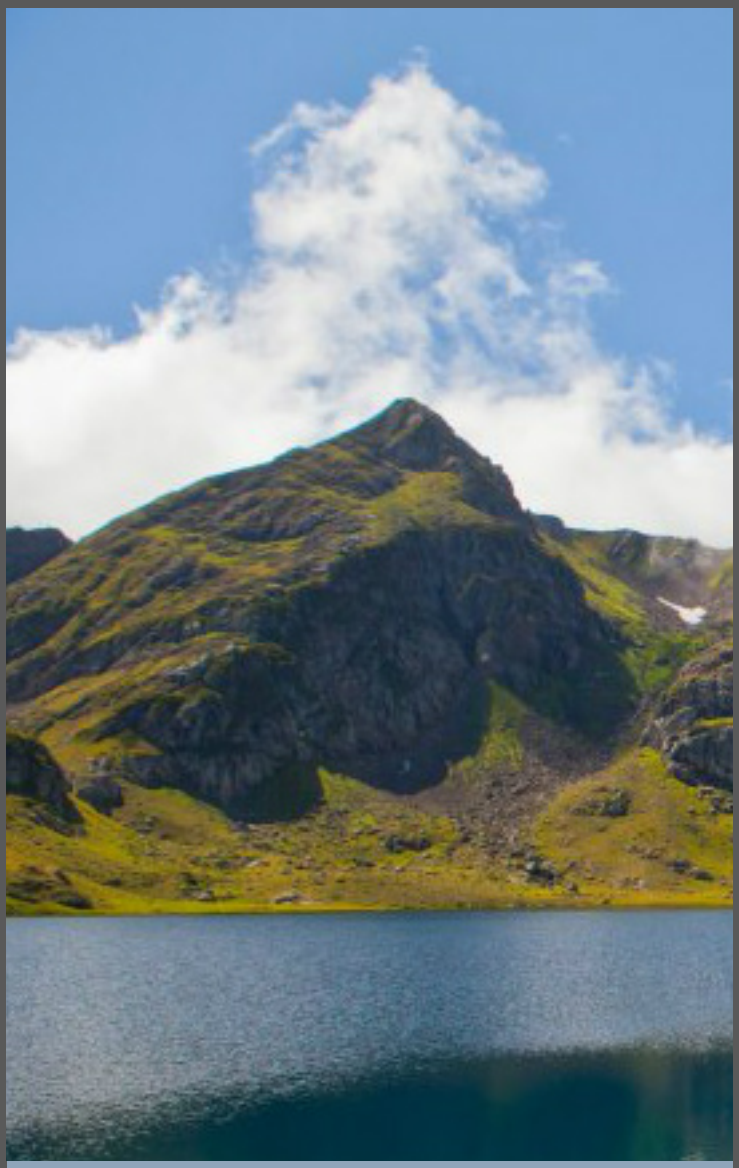
Unrepresented Nations and Peoples Organization Reading Group of Lewis & Clark Law School

James Butler
Tiffany Greaves
Anna Gulotta
Jason Mohabir
Monica Nassar
Vicky Razo
Kirsten Schlewitz
Laura Shoaps
Chelsea Stone



ABKHAZIA IN INTERNATIONAL LAW

FALL 2012

DISCLAIMER

This report is not intended to be legal advice to any person or entity. The report is a scholarly analysis of the legal issues involved in the report prepared by law students studying law at Lewis & Clark Law School in Portland, Oregon. The authors are not licensed to practice law in the United States or any other country. Any person or entity who reads the report should consult their own legal counsel for legal advice.

Acknowledgements

The authors of this report would like to thank several people for their contributions, most importantly Professor John Grant of Lewis & Clark College, without whom this work would not exist.

Thanks also go to Valkir Chirikba and family, Elena Elwen, Pierre Hegay of the Unrepresented Nations and Peoples Organization, Wendy Hitchcock, Sabina Khachaturova, Angela Pataraya, Archil Pitimashvili, Tengiz Tarba, Professor Joe Vacek of the University of North Dakota, and Dianne Viales.

Table of Contents

Maps


RUSSIAN FEDERATION
GEORGIA
ABKHAZIA
Kodori Gorge
NORTH OSSETIA
SOUTH OSSETIA
Roki Tunnel
AJARA (AJARIA)
BLACK SEA
TURKEY
ARMENIA
AZERBAIJAN
Karachayevsk
Prokhladnyy
Mozdok
Nal'chik
El'brus 5642 m
Vladikavkaz
Mestia
Lentekhi
Jvari
Tsalenjikha
Zugdidi
Pichori
Anaklia
Ochamchira
Gali
Tqvarcheli
Khaishi
Omarishara
Otap
Lata
Sukhumi
Gulripsh
Novyy Afon
Gudauta
Pitsunda
Gagra
Pskhu
Lake Ritsa
Psou
Bzyb'
Kodori
Inguri
Khobi
Senaki
Tskhaltubo
Poti
Samtredia
Lanchkhuti
Chokhatauri
Ozurgeti
Kobuleti
Bakhmaro
Batumi
Keda
Khulo
Vale
Akhaltsikhe
Abastumani
Atskuri
Bakuriani
Borjomi
Khashuri
Baghdati
Zestaponi
Kutaisi
Chiatura
Tqibuli
Ambrolauri
Khvanchkara
Kvaisi
Tskhinvali
Akhalgori
Dusheti
Mleta
Kurta
Pasanauri
Archilo
Akhmeta
Qvareli
Telavi
Lagodekhi
Gurjaani
Balakän
Zaqatala
Tsnori
Dedoplis Tsqaro
Rustavi
Marneuli
Bolnisi
Kazreti
Gori
Mtskheta
T'bilisi
Akhalkalaki
Ninotsminda
Lake Paravani
Lake Tabatskuri
Lake Sevan
Agstafa
Mingachevir Reservoir
Kür (Kura)
Vanadzor
Gyumri
Hrazdan
Sevan
Gäncä
Zod
National capital
Autonomous republic capital
Town, village
Major airport
International boundary
Autonomous republic boundary
Main road
Secondary road
Railroad
0 25 50 75 km
0 25 50 mi


Psou
Lake Ritsa
Bzyb'
Gagra
Pskhu
ABKHAZIA
Pitsunda
Gudauta
Novyy Afon
Kodori Valley
Kelasuri
Lata
Omarishara
Sukhumi
Kodori
Otap
Khaishi
Gulripsh
Tqvarcheli
Galidzga
BLACK SEA
Okumi
Jvari
Ochamchira
Gali
Tsale
Pichori
Kahati
Zugdidi
Anaklia

Preface

This report is a compilation of work by law students at Lewis & Clark Law School in Portland, Oregon, United States. The students participated in a reading group that was formed with the assistance of Professor John Grant and the Unrepresented Nations and Peoples Organization, a non-profit organization that works to gain international recognition for its member states. The report focuses on Abkhazia, a territory seeking international recognition as an independent state, and its current situation under principles of international law. It is not legal advice, but rather an in-depth study.

We begin our analysis with self-determination. We examine the right to self-determination and its place in customary international law, as well as its ambiguity and the difficulty in its application. From self-determination, we look at whether or not there is a right to claim secession, and under which circumstances such a right may be exercised. We apply these principles to the situation in Abkhazia, and, subsequently, briefly look to how it stands in relation to the declaratory theory of statehood.

We then move to international recognition, paying particularly close attention to the relationships between Abkhazia and Georgia, Abkhazia and the Western World, and Abkhazia and Russia. We also apply the rule of law to the Abkhazia Constitution and examine how that Constitution has been used on the ground in Abkhazia.

I. Introduction

The break-away of Abkhazia from Georgia two decades ago and its *de facto* independent existence today raise important issues of the international law right to self-determination and the criteria for recognition of new States. The right to self-determination, a foundational principle of the United Nations and subsequently endorsed in treaties ratified by the majority of States, is now a recognized principle of customary international law. Indeed, it is generally accepted as *jus cogens*, a peremptory norm from which no derogation is possible. International instruments, such as the U.N. Charter, the International Covenants of 1966 on Economic, Social and Cultural Rights and on Civil and Political Rights and a number of General Assembly declarations, all include the right to self-determination. The U.N.'s approach, outlined in the Friendly Relations Declaration of 1970, defines the principle as being the right of all "peoples" to "freely determine, without external interference, their political status and to pursue their economic, social and cultural development."

This principle, however, is narrowly construed. Problems arise in determining who is eligible for the right to self-determination and when that right may be invoked. The relevant international instruments fail to define "peoples." However, the U.N. has recognized that the right of self-determination primarily applies to peoples of non-self governing territories, essentially colonies. The right has been extended to apply to those subject to foreign occupation, or alien domination, subjugation or exploitation. Only peoples subjected to the most extreme disadvantages may claim the right to secede from an existing State as a right and then only as a last resort. Otherwise, secession is

prohibited by the principle of the territorial integrity of States. In determining whether Abkhazia qualifies for a legal right to secession, it would need to be established that its people were denied meaningful political participation in the governing structure of Georgia and/or subjected to extreme oppression.

The Abkhaz people were not denied participation in Georgian political institutions. In 1992, at the time of secession from Georgia, Abkhaz represented eight percent of the Georgian legislature when they constituted three to five percent of the total Georgian population. If Abkhazia is unable to show a right to secession based on self-determination, it might additionally have a right to "remedial secession," a theory used to allow secession in the face of egregious human rights violations. These violations must be "gross and systematic," and rise to the level of "extreme persecution." While clearly there have been human rights violations perpetrated by the Georgians against the Abkhaz, these abuses do not appear to rise to the level of egregiousness needed for a right to "remedial secession."

However, Abkhazia may fulfill the objective requirements of statehood. Abkhazia appears to satisfy the generally accepted criteria for statehood as set out in the Montevideo Convention of the Rights and Duties or States of 1933 in having a permanent population, a defined territory, an effective government and the capacity to enter into relationships with other States. Despite appearing to be a State, most nations do not recognize Abkhazia. International recognition, while not a formal requirement of statehood, is critically important for international dealings and governmental legitimacy.

Abkhazia is recognized only by Russia and a few other nations. Western States, particularly the United States and the members of the European Union, continue to

support Georgia's territorial integrity, regarding Abkhazia as an autonomous province of Georgia. They have declined to recognize Abkhazia as a new State in international law. The assertion of statehood of the self-proclaimed Republic of Abkhazia is undermined by the strong (particularly military) Russian presence in the country and its close ties with and dependence on Russia. With the 1991 E.U Guidelines on Recognition of New States, the criteria for recognition have shifted somewhat from the formal and objective standards of the Montevideo Convention towards legitimacy standards, emphasizing the importance of the rule of law and human rights commitments. Abkhazia's 1994 Constitution, as amended, demonstrates a commitment to the rule of law, though there are reported instances of political abuses. More seriously, Abkhazia's human rights record, particularly its treatment of its ethnic Georgian minority, is problematic for a country seeking recognition by other States.

This report explores the above in depth and analyzes Abkhazia's place in international law.

