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## NOTE FROM THE EDITOR-IN-CHIEF

### Nasimi Aghayev

With the signing of the protocols between Armenia and Turkey in Geneva, the world waits on the two countries' parliaments to ratify these accords and open the border—a move that could have various implications for the region and beyond. Being part of Turkey's zero-problems policy, normalizing relations with Armenia is another step toward resolving regional problems with its immediate neighbors—measures which may prove to be too impressive for Brussels to ignore. On the other hand, resolving problems with immediate neighbors may come at the expense of creating new ones with long-time allies. Cue Azerbaijan, which also plays a large role in this process, demands a substantial progress in Nagorno-Karabakh, including the phased withdrawal of Armenian troops, before opening of the Turkish-Armenian border.

For Armenia, which clearly has more to gain from the thaw, the protocols are strongly opposed by the diaspora and opposition parties, not least because of the proposal to create a so-called “historical commission” to investigate the 1915 events, which many Armenians feel calls into question the use of the genocide label. President Sargsyan's Republican Party, however, has a parliamentary majority, which will make it difficult for any opposition forces in Yerevan and beyond to attempt to derail ratification, if the Armenian government really decides to embark on it. Nevertheless, President Sargsyan seems to be disinclined to push for the ratification until the Turkish parliament has done so. Conversely, being bound by his repeated clear-cut pledges to Azerbaijan not to open the border until the end of occupation, Turkey's Prime Minister Erdogan is also demonstrating a similar reluctance.

The Nabucco gas pipeline project, meanwhile, hangs in the balance as these three countries iron out their grievances and demands. If the border opens and Baku decides to decrease ties with Turkey, Azerbaijan's energy resources may end up being routed through the Black Sea, Russia, or Iran, thereby reducing Turkey's stake in transit, supply, and overall geopolitical influence.

Speaking of Russia and Iran, Moscow remains lukewarm in agreeing to take severe measures against Tehran's nuclear ambitions. Instead, Russia's leaders seem to prefer to make as few commitments as possible, giving only minor and rather contradictory concessions to both sides – Washington and Brussels on one, Tehran on the other.

Finally, the situation remains critically tense in the North Caucasus. After Ingush president Yunus-Bek Yevkurov was wounded in a suicide car bomb attack, Chechnya's president Ramzan Kadyrov's efforts to increase his power in the region have multiplied and received at least tacit support from Moscow. The firm response from Moscow, not to mention its support for Kadyrov, has arguably only increased resistance by insurgents, and still no tangible result has been produced in finding the murderers of human rights activists and journalists who have been killed while relaying stories to the world from this war-torn region.

The present Autumn '09 issue presents a meticulous assessment of importance of introducing an alternative dispute resolution mechanism in the North Caucasus, an in-depth analysis of the implications of the 1993 UN Security Council action for the

Nagorno-Karabakh conflict settlement, as well as a thorough research of old-age pension reforms in Georgia. The issue also includes a comment on Ukraine's current quandary between Russia and NATO, scientifically rigorous papers on corruption in Russia, and China's soft-balancing "experiments" in Africa and the Arab world. A review of a book on the Russian-Chechen conflict is published alongside interviews on current South Caucasus issues with experts from Germany, Georgia and the US, as well.

In addition, we are excited to announce that we are currently working on a new design for CRIA's website, which we hope to be able present quite soon, and which will provide a fresh perspective for our readers, old and new. And, as always, we thank our readers for their comments, support, and participation, all of which help to make the CRIA an increasingly relevant and authoritative source of scholarship and information.

# ALTERNATIVE DISPUTE RESOLUTION IN THE NORTH CAUCASUS

Renée Gendron\*

## Abstract

*This article argues that clan conflicts can be addressed through the extension of existing alternative dispute resolution mechanisms. Clan disputes and conflicts are interdependent of other violent conflicts. Through the expansion of existing informal justice mechanisms, the republics of the North Caucasus as well as the Russian Federation can improve the rule of law and reduce the incidents of violence. Recognizing and utilizing local indigenous conflict resolution mechanisms will also empower those populations, facilitating greater active participation in society.*

**Keywords:** *clan feuds, alternative dispute resolution, rule of law, stability*

## Introduction

This article\*\* will argue that grassroots violence can be and is addressed in some circumstances by informal conflict resolution mechanisms, namely the use of customary mediation and conflict resolution mechanisms present in clan societies. While this violence is not directly pertinent to the separatist wars or the position of terrorist groups in the North Caucasus, should those conflicts be resolved, this low-level violence will remain. Addressing that specific low-level violence in both war and post-war settings is crucial to ensuring a lasting peace.

This type of violence is systemic in clan-based societies. Two rival clans which engage in a feud may escalate the violence to a point where the peace agreement is jeopardized. Recognizing, monitoring and utilizing informal conflict resolution mechanisms will be required for effective, and durable state-building. The Russian Federation already has alternative dispute resolution (ADR) mechanisms for the settling economic and family disputes. In some cases, individuals accused of a crime are able to access these alternative dispute resolution processes. This article argues that these mechanisms can and should be expanded to include clan-based conflicts.

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\*\* The author would like to thank Dr. Charlotte Hille, and Dr. Evan Hoffman, CIAN, for their comments and feedback on this article.

There are several conflicts in the North Caucasus. Chechnya, Dagestan and Ingushetia<sup>1</sup> are being destabilized by insurgency, criminal and terrorist organizations and an ever-present Chechen separatist movement.<sup>2</sup> There remain several unresolved border disputes between the republics that strain already tense inter-ethnic relations. There is also another level of violence in the North Caucasus that stems from clan feuds. Clan feuds are interdependent of larger issues. Clan feuds can develop from the perception of being dishonored, a disagreement between clans which escalates to violence and an assortment of other political and non-political reasons.<sup>3</sup>

There are currently several simultaneous, and sometimes interdependent, layers of conflict in the North Caucasus. Although the war in Chechnya has officially been declared over, there remains some troubling evidence to suggest that there is a growing insurgency. Separatist groups, such as the one led by Dokku Umarov, remain intact and continue to have the capability to wage war.<sup>4</sup> There are also other groups which fight for the independence of the whole of the North Caucasus and they are willing to use terrorist methods in order to achieve it. Police officers, government officials and security personnel are increasingly being targeted and attacked, and high level of corruption, unemployment and general economic stagnation remain some of the biggest problems in the region. For some groups, the government's inability to prevent crime and prosecute criminals, which has generated so much frustration, has in some instances called the legitimacy of the government into question.<sup>5</sup>

The current paper does not address the causes of the violent conflicts, the motivations for the Chechen separatist movement, for insurgency throughout the North Caucasus, or for terrorist groups. The article argues that there are other conflicts throughout the North Caucasus which pose a systematic threat to the stability of the region. These conflicts are often left unaddressed by official state institutions, yet they have the potential to destabilize many local governments and can cause a lapse or a relapse into war. These conflicts are the clan disputes which can easily escalate into violent clan conflicts.

## ADR Mechanisms

Alternative dispute resolution can be formal or informal, meaning it can be an official part of any official legal proceeding, or it can be made available to parties to a conflict without the

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- 1 Valery Dzutsev, "Deteriorating Security Situation in Ingushetia Sparks First Ever Visit to Region by Medvedev", *North Caucasus Analysis*, vol. 10:3 (2009), [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews\[tt\\_news\]=34400](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=34400) (accessed September 22, 2009).
  - 2 *Reuters*, "Chechen official says met prominent separatist Zakayev", July 24, 2009, <http://www.reuters.com/article/latestCrisis/idUSLO11567> (accessed September 29, 2009).
  - 3 Centre for European Policy Studies, "A Short Introduction to the Chechen Problem", Centre for European Policy Studies [http://epin.org/Article.php?article\\_id=158](http://epin.org/Article.php?article_id=158) (accessed September 25, 2009)
  - 4 Andrei Smirnov, "Chechen Rebels' Split has not Hampered their Activities", *North Caucasus Analysis*, vol. 9:14 (2008), [http://www.jamestown.org/programs/ncw/single/?tx\\_ttnews\[tt\\_news\]=4847&tx\\_ttnews\[backPid\]=169&no\\_cache=1](http://www.jamestown.org/programs/ncw/single/?tx_ttnews[tt_news]=4847&tx_ttnews[backPid]=169&no_cache=1) (accessed September 22, 2009).
  - 5 *The Economist*, "A mountain of troubles", July 16, 2009, [http://www.economist.com/displaystory.cfm?story\\_id=14054840&CFID=82428952&CFTOKEN=52657186](http://www.economist.com/displaystory.cfm?story_id=14054840&CFID=82428952&CFTOKEN=52657186) (accessed September 22, 2009).



supervision of a court. Alternative dispute resolution is a way for the parties to negotiate their own settlement. The settlement can be legally binding. Alternative dispute resolution also tends to focus more on the *interests* of the parties as opposed to a legal hearing in which the only things considered are the *rights* of the parties and the law.

There are some cultural differences in terms of justice (punish the individual versus restoring social equilibrium). These cultural differences in justice have prompted different countries to develop their alternative dispute resolution systems. For example, Canada has instituted a similar mechanism for addressing some criminal offences committed in aboriginal (First Nations) communities.<sup>6</sup> Broadly speaking, the Canadian judicial system is primarily concerned with upholding the rights of individuals than with restoring social relationships. This is not the case in First Nation cultures, in which, restoring the wider social relations after a crime is, generally, more important than reasserting the rights of individuals.

When an individual has committed a crime in First Nation cultures, the broader community is involved in determining responsibility, and in restoring the relationship between the victim and the perpetrator, as well as the perpetrator and the broader community. The differences in cultural approaches to justice have led to some conflicts between the two communities (First Nations and broader Canadian society). In an effort to reduce this conflict and to maintain respect for First Nations cultures and traditions, an alternative dispute resolution system was created. Healing circles, among other reconciliation processes, allow “for a stay of criminal prosecutions while the accused follows through with an approved alternative process.”<sup>7</sup> The incorporation of reconciliatory justice within the broader framework of rights-based and constitutionally-based justice has given First Nation communities greater say in how they are governed. It has placed greater emphasis on local actors actively participating in their communities for the purposes of empowerment and local ownership of concerns, issues and problems. Given the nature of social relations in the North Caucasus, it would be beneficial to expand alternative dispute resolution mechanisms specifically for clan disputes.