II. Self-Determination

Self-determination as a right in international law

The history of self-determination—the right of the people to freely choose their own sovereignty—began with the American and French revolutions and relied upon the consent of the governed.[1] The principle of self-determination then evolved into a concept based on nationalism as nationally homogeneous states established themselves during the

[1] Daniel Thürer & Thomas Burri, "Self-Determination" in *Max Planck Encyclopedia of International Law* (online ed.).

19th and early 20th centuries.[2] The idea of self-determination as a legal right, however, did not truly take shape until the end of World War II with the establishment of the United Nations (U.N.).[3] Although the principle is now a part of customary international law, its definition is ambiguous and often narrowly construed.

The U.N. Charter includes the right to self-determination in Article I, the statement of purposes, which reads as follows: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."[4] The landmark 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, in its substantive law stipulations, expanded upon this and established certain ordering principles intended to guide the progressive development of international law in accordance with the General Assembly's own explicit mandate, found in Article 13 of the U.N. Charter.[5] Among these stipulations were the following:

> 1) That the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights.[6]
> 2) That all peoples have the right to self-determination, but that this necessarily includes the right to freely determine their political status and to freely pursue their economic, social, and cultural development.[7]
> 3) That immediate steps shall be taken, in United Nations Trust and Non-Self-Governing Territories or all other territories, which have not yet attained independence, to transfer all powers to the peoples of those territories.[8]

The Declaration was generally understood as being primarily directed to "salt-water" colonialism, meaning the occupation of the lands and territories of indigenous, native, or

---

[2] *Id.*
[3] *See infra* note 4 and accompanying text.
[4] United Nations, *Charter of the United Nations*, 24 Oct. 1945, 1 UNTS XVI (hereinafter: U.N. Charter).
[5] Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 Dec. 1960, U.N. GAOR 1514 (XV) (hereinafter: Decolonialization Declaration). *See also* U.N. Charter at Art. 13.
[6] Decolonialization Declaration, *supra* note 5 at Art. 1.
[7] *Id.* at Art. 2.
[8] *Id.* at Art. 5.

aboriginal peoples in Africa, Asia, and the Caribbean who were physically separated by the oceans from their colonial powers.[9]

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both of which entered into force on 23 March 1966, also include self-determination in Common Article 1: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development."[10] The inclusion of self-determination as a foundation of the formation of the U.N., as well as its incorporation in treaties ratified by the vast majority of states, pushed the doctrine into customary international law. However, problems remain in determining both who is eligible for the right of self-determination and when that right may be invoked. In the aftermath of World War II, the U.N. was formed with the lofty goal of establishing a stable and secure world. Article I of the U.N. Charter states that its very first purpose is "to maintain international peace and security."[11] Thus, although the right to self-determination is granted in the Charter, it is subordinate to the need for stability and security.[12]

One of the central complications in self-determination is its application: to whom, exactly, does the right apply? Neither of the 1966 Covenants (the ICCPR or the ICESCR) include a definition of "peoples." Professor William Slomanson, although admitting that there is no general definition for "peoples," presented Finland's secession from Russia as

---

[9] Edward McWhinney, *United Nations Law Making: Cultural and Ideological Relativism and International Law Making for an Era of Transition*, (1984).
[10] International Covenant on Civil and Political Rights, 16 Dec. 1966, U.N. GAOR 2200A (XXI), 999 U.N. T.S. 171 (hereinafter: ICCPR). *See also* International Covenant on Economic, Social, and Cultural Rights, 16 Dec. 1966, U.N. GAOR 2200A (XXI), 993 U.N. T.S. 3, Art. 1 (hereinafter: ICESCR).
[11] U.N. Charter.
[12] Gerry Simpson, *The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age*, 32 STAN. J INT'L L. 255, 266 (1996).

an example.[13] Finnish ancestors immigrated from the Urals to Finland over two thousand years ago[14] and later evolved through further immigration and changes in rulers [15] while maintaining their distinct character and language.[16]

It soon became clear, at least to the U.N., that the right of self-determination was to be applied to states and peoples of non-self-governing territories.[17] The most recent major resolution on self-determination, The Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States (the Friendly Relations Declaration), provides further elaboration on the principle by outlining the U.N.'s approach to the concept.[18]

The Friendly Relations Declaration expands and refines the principle of self-determination as the right of all peoples "freely to determine, without external interference, their political status and to pursue their economic, social and cultural development."[19] Unfortunately for many "peoples"—still technically an undefined term—the Declaration was primarily applied to specific groups seeking to shake off the yoke of European colonialism. Due to this restricted application, self-determination has evolved narrowly, covering the whole peoples of a state rather than racial and ethnic minorities or nationalities within a state.[20]

Self-determination today continues to be narrowly defined. It may only be used as

---

[13] William R. Slomanson, *Legitimacy of the Kosovo, South Ossetia, and Abkhazia Secession: Violations in Search of a Rule*, 9 Miskolc J. of Int'l L. 11 (2009).
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] Robin C.A. White, *Self-Determination: Time for a Reassessment?*, 28 NETH. INT'L L. REV. 147 (1981).
[19] United Nations Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, G.A. Res. 26/25 (XXV), U.N. Doc. A/RES/2625 (24 October 1970) (hereinafter: Friendly Relations Declaration).
[20] *See* Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995).

a remedy when a state fails to provide the "minimum duty of tolerance and non-interference necessary to allow a group's continued existence."[21] Only peoples under alien rule or subjected to extreme persecution may claim secession as a right. In other cases, secession is effectively barred due to the priority given to territorial integrity and the desire to maintain a stable and secure international system.[22] The right of self-determination is not a right to independence, nor is it a right to separate statehood.[23] Rather, the right of self-determination seems to be a limited right to determine one's own political future, which may, under very specific circumstances, result in independence.

Nonetheless, a distinct people or racial group is almost certainly entitled to internal self-determination, or the right to a representative government and the right to freedom from discrimination.[24] This is the form of self-determination upheld by international law and enshrined in the U.N. Charter and the latter covenants. Anything beyond internal self-determination, including the right to independence and the territorial integrity of borders, must be evaluated in light of the group's situation. When determining whether a group or people has a legal right of secession, it is necessary to first establish that they were denied political participation in the governing structure or were subjected to extreme forms of oppression.[25]

On 23 July 1992, Abkhazia declared independence from the Republic of Georgia.[26] However, Georgia continues to assert that Abkhazia remains a part of its

---

[21] Patrick Thornberry, *Self-Determination, Minorities, Human Rights: A Review of International Instruments*, 38 INT'L & COMP. L.Q. 867, 881 (1989).
[22] Timothy William Waters, *Contemplating Failure and Creating Alternatives in the Balkans: Bosnia's Peoples, Democracy, and the Shape of Self-Determination*, 29 YALE J. INT'L L. 423, 424 (2004).
[23] Robert T. Coulter, *The Law of Self-Determination and the United Nations Declaration on the Rights of Indigenous Peoples*, 15 UCLA J. INT'L LAW & FOREIGN AFF. 1 (2010).
[24] Simpson, *supra* note 12 at 270.
[25] Coulter, *supra* note 23 at 9.
[26] Abkhaz Const. Art. 1, *available at* http://www.abkhaziagov.org/ru/state/sovereignty.

republic and the U.N. has called on member states to respect the sovereignty and territorial integrity of Georgia.[27] The question then arises: is Abkhazia's assertion of independence legitimate? Do the Abkhaz have a right to self-determination leading to independent statehood?

Although Abkhazia has not received broad recognition as a state, most commentators would likely agree that its people have already achieved internal self-determination, or, more precisely, what is known as "devolutionary self-determination."[28] Under this system, the state officially distributes power to local groups, conceding some of its sovereignty and allowing a sort of regional autonomy.[29] Georgia recognized Abkhazia as a semi-autonomous region as it had its own government and was permitted to use its language, two components of realized self-determination.[30] The Abkhaz, however, now seek more than this level of autonomy. This desire contributes to the instability in the region.

The declaration of independence by Abkhazia and the subsequent armed conflicts with Georgia throughout the last two decades indicate that the Abkhaz will be satisfied with nothing less than becoming a separate state. As mentioned above, secession is typically viewed as a remedy of last resort. However, when conflicts occur that pose threats to international security, secession becomes a valid option.[31] In 1995, the U.N. Security Council noted that a political settlement, including a determination of the

[27] S.C. Res. 1808, U.N. SCOR, 58th sess., Security Council Extends Mandate of Georgia Observer Mission until 15 Oct., U.N. Doc. SC/9299 (2008).
[28] Simpson, *supra* note 12 at 280.
[29] *Id.*
[30] Charlotte Hille, *The Recognition of Abkhazia and South Ossetia: A New Era in International Law*, Exploring the Caucasus in the 21st Century (2010).
[31] Simpson, *supra* note 12 at 285.

political status of Abkhazia, would be the only way to achieve peace in the region.[32] The question remains where legitimate secession and international recognition as an independent state are plausible outcomes for Abkhazia.

The Georgian Constitution specifically notes the inviolability of its frontiers and prohibits changes in borders absent a bilateral agreement.[33] Powerful states and institutions strongly emphasize stability in the international system. As a consequence, breaking away from another state—essentially violating its territorial integrity—is not endorsed in international law. The 1960 Declaration on the Granting of Independence emphasizes that territorial integrity is an overriding norm of international law.[34] However, the same declaration, in Paragraph 7, emphasizes the primacy of adhering to the U.N. Charter and the Universal Declaration of Human Rights (UDHR), thus making territorial integrity a rebuttable presumption.[35] Only states that act in accordance with the principle of self-determination may invoke it.[36]

The Friendly Relations Declaration builds upon the 1960 declaration. It carefully notes that the text of the declaration should not be read to authorize or encourage any action that would impair, totally or in part, the territorial integrity or political unity of a state.[37] It does, however, go on to say that a state with the right to integrity and unity must conduct itself according to the principle of self-determination and must have a government representing the whole people belonging to the territory without distinction

[32] S.C. Res. 971, U.N. SCOR, 50th sess., U.N. Observer Mission in Georgia, U.N. Doc. S/RES/971 (1995).
[33] THE CONSTITUTION OF THE REPUBLIC OF GEORGIA, 24 August 1995, Art. 2.
[34] Simpson, *supra* note 12 at 270.
[35] United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, U.N. Doc. A/4684 (1960) at para. 7.
[36] *Id.*
[37] Friendly Relations Declaration, *supra* note 19.

as to race, creed, or color.[38]

More recently, the Canadian Supreme Court reiterated this sentiment in their opinion regarding the legality of the secession of Quebec, asserting that:

> A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its own internal arrangements, is entitled to the protection under international law of its territorial integrity.[39]

The question then becomes a matter of whether self-identified Abkhaz were treated with sufficient fairness under the Georgian government. Prior to escalation of the conflict between Georgia and Abkhazia in 2008, were the Abkhaz able to equally participate in civic life? Were they well represented in government? Did the laws of the country discriminate against the Abkhaz due to their race?

Abkhazia was nominally autonomous under Soviet rule, but its culture was suppressed in favor of Georgia's. The Abkhaz were given Georgian surnames, their language was removed from schools and institutions, and forced relocation altered the demographic makeup of the region.[40] After Georgia declared independence from Russia in 1991, the Abkhaz were granted greater participation in civic and cultural life. Georgia's Constitution specifies that the Senate shall include members from the autonomous republic of Abkhazia.[41] It guarantees Abkhazian as the state language in Abkhazia.[42] Echoing the UDHR, the Constitution prohibits discrimination based on race, nationality, or ethnicity.[43]

---

[38] 15 UCLA J. INT'L L. & FOREIGN AFF. 1 at 10.
[39] *Reference re Secession of Quebec*, 2 S.C.R. 217 (1998).
[40] Unrepresented Nations and Peoples Organization, *Abkhazia* (2008), *available at* http://www.unpo.org/members/7854 (hereinafter UNPO on Abkhazia).
[41] THE CONSTITUTION OF THE REPUBLIC OF GEORGIA, 24 August 1995, Art. 4.
[42] *Id.* at Art. 8.
[43] *Id.* at Art. 14.

Although a Constitution's provisions may differ from the actual situation on the ground, there is reason to believe that the Abkhaz were able to participate fully in political institutions. In the Parliamentary elections of 1992 Abkhazia had a total of twelve seats in the Georgia legislature.[44] With a total of one hundred fifty seats in Parliament, this gives the Abkhaz eight percent representation. Although there is debate about the number of people currently living in Abkhazia,[45] the 2011 census estimated the population at 240,705,[46] with fifty percent being ethnic Abkhaz. Using the most liberal estimates, the Abkhaz constitute less than three percent of the population of Georgia.[47] Rather than being denied representation in government, the group appears to have been disproportionately represented—to their benefit.

The Abkhaz were not denied political participation in the governing structure of Georgia. Therefore, the next question for analysis is whether the Abkhaz suffered extreme oppression while under Georgian governance. The right to self-determination has also been invoked as a basis for justifying "remedial secession."[48] While the right to self-determination is entitled to all peoples, there is not a right that entitles states to secede, as state sovereignty takes precedence over self-determination.[49] Again, the two exceptions to this general rule occur when groups with a particular identity within the state are denied representation or when groups suffer extreme oppression and are deprived of their human rights. In the latter case, "a consensus has seemed to emerge that

---

[44] D. Nohlen et. al., *Elections in Asia: A data handbook*, *Vol. 1* 399 (2001).
[45] UNPO on Abkhazia, *supra* note 40.
[46] Apsny Press, *Population census in Abkhazia 2011,* http://apsnypress.info/en/news/338.html.
[47] This is assuming the population of ethnic Abkhaz in Abkhazia is near 120,350. *Id.* The population of Georgia is estimated to be 4,570,934. Central Intelligence Agency, *The World Factbook: Georgia*, 14 November 2012, https://www.cia.gov/library/publications/the-world-factbook/geos/gg.html.
[48] *E.g.*, Antonello Tancredi, *Neither Authorized Nor Prohibited? Secession and International Law After Kosovo, South Ossetia and Abkhazia*, 18 ITALIAN Y.B. INT'L L. 37, 38 (2008).
[49] *Id.* at 38–39 ("the traditional conflict between the self-determination of peoples and the territorial integrity of States continues to be resolved in favour of State sovereignty, with one possible exception").

peoples may also exercise a right to self-determination if their human rights are consistently and flagrantly violated . . . then the right to self-determination is a tool which may be used to reestablish international standards of human rights."[50]

The conflict between Abkhazia and Georgia has been ongoing for decades. It is difficult to pinpoint which party to the dispute instigated human rights abuses. Between the late 1930s and the early 1950s, the process of "Georgianization" took place.[51] To Abkhaz people, this represented an effort by the Georgian government to stifle Abkhaz culture. In 1945 and 1946, Abkhazian language schools were closed and replaced by Georgian language schools.[52] Other anti-Abkhaz policies of this nature were implemented throughout Stalin's rule, although upon Stalin's death many of these policies were reversed.[53] The nationalist cry of "Georgia for the Georgians!" was prevalent during this time and indicated the impending dangers to minorities living in the territory.[54] In response, the Abkhaz people established a forum called *Aydgylara* ("Unity") that met with great Georgian opposition and, ultimately, led to fatal clashes in July of 1989.[55]

Abkhazia has a convoluted history of declaring independence absent international recognition. In February of 1921, Abkhazia was proclaimed an independent Union

---

[50] *Loizidou v. Turkey*, 40/1993/435/514, Council of Europe: European Court of Human Rights, 28 Nov. 1996 (concurring opinion by Judges Wildhaber and Ryssdal).
[51] *See* Regional Surveys of the World, *Eastern Europe and the Commonwealth of Independent States*, (2009).
[52] George Hewitt, *Abkhazia and Georgia: Time for a Reassessment*, 15 BROWN J. WORLD AFF. 183, 186 (2009).
[53] *Id.*
[54] *Id.* at 187.
[55] *Id.*

Republic, but later that year was subordinated to Georgia.[56] On 25 August 1990, the Supreme Soviet of the Abkhaz Autonomous Soviet Socialist Republic declared independence from the Georgian Republic, and, unsurprisingly, the "Presidium (steering group) of the Georgian Supreme Soviet declare[d] the independence measure of the Abkhaz legislature to be invalid."[57] Five days later, the Abkhaz Supreme Soviet voided its declaration of independence.[58]

The Union of Soviet Socialist Republics (USSR) dissolved on 26 December 1991.[59] Later the following year, Abkhazia declared sovereignty over its own territory and proposed a federative treaty to Georgia.[60] In August of 1992, Georgian troops responded by entering Abkhazia and a land and air attack ensued, lasting for fourteen months until Abkhaz and Georgian leaders signed an official ceasefire in December of 1993.[61] Abkhazia created a Constitution on 26 November 1994 and declared independence, which went unrecognized internationally.[62] In 1999, Abkhazia issued a referendum to gauge their citizens' attitudes toward the Constitution of the Republic of Abkhazia.[63] The Constitution was approved by an overwhelming majority of voters and Abkhazia declared independence once again.[64] This declaration of independence is most salient because it occurred after the collapse of the Soviet Union.

---

[56] United Nations High Commissioner for Refugees, *Chronology for Abkhazians in Georgia*, Refworld, *available at* http://www.unhcr.org/refworld/country,,,CHRON,GEO,,469f388ca,0.html (hereinafter: UNHCR Chronology).
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] Unrepresented Nations and Peoples Organization, *Historical Background in Abkhazia* (last updated 25 Mar. 2008) *available at* http://www.unpo.org/members/7854 (hereinafter: UNPO Historical Background in Abkhazia).
[61] *Id.*
[62] UNPO on Abkhazia, *supra* note 40.
[63] *Id.*
[64] United Nations Security Council, *Report of the Secretary-General Concerning the Situation in Abkhazia, Georgia* (S/1999/1087). 22 October 1999.

The theory of "remedial secession"

The "remedial secession" theory postulates that if a nation secedes due to human rights violations then the secession is legitimate.[65] Attaining legitimacy is central to the state's likelihood of being recognized by other nation states—Russia's recognition of Abkhazia was based on a finding of legitimacy from remedial secession.[66] The human rights violations endured by the seceding state must be "gross and systematic" to "lead a state to lose part of its territory if oppression is directed against a specific people."[67] In order for Abkhazia to have legitimately seceded from Georgia, the level of treatment Abkhazia received from Georgia must have risen to "extreme persecution."[68] Furthermore, this right of self-determination applies only after "negotiations for a peaceful solution of the conflict within the State have been exhausted."[69] Again, secession is seen as the last resort for ending oppression.[70]

Situations enabling a nation state to claim the right to remedial secession are narrow. The Supreme Court of Canada, for example, originally held that there is no right to unilateral secession in international law.[71] The Court held "a right to external self determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances."[72]

---

[65] *Id.* at 50.
[66] *Id*.
[67] Jure Vidmar, *Remedial Secession in International Law; Theory and (Lack of) Practice*, ST. ANTONY'S INT'L REV. 37 (2010).
[68] *Id.*
[69] Christine Griffioen, *Self Determination as a Human Right*, Slideshare, *available at* http://www.slideshare.net/christine77/self-determination-as-a-human-right (last updated 2 Nov. 2009).
[70] Vidmar, *supra* note 67 at 37.
[71] *Id.* at 38 (citing the *Quebec* case).
[72] *Id.*

The gravity of the human rights abuses suffered by the Abkhaz people cannot and should not be minimized. When Zviad Gamsakhurdia became Georgia's first president after the country gained independence from the Soviet Union,[73] his regime was characterized by human rights violations targeting the Abkhaz people.[74] Violations included censorship of the media, the arrest of political opponents of Georgia, various hit and run attacks, the demolition of bridges, and disruption of rail traffic.[75] During this time, Human Rights Watch (HRW) viewed Georgian armed forces as having a lack of respect for civilian authority and military discipline.[76]

Throughout the war in Abkhazia, which began in 1992, both Abkhazia and Georgia violated international humanitarian law.[77] Georgia initially began indiscriminate attacks terrorizing civilians, and Abkhazia reciprocated this treatment with the assistance of Russian weapons.[78] Hundreds of ethnically Abkhaz people and those who were thought to be pro-Abkhaz were tortured and executed.[79] In August of 1992, Georgia intimidated Sukhumi (the capital of Abkhazia) residents by engaging "in widespread looting and pillage (*sic*), stripping civilians of property and food."[80]

---

[73] Human Rights Watch Arms Project, *Georgia/Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict*, 12–13 (Mar. 1995) (hereinafter: 1995 Human Rights Watch Report).
[74] *See id.* at 12–13.
[75] *Id.*
[76] *Id.* at 49.
[77] *Id.* at 5 (stating that, "The combination of indiscriminate attacks and targeted terrorizing of the civilian population was a feature of both sides' deliberate efforts to force the population of the other party's ethnic group out of areas of strategic importance."). The Geneva Convention and their Protocols form the core of international humanitarian law, serving to "regulate the conduct of armed hostile conflict and seek to limit its effects…specifically protect[ing] people who are not taking part in the hostilities (civilians, health workers, and aid workers) and those who are no longer participating in the hostilities." *Geneva Convention of 1949 and their Protocols*, INT'L COMMITTEE OF THE RED CROSS, *available at* http://www.irc/org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp.
[78] 1995 Human Rights Watch Report, *supra* note 73.
[79] Liana Kvarchelia, *Georgia-Abkhazia Conflict: View from Abkhazia*, 22, *available at* http://www.gwu.edu/~ieresgwu/assets/docs/demokratizatsiya%20archive/06-01_kvarchelia.pdf.
[80] 1995 Human Rights Watch Report, *supra* note 73 at 5.