The Russian Federation has in place alternative dispute mechanisms for certain types of economic disputes. These alternative dispute resolution arbitration courts are called “*arbitrazhnye sudy*” (arbitration courts).<sup>8</sup> Moreover, the Russian Federation's judicial system does allow for mediation and alternative dispute resolution in family cases, civil and commercial cases and in some instances, for criminal matters. In specific relation to judicial-related matters in the Russian Federation, the court may decide to appoint a mediator. Also, the parties to the conflict may decide to hire a private-sector mediator.<sup>9</sup>

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6 Jonathan Rudin, “Aboriginal Alternative Dispute Resolution in Canada – A Case Study,” *International Journal of Public Administration*, no. 25:11 (2002):1406-1410.

7 Jo-Ann E.C. Greene, “Alternative Dispute Resolution”, *Indian and Northern Affairs Canada*, <http://www.ainc-inac.gc.ca/br/mrp/pubs/adr/adr-eng.asp> (accessed September 24, 2009).

8 Bulletin, “General Overview of the Judicial System of the Russian Federation”, BBH Legal, September 2006, [http://www.bbhlegal.ru/Documents/Publications/general\\_overview\\_of\\_the\\_judicial\\_system\\_in\\_the\\_russian\\_federation.pdf](http://www.bbhlegal.ru/Documents/Publications/general_overview_of_the_judicial_system_in_the_russian_federation.pdf) (accessed September 22, 2009).

9 European Commission for the Efficiency of Justice, *European judicial systems*, (Strasbourg Cedex: Council of Europe Publishing, 2008), 96-106.

## ADR Mechanisms in the North Caucasus

The range of situations in which alternative dispute resolution are used has broadened. Realizing that a formal court hearing is costly as well as lengthy, alternative dispute resolution permits the parties to a dispute or conflict to negotiate a mutually agreeable settlement. The use of alternative dispute resolution can be encouraged in the North Caucasus, as a way of relieving some of the underlying tensions in the region.

There are several outstanding land claim issues in the North Caucasus. These grievances pertain to the way in which the republics were divided, effectively splitting an ethnic group into two or more jurisdictions. One cause of the land claims was the deportation of the Circassians in the 1880s. Another source of land claim concerns is the Deportation of 1944, in which the Chechens and the Ingush peoples were sent to Central Asia by Stalin. These two deportations created lasting tensions. Successfully resolving land claims in ways that are acceptable for all parties will reduce tensions between ethnic groups and may help to assuage some fears within the smaller ethnic groups of assimilation and subsequent loss of culture.

In April 1991, the Russian Soviet Federal Social Republic's Supreme Soviet passed the law "On the Rehabilitation of the Oppressed Peoples". This law was intended to restore territories to their boundaries before the 1944 Deportation.<sup>10</sup> However, there remain many disputed territories within the North Caucasus as the afore-mentioned law prompted the migration towards historical homelands. Many of those historical homelands were inhabited by other groups shortly after the Deportation. Many of those other groups continue to inhabit those lands and this places additional strains on existing clan relations that are sometimes already tense. For example, the Sunzhensky district and the Prigorodnyi region remain contested territories between Chechnya and Ingushetia. Former President of Ingushetia Murat Zyazikov rejected negotiations with local clans over territorial and economic issues. In turn, this failure to negotiate with the clans has increased popular discontent with the government.<sup>11</sup> Furthermore, the Laks - who are ethnic Chechens living in Dagestan - have an unresolved territorial dispute in the Kazbegovsky District. This dispute is between the Laks and Avars in Dagestan. While the struggle is inter-ethnic, and stems from population movements as a result of the 1944 Deportation, much of the struggle is fought on a clan basis.<sup>12</sup> The afore-mentioned law of the Russian Federation, in attempting to redress historical injustices arising from the 1944 Deportation, created new conflicts over disputed territories. In turn, this drew in additional clans who contested for control over these territories.

A dispute between two individuals can escalate to the level of the clan. Escalation to the clan level may start a clan feud. Once the conflict has escalated to the clan level, there exists a real possibility of violence. This violence may be focused on rival clan members. Some clan members or clans may be involved in organised crime. Some organised crime groups, in turn, do business

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10 Larisa L. Khoperskaya, "Migration Contemporary Ethnopolitical Conflicts in the North Caucasus" in *Cooperation and Conflict in the Former Soviet Union, Implications for Migration*, ed. Jeremy R. Azrael and Emil A. Payin, (Washington, D.C.: RAND Corporation, 1996), 136.

11 Alexander Nicolli, Sarah Johnstone, "Insurgency in Ingushetia", *IISS Strategic Comments*, no.14:6 (2008):2.

12 Paul Tumelty, "Chechnya and the Insurgency in Dagestan", *North Caucasus Analysis*, no. 6:18 (2005), [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews\[tt\\_news\]=30391](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=30391) (accessed September 24, 2009)

with some terrorist or separatist groups. This is not to suggest a “domino theory” in which violence against one person automatically escalates into wider violence. This is to illustrate that there are several layers of complex relationships within the North Caucasus. Those networks, familial, personal, economical and political, may have broader impacts, especially in terms of violence. Successfully mediating a resolution to a violent dispute between two clans will not resolve the deeper conflict of separatism, land claims, and terrorist organisations. However, in many instances, the successful resolution of a clan dispute will reduce the overall levels of violence in the North Caucasus.

## Clans and Challenges to Clans as Social Structures

The Russian Federation's constitution is meant to be the supreme law throughout its entire territory. As it is a federated state, each constituent member is able to enact its own laws within its jurisdiction, so long as they are in keeping with the Russian Federation's constitution. In addition to these formal laws (federal and republic-level), many ethnic groups have their own historical customary laws. For the Chechens, this is the *adat*.<sup>13</sup> It is the social code which dictates which behaviors are acceptable and which are not. Variations of the *adat* are practiced by Chechens, the Karachay, the Adygay, and the Kabardins.