Giorgi Karkarashvili, the Georgian commander-in-chief through 1993 and 1994, threatened, on national television,[81] "to eliminate the entire Abkhaz nation even if it took a sacrifice of [one hundred thousand] Georgian soldiers."[82] This threat to the ethnic Abkhaz population "did not evoke the slightest criticism of any international organization or government (with the exception of the UNPO)."[83] This threat of ethnic cleansing is characteristic of the conflict, as ethnic cleansing occurred on both sides of the dispute. Both parties are therefore guilty of human rights violations.

The international community's recent discussions of Kosovo provide insight into the normative attitudes toward remedial secession. Poland argued in favor of remedial secession in cases where "a state gravely violates international human rights and humanitarian law."[84] Cyprus argued that while the "'right of secession of last resort' has been supported by some writers . . . [i]t has not emerged as a rule of customary law."[85] Iran flat out rejected remedial secession "[e]ven in a large scale and systematic violation of international humanitarian law."[86] Judge Yusef[87] of the International Court of Justice (ICJ) supported remedial secession in a separate opinion, indicating that it was appropriate in "exceptional circumstances" where "the State not only denies [a people] the exercise of their internal right of self-determination . . . but also subjects them to discrimination, persecution, and egregious violations of human rights or humanitarian law."[88] This suggests that for a circumstance to truly rise to the level of "extreme

[81] Kvarchelia, *supra* note 79 at 22.
[82] *Id.*
[83] *Id.*
[84] John H. Currie, *Canadian Yearbook of International* Law, 229 (2010).
[85] *Id.* at 240.
[86] *Id.* at 241.
[87] Dr. Abdulqawi Ahmed Yusuf has been a judge on the ICJ since February 6, 2009. He is from Somalia.
[88] *Id.* at 243.

persecution," elements of both egregious violations and denial of internal self-determination, which may include political and social rights, must occur.

It should be borne in mind that remedial secession is only available as an absolute last resort and negotiations must take place before it becomes an option. In 1994, Georgian and Abkhazian negotiators in Geneva agreed to the deployment of U.N. peacekeepers in their zone of conflict.[89] During this time, Georgian press reporters accused Abkhazia of continuing genocide against ethnic Georgians in the Gali region, supporting its allegation with reports of plundering, forced deportation, and torture.[90] In 1995, the U.N. Security Council urged Abkhazia to be more flexible in negotiations with Georgia, after Abkhaz officials said they would "only agree to a Georgian-Abkhaz 'confederation' and [would] not negotiate on the basis of 'federation.'"[91] Talks between Abkhazia and Georgia continued throughout the late nineties until Abkhazia again declared independence in 1999.[92]

While the parties' continued talks could potentially meet the requirement of negotiations prior to the "last resort of" remedial secession, the human rights violations continuing throughout this period probably do not rise to the exceptional status required for remedial secession. The Abkhaz people suffered egregious human rights violations at the hands of Georgian officials.[93] However, as discussed above, Georgians did not deny the Abkhaz their political rights by failing to give them representation in the government, and Abkhazia likely had internal self-determination.[94]

---

[89] UNHCR Chronology, *supra* note 56.
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *See supra* text accompanying notes 78–83.
[94] *Id.* at 6-7.

Remedial secession has not risen to the level of customary international law and remains largely a theoretical exercise. Those who are supporters of remedial secession emphasize that most situations involving human rights violations do not rise to the necessary level of exceptionalism. There has not been any majority opinion jurisprudence endorsing remedial secession to date. Additionally, the fact that Abkhazia continued violating the human rights of Georgians throughout the period leading up to their secession does not work favorably toward the Abkhaz claim for remedial secession. As a result, it can be stated with some confidence that Abkhazia's 1999 declaration of independence was not legitimized by remedial secession.

On 12 August 2008, Georgia filed an application instituting proceedings against the Russian Federation for alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).[95] Georgia alleged that Russia, acting through "Abkhaz separatist forces under its discretion and control, ha[d] practiced, sponsored and supported racial discrimination through attacks against and mass-expulsion of ethnic Georgians, as well as other ethnic groups, in the South Ossetia and Abkhazia regions of the Republic of Georgia."[96]

While the ICJ discussed the "exceptional and complex situation" in Abkhazia, it found that it did not have jurisdiction to hear the dispute.[97] The case is nonetheless notable for what was said about Abkhazia's status and the human rights situation in Abkhazia. The Court stated that it "was of the opinion that the ethnic Georgian population in the areas affected by the recent conflict remains vulnerable" and that the

---

[95] Int'l Court of Justice, *Application of the Int'l Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation): Request for the Indication of Provisional Measures: Summary of the Order*, 1 (2008) (hereinafter: Summary of Order).
[96] *Id.*
[97] *Id.* at 6.

situation in Abkhazia is "unstable and could rapidly change."[98] The Court reasoned, "given the ongoing tension and the absence of an overall settlement to the conflict in this region . . . the ethnic Ossetian and Abkhazian populations also remain vulnerable," and that the problem of internally displaced persons in the region has not been resolved in its entirety.[99]

Whether or not Abkhazia has, or ever had, the right to self-determination, remedial secession, or any other form of independence, the fact remains that Abkhazia may well be a state in reality under the declaratory theory of statehood.[100] This means that Abkhazia fulfills the requirements set forth under the Montevideo Convention on the Rights and Duties of States (Montevideo Convention), which is currently accepted, especially by European states and despite its limited ratification, as a statement of customary international law on the matter.[101] To be deemed a state under this framework Abkhazia must have: (1) a permanent population, (2) a defined territory, (3) a working government, and (4) the capacity to enter into relationships with other states.[102]

As a matter of objective fact Abkhazia arguably meets these criteria. One can have no doubt that there is a group of people who permanently live within the area delineated as Abkhazia. That area has a clearly defined boundary, which is recognized as a *de facto* matter even by Georgia. There is an Abkhaz authority that is exercising the

---

[98] *Id.*
[99] *Id.* at 3.
[100] The declaratory theory of statehood provides that a sovereign state may exist without being recognized by other states. *See* William Worster, *Sovereignty: Two Competing Theories of State Recognition*, Exploring Geopolitics, *available at* http://www.exploringgeopolitics.org/Publication_Worster_Willliam_Sovereignty_Constitutive_Declatory_Statehood_Recognition_Legal_View_International_Law_Court_Justice_Montevideo_Genocide_Convention.html (last updated Feb. 2010).
[101] Alain Pellet, *The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples*, 3 EJIL 178, 182 (1992) (hereinafter: Badinter Opinion).
[102] Montevideo Convention on the Rights and Duties of States, 165 LNTS 19 (26 Dec. 1933) (hereinafter: Montevideo Convention). *See also* Badinter Opinion *supra* note 101 at 182.

traditional functions of government within that territory. Finally, that authority has the capacity to enter into relationships with other states as evidenced by the fact that it has done so, namely through treaty relationships with the Russian Federation and its participation at the Geneva Peace Process.[103]

Nevertheless, the vast majority of international states do not recognize Abkhazia as an independent state. Classically, this does not matter, as statehood is an objective fact independent of recognition.[104] While this may be true as a *de facto* matter, it is undeniable that recognition by other states has benefits[105] that make international recognition a matter of great importance. Obtaining such recognition will be a much more difficult task than simply satisfying the criteria of declarative statehood. Recognition of states in the twenty-first century is often couched in terms of governmental legitimacy, at least as it concerns the major players Abkhazia must convince, namely the United States (U.S.) and European Union (EU).

Legitimacy is a broad idea. The USSR and the European Communities (subsequently subsumed into the EU) issued a declaration on "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union." The declaration set forth certain criteria for recognition, including respect for the rule of law, democracy,

---

[103] Robert McMahon, *UN: Georgia-Abkhaz peace process focuses on security in border region*, EurasiaNet, *available at* http://www.unhcr.org/refworld/topic,45a5199f2,45a519df2,46a484f61e,0,EURASIANET,,.html (last updated 31 May 2003).

[104] Montevideo Convention *supra* note 102 at Art. 3 ("The political existence of a state is independent of recognition by the other states."); *see also* Badinter Opinion *supra* note 101 at 182 ("The existence or disappearance of the state is a question of fact; that the effects of recognition by other states are purely declaratory.").

[105] Among other benefits: accession to the United Nations, eligibility for IMF assistance, participation in the WHO, movement of citizens abroad with government issued identity documents, regularization of international trade, and the protections of international law.

and human rights, as well as guarantees for ethnic and national minority rights and stated that the Council will not recognize entities resulting from violence.[106]

III. International recognition

The Western policy toward Abkhazia

As mentioned above, only Russia and a few of its allies recognize Abkhazia, with total of recognition from six U.N. member states and three U.N. non-member states.[107] Though international recognition is not a legal requirement, some Western observers see this lack of international support as a key factor in Abkhazia's fight to for legitimate independence. [108] The Western policy toward the Abkhaz conflict has been one of general support for Georgia's "territorial integrity" and a rejection of Abkhazia's right to secede. On 23 April 2008, former Secretary of State Condoleezza Rice stated, "[t]he United States is firmly committed to the territorial integrity and sovereignty of Georgia."[109] EU

[106] Article 11 of the Montevideo Convention is also interpreted to state that a state may not be formed by aggression.

[107] The six states include Russia (26 Aug. 2008), Nicaragua (5 Sept. 2008), Venezuela (10 Sept. 2009), Nauru (15 Dec. 2009), Vanuatu (23 May 2011), and Tuvalu (18 Sept. 2011). The three U.N. non-member states include South Ossetia (15 Apr. 2008), Transnistria (22 Jan. 1993), and Nagorno-Karabkh (17 Nov. 2006). *See* Dmitry Medvedev, *Statement by President of Russia Dmitry Medvedev*, Moscow: Federal Government of Russia (26 Aug. 2008); El Presidente de la República de Nicaragua, *Gobierno de Reconciliación y Unidad Nacional*, Decreto No. 47-2008 (5 Sept. 2008); RIA Novosti, *Venezuela recognizes S. Ossetia, Abkhazia*, *available at* http://en.rian.ru/world/20090910/156084433.html (last updated 10 Sep. 2009); Reuters, *Pacific island recognizes Georgian region*, *available at* http://in.reuters.com/article/2009/12/15/idINIndia-44730620091215 (last updated 15 Dec. 2009); RIA Novosti, *Vanuatu recognizes Abkhazia independence – Abkhaz ministry*, *available at* http://en.rian.ru/world/20110531/164348947.html (31 May 2011); Radio Free Europe/Radio Liberty, *Tuvalu 'Recognizes Abkhazia, South Ossetia'*, *available at* http://www.rferl.org/content/tuvalu_recognizes_abkhazia_south_ossetia/24338019.html (23 Sept. 2011); Ministry of Foreign Affairs of the Pridnestrovian Modavian Republic, *Agreement between the Transnistrian Moldavian Republic and the Republic of Abkhazia Friendship and Cooperation*, *available at* http://mfa-pmr.org/index.php?newsid=343 (last updated 26 Jan. 1993); Patricia Carley, *Nagorno-Karabakh: Searching for a Solution*, (1998).

[108] International Alert, *The Politics of Non-Recognition in the Context of the Georgian-Abkhaz Conflict*, 7 (2011).

[109] 154 Cong. Rec. H3028 (2008).

High Representative Catherine Ashton also stated, "the European Union reiterates its support to the territorial integrity and sovereignty of Georgia, as recognized by international law." [110]

Two major issues arise in the context of possible Western support for Abkhazia. First, many Western states view Abkhazia's increasing dependence on Russia as a major hurdle to international recognition:[111] "[t]he Government of the Russian Federation has carried out policies that seek to undermine the sovereignty of the Republic of Georgia in Abkhazia and South Ossetia by awarding individuals [with Russian] citizenship, Russian passports, economic subsidies and the right to vote in Russian elections."[112] This is discussed in greater detail below.

Second, the concern of many Western states still rests primarily with peacemaking in the region. The Western view is that Russia is the reason for the current turmoil. U.S. Senator Richard Durbin stated, "it is clear that Putin is trying to create a provocative environment within Georgia today."[113] The U.S. State Department has further stated that, "the Russian Federation's deployment of troops and weapons in the regions is inconsistent with its cease-fire commitments and clearly threatens stability." [114] The U.S. has pushed for Georgia to join the North Atlantic Treaty Organization (NATO), a clear pro-Georgian stance and a move that Russia vehemently opposes.[115]

Furthermore, congressional hearing records reveal that the U.S. views Russia as a threat to Abkhazia and that, "the statements and counter-productive actions of the

---

[110] Press Release, *Council of the European Union*, European Union (15 Oct. 2012) (on file with author).
[111] International Alert, *supra* note 108.
[112] 154 Cong. Rec. H3028 (2008).
[113] 158 Cong. Rec. E275 (daily ed. 29 Feb. 2012) (statement of Sen. Richard Durbin).
[114] Ian Kelly, *Statement on the Geneva Discussions*, *available at* http://photos.state.gov/libraries/osce/242783/march2011/MAR_10-11_GenevaDiscussionsGeorgia.pdf (last updated 10 Mar. 2011).
[115] Slomanson, *supra* note 13 at 15

[Russian Federation have] undermined the peace and security in Abkhazia."[116] The EU and the U.S. have reacted unfavorably toward attempts by Russia to gain state recognition for Abkhazia. The EU and the U.S. have applied pressure to any states willing to recognize the independence of Abkhazia, effectively blocking attempts by the Russian Federation to gain wider recognition of Abkhazia.[117] Additionally, restrictions imposed by the U.S. and the EU on Abkhaz people entering these countries are seen as unfair by Abkhazia. However, recent reports have circulated suggesting that U.S. Secretary of State Hilary Clinton will allow citizens of Abkhazia to travel with "neutral documents."[118]

The EU refused to recognize the recent 2011 elections in Abkhazia. EU High Representative Catherine Ashton and North Atlantic Treaty Organization (NATO) Secretary General Anders Fogh Rasmussen each issued statements dismissing the 2011 Abkhaz presidential results and furthermore referred to Abkhazia as a "Georgian region."[119] EU High Representative Ashton said, "[i]n view of the recent reports today from Sukhumi in the breakaway region of Abkhazia in Georgia, that Mr. Alexander Ankvab has been elected as new president, this statement is to recall that the European Union does not recognize the Constitutional and legal framework within which these elections have taken place."[120]

Additionally, the EU noted with concern "that the Prime Minister of the Russian Federation, Vladimir Putin, has paid a visit to the Georgian region of Abkhazia, without

---

[116] 154 Cong. Rec. H3028 (2008).
[117] International Alert, *supra* note 108 at 10.
[118] Giorgi Lomsadze, *Russia to Clinton: Beware "Provocative Passports"*, EurasiaNet, *available at* http://www.eurasianet.org/node/65520 (last updated 8 Jun. 2012).
[119] Press Release, *Statement by the spokesperson of EU High Representative Catherine Ashton on the elections in the breakaway region of Abkhazia in Georgia*, EUROPEAN UNION (27 Aug. 2011) (on file with the author).
[120] *Id.*

prior consent of the Georgian authorities."[121] It did not consider this visit compatible with the principle of territorial integrity, nor did it find it helpful for the international efforts to stabilize the region.[122] This stance is reflective of the West's policy of promoting and upholding the territorial integrity of Georgia.[123]

While the U.S. and the EU have generally maintained the same policy of non-recognition towards Abkhazia, the EU has approached the Abkhaz conflict on two different levels. First, the EU supports Georgia's transformation and subsequent reforms. It signed a European Neighborhood Policy Action Plan with Georgia and assisted Georgia's border management reform through a European Union Special Representative Border Support Team.[124] Second, the European Commission participated in conflict settlement talks on economic issues.[125] The EU also contributed to the rehabilitation of the conflict zones, spending twenty-five million Euros between 1997 and 2006.[126]

The EU has been reluctant to make any real commitments in the conflict. An EU official stated that, "[t]he EU cannot send peacekeepers for decades into conflicts which have no prospects of being solved."[127] On conflict resolution in the region, "[i]ts main contribution… should be assisting Georgia [in creating] a state based on European values and standards, which ultimately could be more attractive to [Abkhazia] than independence or closer integration with Russia."[128] The EU further declared that it is

---

[121] Press Release, *Declaration by the Presidency on behalf of the European Union on Russian Prime Minister Putin's visit to the Georgian region of Abkhazia*, EUROPEAN UNION (13 Aug. 2009) (on file with the author).
[122] *Id.*
[123] *Id.*
[124] Nicu Popescu, *Europe's Unrecognized Neighbours: The EU in Abkhazia and South Ossetia*, at 1 (2007).
[125] *Id.* at 2.
[126] International Crisis Group, *Conflict Resolution in the South Caucasus: The EU's Role*, at 11, (2006).
[127] Popescu, *supra* note 124 at 10.
[128] International Crisis Group, *supra* note 126.

ready to "contribute to the conflicts settlement in Abkhazia, Georgia and Tskinvali Region/South Ossetia, Georgia, based on respect of the sovereignty and territorial integrity of Georgia."[129]

Georgia's policy of non-recognition

The state of affairs between Georgia and Abkhazia has remained frozen, especially since the 2008 war against Russia and South Ossetia. Georgia's current policy towards Abkhazia is the same as the West's policy of non-recognition. This non-recognition of Abkhazia's independence can be viewed as an attempt to protest what Georgia perceives as a form of Russian occupation within its borders. Since the Georgian-Russian war of 2008, Russia's strong presence within Abkhazia and its recognition of Abkhazia's independence have added to fears over the territorial integrity of Georgia.

After the collapse of the Soviet Union, the international community recognized the move towards independence within the Soviet Republics, but not in the autonomous republics.[130] Abkhazia was an autonomous republic.[131] The Russian Constitution itself granted the right of secession to the Republics but not to the autonomous republics and other regional entities.[132] Article 72 of the 1977 USSR Constitution states that "[e]ach Union Republic shall retain the right freely to secede from the USSR."[133] Thus, Abkhazia had no Constitutional right to secede upon the dissolution of the Soviet Union, while

---

[129] Popescu, *supra* note 124 at 11.
[130] Angelika Nußberger, *The War Between Russia and Georgia—Consequences and Unresolved Questions*, 1 GOETTINGEN J. OF INT'L L. 341, 355 (2009).
[131] *Regions and Territories: Abhkazia*, BBC NEWS, (last updated Mar. 12, 2012, 14:41) http://news.bbc.co.uk/2/hi/europe/3261059.stm
[132] Nußberger, *supra* note 130 at 356.
[133] CONSTITUTION OF THE UNION OF SOVIET SOCIALIST REPUBLICS, 7 October 1977, available at http://www.constitution.org/cons/ussr77.txt.

Georgia did. This alone lends credence to Georgia's position on the illegality of Abkhazia's secession. Georgia had a right to declare its independence, and, under international law, it subsequently had a right to preserve its territorial integrity from the secession of the semi-autonomous regions of South Ossetia and Abkhazia.[134]

The principle of *uti possidetis* declares that the former boundaries within a state become the boundaries of newly independent states.[135] Despite the fact that Abhkazia has a long, rich cultural tradition that is distinct from Georgia's, it was long ago absorbed into Georgia and the principle of *uti posseditis* essentially denies sub-regional territories within former republics a legal right to secession.[136] Georgia, especially as viewed by the West, has a strong argument that it has the right to maintain its territorial integrity and to deny the legitimacy of Abkhazia's secession when viewed in the light of the principles of international law.[137] The Abkhaz certainly seem to be a separate people, but, as demonstrated above, this does not automatically give rise to a declaration of independence in accordance with international law.

The Parliamentary Assembly of the Council of Europe condemned, in a resolution, Russia's recognition of South Ossetia's and Abkhazia's independence.[138] It declared the recognitions as breaches of Georgia's territorial integrity and sovereignty and reaffirmed its commitment to recognizing the territorial integrity of Georgia.[139] The diverging viewpoints on the legality of Abkhazia's declaration of independence are important to understanding the current state of frozen diplomacy. Russia maintains that

[134] Nußberger, *supra* note 130 at 356.
[135] *Id.*
[136] *Id.* at 357.
[137] *Id.* at 356.
[138] *Id.* at 343.
[139] *Id.*

the war in 2008 was an act of aggression by Georgia against South Ossetia, whereas Georgia maintains that it acted in response to Russian and South Ossetian threats in order to protect its own borders.[140]

Russia views its intervention in the region as necessary to preserve the right to self-determination.[141] According to Russia, the Georgian threat to South Ossetia created a threat to Abkhazia, and Russia claims it intervened to prevent imminent human rights violations from being committed by Georgia.[142] The difficulty of reaching a consensus on the legality of secession becomes obvious in light of the chasm between these two stances. It is within Russia's interest to continue to recognize Abkhazia's independence, and whether it acted to protect those interests by blanketing them in humanitarian terms does not matter much in the end—it is highly unlikely to give up its strategic advantage. Georgia, for its part, currently enjoys the support of the bulk of the international community, which generally views Abkhazia's secession as an illegitimate act.[143] Since Georgia cannot act militarily in the region without facing military intervention by Russia, the policy of non-recognition has become the most ideal stance.

Generally, Georgia seems to have the upper hand under international law principles, as evidenced by the West's policy of non-recognition towards Abkhazia.[144] However, it is arguable that this policy is not sustainable in the long run—in fact, there is some evidence that Georgia is aware that the policy itself stands on shaky ground.[145] History shows that policies of non-recognition tend to collapse some time after the

[140] *Id.* at 345.
[141] *Id.*
[142] *Id.* at 346.
[143] International Alert, *supra* note 108 at 12.
[144] *Id.* at 29.
[145] *Id.*

original conflict has passed.[146] Essentially, Georgia needs to maintain this policy for as long as possible in order to avoid losing the territory permanently.