The practice of *adat* has been weakening in recent years, due to several factors. Since the collapse of the Soviet Union, religion in general, Islam in particular, has increased in importance. While many of the peoples of the North Caucasus have historically been Muslim, they tended to practice a form of Islam which conformed to the *adat*. Over the past twenty years, the local *adats* have been changed to better conform to more mainstream Islamic teachings.<sup>14</sup> The North Caucasus has had greater contact with other sources of religious teachings in recent years as well. This led to an increase in the practice of Arab-influenced Wahhabism in the North Caucasus throughout the 1990s and into the 2000s. The introduction of a stricter form of Islam into the region placed additional strains on the historical form of Islam practiced in the North Caucasus. Traditionally, it was the clan elders who mediated disputes but their significance was diminished as different religious practices were introduced. Wahhabism placed prohibitions on alcohol, for instance. The hierarchal nature of Wahhabi Islam goes against the strongly egalitarian nature of the indigenous cultures in the North Caucasus.

Also, with the introduction of Wahhabism in the region came linkages with the Middle East and the opportunity for many young Chechen men to study abroad. While studying abroad, these young men learned the importance of religious teachings, and the relatively low importance of clan affiliations. This further weakened the opportunities for clan elders to mediate or negotiate settlements to disputes and conflicts.<sup>15</sup> In addition, there has been an influx of foreign Imams into

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13 Emil Souleimanov, “Chechnya, Wahhabism and the Invasion of Dagestan”, *The Middle East Review of International Affairs*, no. 9:4 (2005), article 4, <http://meria.idc.ac.il/journal/2005/issue4/jv9no4a4.html> (accessed September 22, 2009).

14 Mairbek Vatchagaev, “Karachay Jamaat: History, Reality and Perspective”, *North Caucasus Analysis*, no. 8:22 (2007), [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews\[tt\\_news\]=4203](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=4203) (accessed September 22, 2009).

15 Robert Bruce Ware, “Islamic Resistance and Political Hegemony in Dagestan” (Paper prepared for the

the North Caucasus, who taught that it was of more importance to follow Islam and its religious laws, than to follow the laws of the *adat*. Again, this too has weakened traditional conflict resolution mechanisms between the clans. Moreover, with the rise of Wahhabi Islam in Chechnya, it began to centralize power in religious institutions. This was in opposition to the traditional Chechen governance system of *Mehk-Khel* or council of elders.<sup>16</sup>

While the significant displacement of Chechens because of the two wars in the 1990s has created social rifts, and perhaps weakened some informal institutions such as clans, clans as social actors remain important in Chechnya and for Chechens. This can be demonstrated in the power struggle between Chechen President Ramzan Kadyrov's clan and Ruslan Yamadayev's clan. Ruslan Yamadayev was killed in suspicious circumstances in September 2008, and his brother Sulim was shot in Dubai, in March 2009.<sup>17</sup>

In Ingushetia, Chechnya and Dagestan, clan allegiance and affiliation play an important role when it comes to voting patterns, as well as general impressions of government.<sup>18</sup> Blood feuds are still common throughout the North Caucasus in specific population sections.<sup>19</sup> While blood feuds are not common in the ethnic Russian population, they remain a factor in Chechen, Ingush and Dagestani life. Opposition to government, because of the perceived and real levels of corruption, is often organized according to clan allegiance and alliances.<sup>20</sup>

Clan-based disputes pose several challenges to state building. The strong adherence to a set of laws, in this case *adat* in Chechnya, and other customary laws in the North Caucasus, sometimes challenges the Russian Federation's constitution. The Russian Federation's constitution guarantees the right to every person to a fair and transparent trial before any punishment is issued. This is not the case in clan disputes. The “verdict” of guilty is issued by a non-state actor, the other clan. Also, there is no fair and transparent trial in such cases. Consequently, there is no fair and transparent appeal process. The punishment for a real or perceived offense is also carried out by a non-state actor, the other clan. Historically, clan elders were the judges or mediators in disputes, introducing additional non-state actors in justice and reconciliation processes.

Moreover, it is often the case that the state is unaware of the conflict, as no official police report was filed, leaving many state officials unaware of the situation. As no state official is aware of the

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International Studies Association Annual Convention, [San Francisco, United States of America, March 26-29, 2008](http://www.allacademic.com/meta/p251073_index.htm), [http://www.allacademic.com/meta/p251073\\_index.htm](http://www.allacademic.com/meta/p251073_index.htm) (accessed September 24, 2009).

16 Artem Kroupenev, “Radical Islam in Chechnya”, International Institute for Counter-Terrorism, <http://www.ict.org.il/Articles/tabid/66/Articlsid/636/currentpage/1/Default.aspx> (accessed September 24, 2009).

17 *Radio Free Europe Radio Liberty*, “Speculation Swirls After Kadyrov Rival is Slain in Russian Capital”, September 25, 2008, [http://www.rferl.org/content/Kadyrov\\_Rival\\_Slain/1291594.html](http://www.rferl.org/content/Kadyrov_Rival_Slain/1291594.html) (accessed September 25, 2009).