Simultaneously, Georgia is attempting to apply "soft power" to influence renewed Abkhaz and Georgian ties.[147] At some point, the desire for peace and resolution of the conflict may take precedence, at which point, Georgia might have trouble justifying continued reliance on a policy that the West has tended to abandon with the passage of time. This does not, however, appear plausible in the foreseeable future. If the West retreated from this policy and recognized the independence of Abkhazia, it would likely result in a resentful Georgia. Georgia is already in a particularly vulnerable position, falling outside multilateral systems of international security and frozen in limbo over the resolution of its current three-way conflict between Russia, South Ossetia, and Abkhazia. A Georgia left with no political backing in the West is a Georgia left open to Russian influence, and the West has no desire to see a renewed Russian hegemony.[148]

At international law, Georgia has a strong argument in maintaining that the secession is a threat to its territorial integrity.[149] The Friendly Relations Declaration states that the right to self-determination may not be exercised to the detriment of 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."[150] If gross violations of the Abkhaz people's right to self-determination had occurred, there would be a stronger argument for the legality of secession. Had Georgia, for example, denied them recourse to the country's political system or breached other

---

[146] *Id.*
[147] *Id.*
[148] *Id.* at 35.
[149] *See* Friendly Relations Declaration, *supra* note 19 at 165.
[150] *Id.*

basic human rights, or had there been sustained and prolific violence or genocide against the Abkhaz people by Georgia, then considerations of self-determination would likely take precedence over Georgia's desire to retain Abkhazia as part of its territory.

The conflict over the legitimacy of Kosovo's independence can be seen as analogous to the situation within Abkhazia.[151] There are, however, a few key differences. First, Albanians in Kosovo arguably had diminished internal self-determination and therefore a stronger case for independence.[152] Second, the break-up of Yugoslavia was "non-consensual," giving rise to a special situation as it pertained to Kosovo.[153] Condoleeza Rice distinguished Kosovo from South Ossetia and Abkhazia on this basis, stating, "we have been very clear that Kosovo is *sui generis*. That is because of the special circumstances out of which the breakup of Yugoslavia came."[154]

The international community was nonetheless divided on Kosovo's right to independence.[155] It could even be argued that Kosovo's independence hinders on the presence of U.S. and NATO troops (Slomanson article supra, at 11). When the General Assembly lodged its case with the ICJ in October 2008 over the validity of Kosovo's independence, seventy-seven states supported it and seventy-four abstained, and those in favor predominantly consisted of EU and NATO member states (Id. at 12). The West's push for Kosovo's independence while resolutely refusing to recognize the legitimacy of Abkhazia's secession is clearly a major barrier to Abkhazia's fight for recognition and shows the distinction the West has drawn between the two situations (Id). The decision to

---

[151] Abkhaz World, *Kosovo or Abkhazia: Contrasts and Comparisons*, Headlines, *available at* http://www.abkhazworld.com/headlines/702-kosovo-or-abkhazia-contrasts-and-comparisons.html (last updated 15 Aug. 2011).
[152] Nußberger, *supra* note 130 at 349.
[153] *Id.*
[154] *Georgia rebel region seeks recognition after Kosovo*, Guy Faulconbridge, March 5, 2008, Reuters.
[155] *Id.* at 350.

grant the legality of Kosovo's secession, in light of the divisiveness of the situation, can hardly be considered strong precedent for a similar decision on behalf of Abkhazia and certainly cannot be seen as the development of new customary international law.[156]

The West therefore refuses to adopt the Kosovo situation as precedent, making it clear that such circumstances do not apply to Abkhazia. The lack of recognition of Abkhazia by any member of the Commonwealth of Independent States demonstrates that the position of the international community at large is the same as the West's (International Alert at 12). This lends even further support for Georgia's position on the illegality of Abkhazia's secession. Additionally, Georgia continues to maintain that Abkhazia was the major aggressor during the conflict of the early 1990s.[157] Both sides committed various human rights violations and helped perpetrate the violence, but there is little agreement as to the nuanced details of the clash.[158] The fact remains that the international community is unlikely to look kindly upon the forced displacement of nearly 250,000 people, most of whom were ethnic Georgians, from Abkhazia during the 1992-1993 conflict.[159] While a large number of former residents of Abkhazia remain displaced, any claim for the Abkhaz people's right to control the Abkhaz territory is diminished.[160]

From Georgia's perspective, there were no acts of aggression committed by Georgia against Abkhazia in the 2008 war, which negates any legitimate intervention by Russia on behalf of the Abkhaz people.[161] Had Georgia been the initial aggressor against

---

[156] *Id.*
[157] International Alert, *supra* note 108 at 31.
[158] *See supra* notes 73–83 and accompanying text.
[159] International Alert, *supra* note 108 at 31.
[160] *Id.*
[161] *Id.* at 32.

Abkhazia, there would be stronger ground for finding that the Abkhaz people have a right to independence. There is also the problem of continued Russian involvement in Abkhazia. As long as Russia remains deeply involved there, Abkhazia's secession cannot be viewed as the creation of a sovereign state.[162] Georgia continues to argue that since 1998 it has been experiencing a form of Russian occupation,[163] and, as long as the West views the conflict from a Georgian perspective, it is highly unlikely Abkhazia's secession will be seen as legal.

Georgia's position on the conflict with Abkhazia is in many ways inextricably linked with its views on its conflict with Russia. In fact, many within Georgia maintain that there is no conflict with Abkhazia,[164] claiming that the real issue lies with Russia's continued involvement.[165] Therefore, it becomes difficult to parse out policies and positions aimed directly at Abkhazia from the underlying influence of ongoing Russian intervention. As of now, the policy of non-recognition remains the best policy Georgia has against Abkhazia.

There are, however, numerous ways in which this policy could backfire with time. At some point, as stated previously, the West could tire of this policy and choose instead to recognize Abkhazia. It is also likely that non-recognition will lead to further alienation and degradation of affairs between the Georgia and Abkhazia, possibly leading to an eventual shift in political thought that would see Georgia as the enemy of Abkhazia's reasonable desire for independence.[166] These possibilities cannot overshadow Russia's continued occupation within its borders. Abkhazia feels more secure with the ongoing

---

[162] *Id.* at 31.
[163] *Id.* at 27.
[164] *Id.* at 34.
[165] *Id.*
[166] *Id.* at 37.

presence of Russian military, a situation that makes Georgia feel increasingly insecure,[167] and this fact alone puts the Georgian-Abkhaz situation in a deadlock. The reality of Russia's military presence within Abkhazia makes any resolution between Georgia and Abkhazia all the more difficult.

Russia's effect on Abkhazia's bid for independence

Abkhazia and Russia share a deep, layered relationship. The two governments have signed multiple agreements dealing with military, social, and economic support for Abkhazia, with promises of more agreements to come. However, the depth and breadth of the relationship between Abkhazia and Russia threatens Abkhazia's quest for legitimate recognition.

One of the requirements of statehood is an effective government.[168] Abkhazia's dependence on Russia may compromise the effectiveness of Abkhazia's government. Abkhazia "has expressed its clear will to remain independent from Russia," but, "its policies and structures, particularly its security and defence institutions, remain to a larger extent under the control of Moscow."[169] Russian support could be part of the process of developing and strengthening an effective government. However, a government deeply dependent upon another cannot be simultaneously described as independent. This issue is detrimental to Abkhazia's bid for legitimacy and recognition.

---

[167] *Id.* at 34.
[168] Tarcisio Gazzini, *Criteria for Statehood as Applied by the EU's Independent Fact-Finding Mission on the Conflict in Georgia,* Blog of the European Journal of International Law, *available at* http://www.ejiltalk.org/criteria-for-statehood-as-applied-by-the-eus-independent-fact-finding-mission-on-the-conflict-in-georgia/ (last updated 8 December 2009), citing *EU Independent International Fact-Finding Mission on the Conflict in Georgia Report,* at 124 (30 September 2009), *available at* http://www.ceiig.ch/Report.html.
[169] *Id.*

If Abkhazia's declaration of independence is considered an illegal secession, Russia's recognition of Abkhazia is a violation of its duty to "respect the territorial integrity" of Georgia.[170] This has not deterred Russia from continuing to treat Abkhazia as an independent state. The Russian government refers to the leaders of Abkhazia as presidents and receives the leaders as if they were "high-level Russian officials."[171] Military and security institutions in Abkhazia are headed by Russian officials or individuals who worked for the Russian government.[172]

There are upwards of five thousand Russian troops in Abkhazia, including security, border control, and coast guard units.[173] An agreement signed in September 2009 allows the Russians to use and improve military bases and infrastructure for a forty-nine-year term, extendable for an additional fifteen years.[174] The stated purpose of the bases is to "protect [the] sovereignty and security of the republic [of Abkhazia]."[175] A Russian official confirmed that "[Russia is] here for the long term."[176] This is supported by many of Russia's actions. For example, Russia is planning to build a naval base on the

---

[170] Committee on Legal Affairs and Human Rights, *National sovereignty and statehood in contemporary international law: the need for clarification,* Council of Europe Parliamentary Assembly, *available at* http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12689.pdf (last updated 12 Jul. 2011).
[171] Nicu Popescu, *"Outsourcing" de facto Statehood: Russia and the Secessionist Entities in Georgia and Moldova*, Policy Perspectives (2006).
[172] *Id.*
[173] International Crisis Group, *Abkhazia: Deepening Dependence,* Europe Report N°202, *available at* http://www.crisisgroup.org/~/media/Files/europe/202_abkhazia___deepening_dependence.ashx (last updated 26 Feb. 2010) (hereinafter: Crisis Group). *See also* Joanna Dziuba, *Russia and Abkhazia Agree on Military Base in Gudauta*, Central Asia-Caucasus Institute Analyst, *available at* http://www.cacianalyst.org/?q=node/5289 (last updated 18 Mar. 2010).
[174]RIA Novosti, *Russia signs military cooperation deals with Abkhazia, S. Ossetia*, *available at* http://en.rian.ru /mlitary_news/20090915/156135405.html (last updated 15 Sep. 2009) (hereinafter: Russia-Abkhazia Military Cooperation). *See also* Crisis Group, *supra* note 173 at note 6.
[175] Official Website of Sergey Bagapsh, *Russia, Abkhazia Signed Agreement on Joint Russian Military Base on Abkhaz Territory*, *available at* http://www.abkhaziagov.org/en/news/detail.php?ID=28673 (last updated 17 Feb. 2010).
[176] BBC Monitoring International Reports, *Russia, Abkhazia to ink deal on military base 'before end of July'—official*, Interfax, (23 Jul. 2009) (on file with the author).