18 Enver Kisriev, “Dagestan: Factors in Conflict and Stability”, *Central Asia and the Caucasus*, <http://www.ca-c.org/dataeng/bk02.10.kisriev.shtml> No. 4 (2000) (accessed September 23, 2009).

19 Marina Kamenev, “Has Russia Lost Control of the North Caucasus”, *Time*, June 12, 2009, <http://www.time.com/time/world/article/0,8599,1904234,00.html> (accessed September 23, 2009)

20 Kara Flook, “A Violent Summer in the North Caucasus: Analysis of the Ingushetia Bombing”, *Iran Tracker*, August 26, 2009, <http://www.irantracker.org/related-threats/violent-summer-north-caucasus-analysis-ingushetia-bombing> (accessed September 23, 2009)

carrying out of “private justice”, individuals and clans, in this instance, are posing a direct challenge to the state's ability to project authority and force throughout the totality of its territory. Another challenge to both the Russian Federation's constitution as well as the republic's legal order is that the punishment for alleged clan disputes may not be in keeping with existing laws. When there is an ongoing dispute, the practice of blood feuds is common. A blood feud often leads to violence resulting in bodily harm, and sometimes death.

Clan feuds remain an active part of Chechen life. The Kadyrov clan recruits individuals into their militias. In turn, rival factions recruit into their militias. As they violently contest for control, there are deaths. These deaths then become “blood obligations” that the militiamen must avenge. The cycle of violence is then continued, drawing in more militiamen into the “blood debt”.<sup>21</sup>

Also, willful destruction of another person's property in retaliation occurs, as clans engage in tit-for-tat actions. None of these behaviors is in conformity with Russian law. Detecting and intervening in a clan dispute before it escalates into violence, which sometimes results in death, is imperative for constructive relations in the North Caucasus. Using and enhancing the conflict resolution expertise of clan elders and incorporating them into state operated informal alternative dispute resolution mechanisms can reduce the incidents of violence.

Moreover, the ethnic boundaries, and subsequently the clan boundaries in the North Caucasus, are fluid. Ethnic groups are often divided between two or more administrative units. As such, the clan feuds impact several jurisdictions simultaneously. The reason for the dispute may not have anything to do with the grievances which motivate some groups for war. A clan dispute can start for the perceived slight against one's honor or a miscommunication between two members from two different clans.

However, clan disputes can and do have linkages to the overall violent conflicts in the North Caucasus. One clan may support the Chechen separatist movement while another opposing clan, does not. A dispute between two such clans can further destabilize the republic(s) as the grievance “escalates to another level of conflict”. While the conflict may originate in an interpersonal conflict between two clan members, it can escalate to involve other clans concerned with larger issues, such as separatism. Clan feuds can also escalate to other levels of violence, including support for or against terrorist groups, or groups which support the creation of a Pan-Caucasus caliphate.

The two types of justice systems, formal justice as dispensed by the state and informal as dispensed by clans, need not be in conflict with one another. Currently, the two systems are often in conflict, as they do not always share the same view on a matter. State justice, that is formal justice which is in keeping with the Russian Federation's constitution, is there to protect an individual and prosecute an individual. Informal justice mechanisms, as used by the clans, are primarily concerned with achieving justice for the group, sometimes at the expense of the individual's personal rights and freedoms.<sup>22</sup> Moreover, informal justice mechanisms used by clans

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21 Emil Souleimanov, “Russian Chechnya Policy: “Chechnization” turning into “Kadyrovization”?”, *Central Asia-Caucasus Analyst*, May 31, 2006, <http://www.cacianalyst.org/?q=node/3976> (accessed September 22, 2009).

22 Walter Cummings-Richmond, “Legal Pluralism in the North West Caucasus: The Role of Sharia Courts”,

place a strong emphasis on maintaining a balance between the relative powers of clans. No such stipulation exists within the formal justice system in the Russian Federation.

Disputes and conflicts between clans will not go away once all of the grievances that could motivate people to go to war have been resolved. The possibility of dishonor or perception of offence will continue to be part of the social fabric of Chechnya, Dagestan, Ingushetia as well as in general throughout the North Caucasus. Attempts to forcibly break the social power of clans have failed and will continue to fail. Instead of creating a confrontational relationship, or one which intentionally ignores the presence of clans despite their consequences, their informal conflict resolution system can be incorporated into larger state structures in efforts to reduce the level of violence and social strife.

While the Russian Federation does incorporate mediation and alternative dispute resolution into its judicial practices, including the mediation of family, contract and economic disputes, as well as the mediation of certain types of crimes, there are specific factors to the North Caucasus which need to be taken into consideration when addressing mediation practices in the North Caucasus. Many of the clan-based indigenous peoples of the North Caucasus have a rich history of informal conflict resolution. The type of mediation, the skills of the mediator, and the overall style of negotiation, needs to be taken into consideration. Negotiations involving clans tend to be cyclical, not linear, meaning that the parties involved in the conflict, including the mediator, must expect that issues will be revisited several times before they are considered “addressed in a satisfactory manner”.<sup>23</sup>

There are indigenous conflict resolution capacities throughout the North Caucasus. Incorporating clan based conflict resolution mechanisms into informal justice mechanisms, such as the use of alternative dispute resolution under the supervision of the Russian Federation's courts, will do two very important things: i) it will reduce the incidents of clan-based violence as parties to a dispute have greater access to justice mechanisms, and ii) it will improve local ownership of disputes and their successful, peaceful resolution, as the method used for reconciliation is in keeping with local traditions and practices. Incorporating clan-based dispute mechanisms into the overall structure of alternative dispute resolution in the Russian Federation may also increase resources with which to reconcile and address these disputes. It will also assist state authorities in monitoring clan disputes, which in turn can provide state officials with sufficient warning about a tense situation. As argued, clan disputes can and do escalate to violence, sometimes resulting in death (blood feuds). Early detection and intervention by the state, in the form of clan-based conflict resolution, will assist state and civil society actors in monitoring and reducing the levels of violence in the North Caucasus.

Incorporating clan-based conflict resolution mechanisms into state practices provides several types of justice (formal and informal) to the population, while maintaining a sensitivity for cultural preferences (individual rights versus restoring social relations). It also recognizes that clans are part of the social fabric of the North Caucasus and can play a vital role in stabilizing the

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*Religion, State and Society*, no. 32:1 (2004): 61-63.

23 Tamara Duffey, "Cultural Issues in Contemporary Peacekeeping", *International Peacekeeping*, no. 7:1(2000):158.



region. This is not to say that all clan disputes can be resolved in a manner that is in keeping with the Russian Federation's constitution. However, incorporating clan-based resolution options into the framework of judicial oversight can reduce these infringements of constitutional rights. Right now, these informal clan-based conflict resolution mechanisms are outside the purview of the state. Allowing for their use, under the supervision of the Russian Federation's courts, will make the state aware of such disputes and will provide greater opportunities for mutual collaboration between formal and informal justice mechanisms. It will also strengthen state institutions as access to broad justice is widened to include some aspects of clan-based conflict resolution. The clan-based mediators and dispute practitioners can be trained in the Russian Federation's constitution, and on the type of settlements that are in conformity with Russian law. At the same time, aspects of clan-based conflict resolution which are constitutional can be strengthened, developed and promoted. This further strengthens the rule of law throughout the North Caucasus.

The Russian Federation does allow for alternative dispute resolution mechanisms to be used in other types of disputes. If the Russian Federation can expand the list of eligible disputes and conflicts to be resolved through alternative dispute resolution mechanisms, it would then facilitate local ownership for the identification, negotiation and implementation of a mutually agreed upon solutions. Moreover, it would encourage more active citizen participation in the region as these mechanisms for justice and reconciliation conform more to the indigenous cultures.

There are some instances in which clan-based justice is not possible. In such cases, the formal justice system of the Russian Federation must be used. One such example occurred when former Chechen President Maskhadov was not able to arrest Salman Raduev as it would have led to an internal clan dispute. Salman Raduev was sentenced to life in prison for having committed acts of terrorism and murder. He was found guilty of participating in the 1996 raid on the town of Kizlyar, in which seventy-eight people were killed.<sup>24</sup>

## Conclusion

Recognizing and incorporating indigenous conflict resolution mechanisms into more formal state processes will help strengthen state structures as the state takes a more active role in conflict resolution through means other than the use of force. Clan feuds can also be inter-generational, meaning that the dispute remains unresolved and often bloody for generations. One of the longest recorded clan feuds lasted for two hundred and sixty years.<sup>25</sup> Stability in Chechnya, and the North Caucasus overall, will not be achieved until clan conflicts are acknowledged as a part of the social make-up. Reconciling and addressing those clan-based conflicts must be incorporated into more formal processes. Acknowledging and employing local customs for the resolution of conflict, also sends an important message to the peoples in the North Caucasus: that their cultures are valued and have a place within the Russian Federation. In so doing, this may reduce some inter-ethnic tensions in other areas as well as work towards empowering the peoples of the North Caucasus.

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24 Francesca Mereu, "Russia: War Destroyed Chechnya's Clan Structure Part 1", *Johnson's Russia List*, January 5, 2002, <http://www.cdi.org/russia/johnson/6006-13.cfm> (accessed September 24, 2009)

25 Emil Souleimanov, "Chechen Society and Mentality", *Prague Watchdog*, May 25, 2003, <http://www.watchdog.cz/?show=000000-000015-000006-000006&lang=1> (accessed September 24, 2009)

# THE IMPLICATIONS OF THE 1993 U.N. SECURITY COUNCIL ACTION FOR THE SETTLEMENT OF THE ARMENIA-AZERBAIJAN CONFLICT

Rovshan Sadigbayli\*

## Abstract

*The article revisits the four resolutions adopted in 1993 by the U.N. Security Council on the conflict between Armenia and Azerbaijan. It analyses the terminology used in these resolutions viewed within the overall context, in which these resolutions were adopted. It is the premise of this article that these resolutions were the result of the complex web of interrelated factors, which had a decisive impact on the Security Council actions in relation to the conflict. These resolutions reflect the delicate balance between the obligation of the U.N. Security Council to abide by the principles and norms of international law enshrined in the U.N. Charter and address situations threatening international peace and security in an unbiased way and on the other hand safeguarding the interests of the permanent members of the Council. Hence, although the resolutions fell short of pointing finger, they implicitly pointed to the inter-state nature of the conflict, singled out the principles and norms of international law applicable to this conflict, reminded of the inadmissibility of violating those norms and outlined the principles that should provide the overall framework and guidance for the mediation efforts for the conflict settlement pursued in the context of the OSCE Minsk process.*

**Keywords:** Armenia-Azerbaijan conflict, Nagorny Karabakh, UN Security Council resolutions, territorial integrity, OSCE Minsk Process

## Introduction

In the course of 1993 the United Nations Security Council adopted four resolutions on the conflict between Armenia and Azerbaijan.<sup>1</sup> There are few other cases, when the Security Council adopted four resolutions on a particular conflict just in one year, which in itself can be regarded as the acknowledgement of the gravity of the situation. These resolutions are probably the most cited and referred to documents in the context of the conflict between Armenia and Azerbaijan. And this is not a surprise as the resolutions adopted by the Security Council are the most authoritative decisions of this body empowered by the U.N. Member States through the U.N. Charter to maintain international peace and security.