Black Sea close to the Georgian border and will take control of the border crossing with Georgia.[177]

Russia and Abkhazia also agreed to coordinate air traffic, with Russia promising to repair Abkhazia's main airport.[178] Additional agreements were signed regarding many other issues, including banking, integration of energy and transportation systems, air communication, and illegal migration.[179] Another agreement may be signed transferring management of the railways to a Russian company.[180]

Economically, Abkhazia is heavily dependent on Russia's support. Russia is Abkhazia's main trading partner and Abkhazia adopted the Russian rouble as its currency.[181] Almost all trade occurs with Russia and much of what is consumed in Abkhazia is imported from Russia.[182] Russia provides half of Abkhazia's budget and is spending $465 million on military installations in the region, more than Georgia's entire military budget for the year.[183]

In addition, Russia granted citizenship to the residents of Abkhazia, with approximately ninety percent of Abkhaz holding Russian passports.[184] Although Russia claims this action was based on humanitarian concerns, it is more likely that Russia wishes to legitimize its involvement in the region by claiming it is protecting its own

---

[177] RIA Novosti, *Georgia: Abkhaz Parliament Ratifies Border Accord with Russia*, *available at* http://en.rian.ru/world/20111227/170516553.html (last updated 10 Jul. 2009).
[178] Xin Hua, *Georgia denies legitimacy of Russia-Abkhazia agreement on air traffic*, *available at* http://news.xinhuanet.com/english2010/world/2010-02/18/c_13178983.htm (last updated 18 Feb. 2010).
[179] Wojciech Goreck, *Russia concludes interstate treaties with Abkhazia and South Ossetia*, Centre for Eastern Studies, *available at* http://www.osw.waw.pl/en/publikacje/eastweek/2008-09-25/russia-concludes-interstate-treaties-abkhazia-and-south-ossetia (last updated 24 Sept. 2008).
[180] RIA Novosti, *Russia, Abkhazia to build joint military base*, *available at* http://rt.com/politics/medevedev-bagapsh-military-base/ (last updated 17 Feb. 2010).
[181] Popescu, *"Outsourcing" de facto Statehood*, *supra* note 171.
[182] Crisis Group, *supra* note 173.
[183] RIA Novosti, *Putin visits Abkhazia, confirms Russian aid commitments*, *available at* http://en.rian.ru/russia/20090812 /155792028.html (last updated 12 Aug. 2009). *See also* Russia-Abkhazia Military Cooperation. *See also* Crisis Group, *supra* note 173.
[184] Popescu, *"Outsourcing" de facto Statehood*, *supra* note 171.

citizens.[185] The Russian government also pays pensions in Abkhazia that are larger than those paid by Georgia, encouraging further alliance with Russia and perpetuating the Abkhaz-Georgian conflict.[186]

Russia has also used its position on the Security Council to strike down the United Nations Observer Mission in Georgia (UNOMIG) peacekeeping mission.[187] By vetoing a technical roll-over of the mandate on 15 June 2009, Russia effectively ended the seventeen-year mission.[188] Russia, therefore, has interfered in UN peacekeeping missions in relation to the Georgian-Abkhaz conflict, essentially wedging another divide between the international community and Abkhazia.

The breadth of the relationship between Abkhazia and Russia makes it clear that Abkhazia is strongly dependent on Russia, which the signing of agreements has institutionalized.[189] Although its independence may be limited by this intricate relationship with Russia, an Abkhaz official stated, "we have the amount of independence [from Russia] that meets our security and economic needs."[190] The Abkhaz government sees the agreements as guarantees of security from Georgian control, whereas Georgia feels that Russia is occupying and annexing its territory.[191] There is a risk that Abkhazia is no longer free to negotiate with Georgia due to Russian involvement. Many analysts believe that Russian involvement undermines "the independent status of Abkhazia's

---

[185] *Id.*
[186] *Id.*
[187] U.N. Observer Mission in Georgia, *Background*, http://www.un.org/en/peacekeeping/missions/past/unomig/background.html
[188] *Id.*
[189] Popescu, "*Outsourcing" de facto Statehood, supra* note 171 at 13.
[190] Crisis Group, *supra* note 173.
[191] *Id.*

sovereignty," "creates a precedent to lower the status of an independent state," and "virtually eliminates the international and political status of Abkhazia."[192]

As a result of the increased relationship with Russia, Abkhazia is at risk of being incorporated into the Russian Federation.[193] Due to the small number of ethnic Abkhaz in Abkhazia, there is a serious risk of the group being outnumbered by individuals who are inclined to join the Russian Federation. The signing of more agreements and increasing dependence may push Abkhazia past a point of no return, making it a *de facto* part of Russia.[194] While this close alliance persists there is a strong possibility that the attitudes and policies of Abkhazia will continue to mirror Russian standards, moving further from those of the West and further alienating it from the international community (International Alert at 13).

Abkhazia and the rule of law

Despite Abkhazia's reliance on Russia and the Western world's policy of non-recognition, there are arguments that support the international recognition of Abkhazia. The rule of law, for example, is among the core principles of state legitimacy according to the U.N. and the EU.[195] Commentators attribute numerous benefits to the application of the principle, ranging from increased economic growth to institutional stability. However, those same commentators have difficulty defining the term "rule of law," instead proffering a number of definitions ranging from the exceptionally broad (where any functioning state would qualify) to the explicitly narrow (where few, if any, nations

---

[192] Izida Chania, *Strategic Partnership of Abkhazia and Russia: How to Make it Fruitful and Mutually Beneficial?,* The Analyticon, *available at* http://theanalyticon.com/?p=1433&lang=en (last updated Feb. 2012).
[193] Popescu, *"Outsourcing" de facto Statehood*, *supra* note 171.
[194] *Id.*
[195] *See generally* Badinter Opinion, *supra* note 101.

could claim actual compliance).[196] Nonetheless, certain factors form a common thread in most of the useable definitions. Under the rule of law, Abkhazia must fulfill four fundamental criteria to be considered a state:

1. All persons, institutions, public and private, including the state itself are accountable to the law.
2. Those laws are clear, public, and prospective in application and stable.
3. The process by which laws are enacted, administered, and enforced is known and accessible.
4. The adjudication of the law is carried out by independent, competent, and ethical adjudicators.[197]

The application of these criteria to the situation in Abkhazia shows a strong foundation under the rule of law.

The Abkhaz Constitution contains strong statements holding all persons and institutions, including the government, accountable under the law.[198] While hardly definitive, Constitutions are generally thought to embody the idea that governments have certain legal powers and are in some way accountable to the people as the ultimate source of sovereignty.[199] Abkhazia's Constitution provides many specific statements to that effect.

For example, the Constitution aspires to create a "democratic state based on law"[200] where "[t]he sovereignty of the people shall be the basis for the State

---

[196] *Compare* United Nations Security Council, *Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies* (S/2004/616), 23 Aug. 2004; The International Commission of Jurists, *The Delhi Declaration*, *available at* http://www.unesco.org/pv_obj_cache/pv_obj_id_9BF63EEF20874F662E1012D110516DE59B2A0100/filename/DELHI.PDF (last updated 10 Jan. 1959); The World Justice Project, *What is the Rule of Law?*, *available at* http://worldjusticeproject.org/what-rule-law, (last updated 12 Nov. 2012); A.V. Dicey, *An Introduction to the Study of the Law and the Constitution* (8th ed. 1982); Joseph Raz, *The Rule of Law and its Virtue*, 93 Law Q. Rev. 195 (1977).
[197] *See* sources cited *supra* note 196.
[198] *See infra* notes 200 and 201 and accompanying text.
[199] Scott Gordon, *Controlling the State: Constitutionalism from Ancient Athens to Today*, 4 (1999).
[200] CONSTITUTION OF THE REPUBLIC OF ABKHAZIA (Abkhazia Constitution), 26 November 1994, at Art. 1.

authority."[201] Collectively, these assertions are an invocation of the "consent of the governed" theory of state power. This theory stands for the notion that the government only has those powers that are given it and must be held accountable to those limits and to the people, an inherent aspect of the rule of law.[202] In other words, the Constitution in Abkhazia is fairly similar to the U.S. Constitution in that it establishes a system of checks and balances and is positioned as the supreme law within the territory with which all other acts must be in accordance.[203]

Subordination to the law alone, however, is insufficient. Laws, if they are to be obeyed, must be known, understandable, stable, and forward-looking.[204] At the very least, as a Constitutional matter, *ex post facto* laws are prohibited by the requirement that "[a] law which establishes or aggravates responsibility may not be retroactive."[205] As long as this is honored in practice, Abkhazia's laws are, by implication, forward-looking and prospective in application.

Closely related to the above notions of what laws ought to be is the idea that the process by which those laws are made and enforced should be known and accessible. Like all Constitutions, the Abkhaz Constitution spells out a process for enacting legislation, at least in the general sense. Similarly, the process is accessible. The Constitution expressly provides for the election of Parliament by direct, equal, and universal suffrage.[206]

---

[201] *Id.* at Art. 2.
[202] *See generally* John Locke, *Second treatise of civil government: and a letter concerning toleration* (1690).
[203] Abkhazia Constitution, *supra* note 200 at Art. 9.
[204] *See* sources cited *supra* note 196.
[205] Abkhazia Constitution, *supra* note 200 at Art. 25.
[206] *Id.* at Art. 37.

The question here is not a structural one, but a practical one. Voting and membership in Parliament are both predicated upon Abkhaz citizenship.[207] There have been allegations that the citizenship law is discriminatory, with the practical effect of disenfranchising a very sizeable portion of the residents of Abkhazia.[208] Furthermore, the resolution of the situation is complicated in light of the extensive and ongoing problem concerning ethnic Georgian IDPs displaced from Abkhazia, discussed below. Abkhazia is accused of systematically disenfranchising and excluding from the political process several hundred ethnic Georgians who otherwise would make up a substantial portion of the Abkhaz electorate.[209] This poses a serious question for Abkhazia as it moves forward.

The final element of the rule of law recognizes that all of the above is meaningless if the application of the law depends merely on political whim, personal relationships, or arbitrary judicial action. Accordingly, it is widely accepted that judges ought to be independent of the political process and, above that, be well trained and adhere to a code of professional ethics that ensures equal and fair adjudication.[210] The Abkhaz judiciary satisfies this general expectation and is independent by the standard of the Western world.

Minority rights in Abkhazia

Although Abkhazia's Constitution does seem strong under a rule of law analysis, it is beneficial to look at how it is used on the ground. The status of minorities within a

---

[207] *Id.* at Art. 38–39.
[208] United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights, *Universal Periodic Review: Georgia*, *available at* www.UNHCR.org, *e.g.* (2010).
[209] *See generally* International Convention on the Elimination of All Forms of Discrimination, 21 Dec. 1965, U.N. GAOR 2106 (XX), 660 U.N.T.S. 195.
[210] International Bar Association, *Resolution of the International Bar Association of 8 October 2009 on the Commentary on the Rule of Law Resolution*, *available at* http://www.ibanet.org/Document/Default.aspx?DocumentUid=9925C6FD-5804-407F-9D39-ECB9D6A8B9D4 (last updated 8 Oct. 2009).

territory provides a strong example of potential disconnects between a Constitution and its practical application. Abkhazia's Constitution provides numerous protections with respect to minority groups. One major aspect of Abkhazia's Constitution protecting minority groups is the recognition and assurance of the rights proclaimed in the UDHR. Chapter II, Article 11 of the Abkhaz Constitution states:

> The Republic of Abkhazia shall recognize and guarantee the rights and freedoms proclaimed in the Universal Declaration of Human Rights, the international covenants of economic, social, cultural, civil and political rights and other universally recognized international legal instruments.[211]

The UDHR provides individuals with, among other things, the right to life, the right to privacy, and the right to movement.[212] In addition, the ICCPR provides individuals with freedom of religion and freedom of expression,[213] and the ICESC provides individuals with fair wages and equal remuneration for work of equal value without distinction of any kind.[214] These are among the rights protected under several international legal instruments that the Abkhaz Constitution has recognized and guaranteed for its citizens.