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<sup>1</sup> S/RES/822 (April 30, 1993), S/RES/853 (July 29, 1993), S/RES/874 (October 14, 1993) and S/RES/884 (November 12, 1993). For simplicity in the article I will refer only to the consecutive numbers of these resolutions (i.e. 822, 853, 874 and 884). All U.N. documents are available publicly at [www.un.org/documents/](http://www.un.org/documents/)



Although, the texts of the above-mentioned resolutions are well known, at least to those who had a chance to get acquainted with the background of one of the most violent armed conflicts on the territory of the former Soviet Union, few attempts were made to explore in detail the terminology used in these resolutions and the overall context in which these resolutions were adopted. Yet, these resolutions were the result of the complex web of interrelated factors, which had a decisive impact on the Security Council action in relation to the conflict.

Hence, the purpose of this article is to reconsider the wording of the resolutions, try to analyse possible reasons explaining why these resolutions were framed the way they were and elaborate on the implications of the Security Council actions for the conflict settlement process.

Since there is no codified generally accepted rules of interpretation of the Security Council resolutions, for the purpose of this article I will combine the two methods, one focusing narrowly on the ordinary or plain textual meaning of the terms of the resolutions and the method of reading the text of the resolutions in the overall context, taking into account the object and purpose of the resolutions as well as the overall political background.<sup>2</sup>

I will start by elaborating on the factors affecting the daily practice of the Security Council, in particular the complex decision-making process and the role of the permanent members of the Council in this regard. Two aspects will be specifically mentioned in the following sections. First, as will be argued below the U.N. Charter requires that the Security Council in its daily practice must assess problems likely to threaten the international peace and security based on the principles and norms of international law enshrined in the U.N. Charter and determine which of the arguments presented by the parties to a dispute correspond to the factual situation. Therefore, international law provides overall framework for the Security Council actions. In this regard, analysis of the terminology used in these resolutions from the perspective of their meaning within international law is crucial for understanding the actual meaning embedded into the adopted texts. Second, the “veto” power of the permanent members of the Security Council continues to give them unprecedented leverage on the Security Council action and allows them to shape the decisions in the way that would not harm their interests.

It is equally important to bear in mind that the resolutions were adopted as a response to the dramatic events unfolding in the conflict zone and therefore can be regarded as an assessment by the Security Council of the situation on the ground and recognition of the facts by this authoritative organ of the United Nations. For the purpose of this article I will specifically focus on the way the Security Council addressed the reports coming from the region on the involvement of Armenia into the conflict. Today, with the continued presence of the regular troops of Armenia in the occupied territories of Azerbaijan<sup>3</sup> and Armenia’s president Serzh

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<sup>2</sup> See Michael C. Wood, “The Interpretation of Security Council Resolutions”, *Max Planck Yearbook of United Nations Law*, 2:73, (1998), [http://www.mpil.de/shared/data/pdf/pdfmpunyb/wood\\_2.pdf](http://www.mpil.de/shared/data/pdf/pdfmpunyb/wood_2.pdf) (accessed July 17, 2009).

<sup>3</sup> For example, in the aftermath of the Presidential elections in Armenia in March 1998 the OSCE/ODIHR Election Observation Mission in Armenia released Final Report in which it expressed extreme concern “that one of the mobile boxes has crossed the national borders of the Republic of Armenia to collect votes of Armenian soldiers posted abroad (Kelbajar)”, thus confirming the deployment of Armenian troops in the Kelbadjar district of Azerbaijan, which was occupied in April 1993. See “OSCE/ODIHR Final Report on the Presidential Elections in Armenia” issued on 9 April 1998, p. 8. Available online at: [http://www.osce.org/documents/odihr/1998/04/1215\\_en.pdf](http://www.osce.org/documents/odihr/1998/04/1215_en.pdf) (accessed October 29, 2009).

Sarkisian and his defence minister Seyran Ohanian's routine visits to these territories for inspecting troops stationed there<sup>4</sup> and attending military exercises, the direct military involvement of Armenia in the conflict is not questioned and widely recognised by the international community.<sup>5</sup> However, back in 1993 for at least several permanent members of the Security Council the military intervention of Armenia was inconvenient truth, which they were reluctant to accept. In the sections that follow I will try to identify factors that may have shaped the stance of permanent members of the Council and will discuss what repercussions this had for the overall tone of the adopted resolutions and the terminology that was used to frame the texts.