In addition, Abkhazia's Constitution expresses a specific right for minority groups in the provision that protects minorities who seek education in their native language.[215] Chapter I, Article 6 states:

> The official language of the Republic of Abkhazia is Abkhazian. The Russian language as well as the Abkhazian language shall be recognized as the language of the government, public, and other institutions. The state shall guarantee all ethnic groups living in Abkhazia the right to use freely their own language.[216]

---

[211] Abkhazia Constitution, *supra* note 200 at Art. 11.
[212] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 12–13 (1948).
[213] ICCPR, *supra* note 10 at 18–19.
[214] ICESC, *supra* note 10.
[215] *Id.* at Art. 6.
[216] *Id.*

This allows many minority groups in Abkhazia to freely use their native language and seek an education in that language. Thus, Armenian and Georgian languages should be able to be taught in schools without government interference.

Abkhazia's Constitution establishes a high standard for civil rights among its citizens. Recognizing and guaranteeing the rights within the UDHR and numerous other international legal instruments demonstrates that Abkhazia is theoretically willing to provide agreed upon international rights for its citizens. Although Abkhazia does not specifically express minority rights anywhere other than Article 6, Abkhazia's Constitution generally provides equal rights for everyone in Abkhazia.[217]

That being established, it is useful to look at how the Constitution has actually been applied. Unfortunately, there have been various Constitutional violations committed by Abkhaz authorities upon minority groups, especially against ethnic Georgians.[218] There are currently approximately 247,000 to 249,000 ethnic Georgian internally displaced peoples (IDPs), the majority of whom were forced to leave their homes in Abkhazia while the 1992—1993 conflict raged and subsequently throughout the 1990s.[219] Nearly 6% of Georgia's population is displaced and are living in terrible, cramped, and filthy conditions.[220] The Organization for Security and Cooperation in Europe, or OSCE, has repeatedly recognized and discussed the ethnic cleansing of Georgians from Abkhazia. In all, 46% of the Georgians living in Abkhazia were expulsed

---

[217] *Id.* at Art. 12.
[218] Human Rights Report, *Living in Limbo*, 1-4, *available at* http://www.hrw.org/sites/default/files/reports/georgia0711LR.pdf (last updated Jul. 2011) (hereinafter: Living in Limbo).
[219] Peter Kabachnik, Joanna Regulska, and Beth Mitchneck, *Where and When is Home? The Double Displacement of Georgian IDPs from Abkhazia*, Journal of Refugee Studies, Volume 23, No. 3, August 5, 2010, 315, 315–316 (hereinafter: Double Displacement)
[220] *Id.*

and to this day are not allowed to return home.[221] The OSCE branded this a deliberate attempt by Abkhaz authorities to maintain their "totalitarian hold" over all aspects of life in Abkhazia because if ethnic Georgians were allowed to return home the composition of the electorate would be changed.[222]

The Abkhaz government has discriminated against ethnic Georgians through the process of gaining citizenship, the right to freedom of movement, and interference with education.[223] Although Abkhazia's Constitution contains numerous clauses pertaining to rights for not only ethnic Abkhaz, but also for ethnic Georgians, Abkhazia's government has continuously and systematically interfered with these rights.[224] Georgia's policy is that the IDPs must be allowed to return home to Abkhazia, a geopolitical strategy to uphold its own territorial integrity while inserting itself into Abkhazia via its own people.[225] These IDPs are stuck in a physical and political limbo. Abkhaz authorities have turned a blind eye to repeated calls from the international community to allow the Georgian IDPs to return home,[226] and this, coupled with the ongoing human rights violations perpetrated by Abkhazia against those IDPs, does not do much to assist in its attempts for international recognition of Abkhaz independence.

As noted earlier, Chapter II, Article 11 of Abkhazia's Constitution recognizes and guarantees the rights laid out in the UDHR, the ICCPR, the ICESCR, and other universally recognized international legal agreements.[227] All of these international legal

---

[221] Coalition for Justice, *The 2012 Human Dimension Implementation Meeting: Working Session 3: Humanitarian Issues and Other Commitments, Including Refugees and Other Displaced Persons* September 25, 2012, 1, 1.
[222] *Id.*
[223] *Id.* at 1.
[224] *Id.* at 2.
[225] Double Displacement, *supra* note 219 at 320.
[226] Coalition for Justice, *supra* note 221 at 2.
[227] Abkhazia Constitution, *supra* note 200 at Art. 11.

instruments make it illegal to discriminate against an individual on the basis of ethnicity. Nonetheless, Abkhaz authorities continue to discriminate against ethnic Georgians.[228]

In 2005, the Abkhaz Parliament enacted a law that defines who is eligible for Abkhaz citizenship, the necessary procedures to obtain citizenship, and the grounds for refusal.[229] This law discriminates against ethnic Georgians because it allows ethnic Abkhaz to become citizens automatically but creates numerous barriers to non-ethnic Abkhaz who wish to become citizens. The only way to become a citizen automatically for a non-ethnic Abkhaz is to have been a resident for at least five years at the time of Abkhazia's declaration of independence in 1999. However, because the fighting in 1992—93 displaced most ethnic Georgians, this condition excludes most of them.

Georgians can receive citizenship through nationalization, but they are forced to relinquish their Georgian citizenship and engage in a tedious application process. Regardless, many ethnic Georgians believe that this risk is worth taking because obtaining a citizenship will allow ethnic Georgians to obtain jobs in Abkhazia. In an interview with HRW, Sergey Shamba, then prime minister of Abkhazia stated, "[jobs in] educational institutions should go to citizens of our country."[230]

The Abkhaz administration considers an Abkhaz passport to be proof of citizenship.[231] This document not only provides individuals with citizenship but also secures many rights for individuals that would be otherwise unavailable.[232] This includes the right to work in the public sector (which includes teachers and medical personnel), the right to participate in elections and hold public office, and the right to property.

---

[228] Living in Limbo, *supra* note 218 at 1.
[229] *Id.* at 31.
[230] *Id.* at 37.
[231] *Id.* at 31.
[232] *Id.* at 2.

Tellingly, R.K., the president's special representative in the Gali district, asked HRW, "[b]ut why do I need him or her [referring to those without passports] in a public [sector] job, when there are others with Abkhaz passports? If he refuses to take our passport, what kind of a friend and a brother-in-arms would he be?"[233] In line with this statement, in early 2009 a headmaster in a school was told that teachers in the school without Abkhaz passports would not receive their salaries.[234]

The procedure for obtaining an Abkhaz passport is, as mentioned before, tedious and cumbersome. One mother, a resident of Chuburkhinji village, describes the hardship in applying for a passport for her daughter, saying:

> My daughter graduated from school in Zugdidi in 2009 . . . I wanted to apply for an Abkhaz passport for her. However, in the administration I was told that she will have problems getting it, as she did not graduate from a school here. I don't know what to do.[235]

In addition to the vast amount of forms needed for the application process, the documents must be submitted in Russian or Abkhazian.

Ethnic Georgians also face Constitutional violations by Abkhaz authorities because of the restrictions placed on returnees to commute across the boundary line into Georgia's territory. Following the 2008 conflict, Abkhazian authorities officially closed the boundary for one year, unless the crossing was for a humanitarian reason.[236] This is a violation of the Abkhaz Constitutional provision protecting the right to freedom of movement.[237] Consequently, ethnic Georgians could not commute to Georgia. This hindered their safety, their access to collect allowances for displaced persons (which are

---

[233] *Id.* at 37.
[234] *Id.*
[235] *Id.* at 53.
[236] *Id.* at 23.
[237] Abkhazia Constitution, *supra* note 200 at Art. 16

given only on the Georgian side of the boundary line) and their ability to maintain ties with family. Many residents in the Gali district of Abkhazia like the option to travel back and forth from Abkhazia to Georgia and have told HRW that they fear a Russian takeover. Many residents believe it would mean that they would have to choose to permanently live in one area.[238] However, living permanently in one area is not an option for many ethnic Georgians due to the factors listed above regarding the benefits received by many displaced persons traveling to Georgia from Abkhazia.

Another Constitutional violation instituted by Abkhazian authorities is the push for a unified curriculum in schools with Russian as the main language of instruction.[239] Prior to the 1992—93 conflicts, Georgian was the language of instruction in almost all the Gali district's fifty-eight schools.[240] As a result of requiring Russian to be the main language, only eleven schools still teach in Georgian, and the future of these schools remains uncertain. Consequently, many students have been forced to change schools and even leave the district altogether. As the Georgian language has been phased out, ethnic Georgians do not have the same access to an education in their native language as Abkhazian and Russian residents of Abkhazia. As discussed above, Article 6 of the Abkhaz Constitution expressly guarantees the rights for minority groups to use their native language. However, as demonstrated, Abkhaz authorities have restricted this right and, if the trend continues to favor Russian instruction, access to the Georgian language will be impossible for ethnic Georgians in the Gali district.

Abkhaz tolerance of the Georgian language seems to be very thin. Not only is the Abkhaz government switching instruction of education from Georgian to Russian, many

[238] *Id.* at 41.
[239] *Id.* at 48–49.
[240] *Id.*

residents feel that the government restricts their freedom to use the Georgian language in daily use. One mother described her frustration about the prohibition of Georgian-language with HRW on 9 October 2009:

> My son dances in a local ensemble and they had a concert last year in Gali. I was there attending it, and when the children started singing in Georgian, the concert was interrupted. A local official started waving his gun and screaming to shut up. The concert ended immediately. The children were very scared.[241]

One resident spoke about a poster written in Georgian at a school welcoming students for their first day; three armed men ripped the poster down and began yelling and screaming.[242] Other residents spoke about the same incident and their feeling that it was as if a crime was committed by having a welcome sign written in Georgian.[243] Several students subsequently transferred from the school and were sent to Zugdidi to finish.[244] Although there are numerous accounts of similar incidents, the Abkhaz minister of education has told the HRW that Georgian is spoken freely everywhere in Abkhazia.[245]

The adoption of the Abkhaz Constitution provides protection for not only ethnic Abkhaz but also for minority groups. However, in practice, the protection of minority rights, specifically for ethnic Georgians, seems to be nonexistent. Ethnic Georgians are discriminated against through access to citizenship, lack of freedom of movement, and prohibition of Georgian language instruction in education. Although the Abkhaz Constitution sets forth provisions to protect against unfair treatment of minorities, in reality, ethnic Georgians are stripped of their rights to freedom and equality, resulting in illegal discrimination that diminishes Abkhazia's arguments for independence.

---

[241] *Id.*
[242] *Id.* at 55.
[243] *Id.*
[244] *Id.*
[245] *Id.* at 57.