With a view to reconstruct the scene as was seen at that time from the U.N. Headquarters in New York City reference will be made to the reports of the U.N. Secretary-General and the Chairman of the Minsk Conference of the Conference for Security and Cooperation in Europe (CSCE)<sup>6</sup> dealing with the conflict, submitted to the Security Council based upon the inquiries of the fact-finding missions. Since the Security Council was also furnished with information on the developments in the conflict zone by regional States I will consult the correspondence communicated to the Security Council both from Azerbaijan and Armenia as well as from other States concerned. The verbatim records of the proceedings of the relevant Security Council meetings as well as *the Repertoire of the Practice of the Security Council*<sup>7</sup>, serving as an institutional memory of the practice of the Security Council and *the Yearbook of the United Nations*<sup>8</sup>, which is considered to be a comprehensive and authoritative reference publication about the work of the United Nations, will be consulted with a view to revealing the atmosphere prevailing in the Security Council at that time and shedding light on the positions of the Council members towards the conflict. These sources are also useful to recreate chronology of the actions taken by the Security Council with regard to the conflict between Armenia and Azerbaijan.

The Security Council resolutions were not adopted in the vacuum. The conflict drew the attention of the international community and the developments in the conflict zone quickly became a matter of public knowledge as reflected in the news reports of the leading foreign media outlets as well as the statements issued by the major international organizations and individual States. Hence, a short reference will be made to the background information based on the news reports, the official documents distributed in the United Nations as well as the statements by the relevant international organizations in order to provide the reader with the general context of the conflict. For the sake of presenting objective and unbiased account of

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<sup>4</sup> The last such visit occurred in October 2009. Information on this visit and related photographs is publicly available at the official web page of the president of the Republic of Armenia, <http://president.am/events/news/eng/?day=22&month=10&year=2009&id=766> (accessed October 26, 2009).

<sup>5</sup> See for example the Report entitled "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference" (Doc. 10364) prepared by the Rapporteur of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe Mr. David Atkinson in November 2004 and the subsequent resolution 1416 adopted by PACE on January 25, 2005. Available online at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1416.htm>, (accessed October 29, 2009).

<sup>6</sup> Since 1994 – OSCE (Organization for Security and Cooperation in Europe).

<sup>7</sup> See *Repertoire of the Practice of the Security Council*, Supplements 1989-1992 (ST/PSCA/1/Add. 11) and 1993-1995 (ST/PSCA/1/Add. 12). Items 19 and 9 respectively related to the conflict between Armenia and Azerbaijan. Available online at <http://www.un.org/Depts/dpa/repertoire> (accessed June 10, 2009).

<sup>8</sup> See *Yearbook of the United Nations*, 1992-1994, Department of Public Information, New-York. All issues are available online at <http://unyearbook.un.org/index.html> (accessed June 10, 2009).

the key events of the conflict, in this article I will refer mainly to the books, articles and reports on the conflict written by non-regional independent scholars and observers.

When appropriate, I will elaborate on the meaning of the principles and norms of international law singled out by the Security Council in its resolutions and identify the obligations of individual States derived from these norms. I will conclude by dwelling upon the implications of the Security Council action for the current conflict settlement process.

### **The U.N. Charter as a framework for the Security Council action**

The primary purpose of the United Nations and its central organ - the Security Council as reflected in the first Article of Chapter 1 of the U.N. Charter is "...to bring about by peaceful means, and in conformity with the principles of justice *and international law* adjustment or settlement of international disputes..."<sup>9</sup> Thus, the U.N. Charter establishes international law as a clear-cut framework for the Security Council within which to address a particular situation threatening international peace and security. Rosalyn Higgins, analyzing the place of international law in the decisions adopted by the Security Council, noted that it is for the Security Council to decide, which of the legal propositions presented by the parties to the dispute happened to accord with the facts of the case.<sup>10</sup> She recognized the right of the Security Council to "make authoritative and binding interpretations of Members' legal obligations under the Charter."<sup>11</sup>

At the same time, because of the "veto" power reserved for the permanent members of the Security Council by the founders of the United Nations, there are voices constantly challenging the legitimacy of the collective authority of the Council on the grounds that the proceedings in this organ are dominated by the powerful few and hence this body is merely an instrument in the hands of the major powers to advance their interests, rather than a mechanism of maintaining international peace and security – a core mission prescribed in the Charter.<sup>12</sup> Under the circumstances, being guided in its daily practice by the principles and norms of international law becomes also an indispensable precondition and a source of legitimacy for the Security Council in the eyes of the Member States of the United Nations. Due to the legitimacy vested in the Security Council its resolutions should be regarded as authoritative decisions of the United Nations to be reckoned with. Rosalyn Higgins underlined in this regard that "[t]he application of legal rules to particular circumstances forms part of the United Nations practice and, over a period of time, becomes part of the stream of authoritative decisions which are looked to as a source of law."<sup>13</sup>

The analysis of the practice of the Security Council reveals that on many occasions the decisions taken by this U.N. organ reflect the delicate balance between the obligation of the

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<sup>9</sup> Charter of the United Nations and Statute of the International Court of Justice, U.N. Department of Public Information, DPI/511, United Nations, New York (2006), (Emphasis added).

<sup>10</sup> See Rosalyn Higgins, "The Place of International Law in the Settlement of Disputes by the Security Council", *The American Journal of International Law*, vol. 64:1 (1970): 4, <http://links.jstor.org/sici?sici=0002-9300%28197001%2964%3A1%3C1%3ATPOILI%3E2.0.CO%3B2-7> (accessed March 17, 2009).

<sup>11</sup> *Ibid.*, at 6.

<sup>12</sup> See David D. Caron, "The Legitimacy of the Collective Authority of the Security Council", *The American Journal of International Law*, vol. 87:4 (1993): 552-588, <http://links.jstor.org/sici?sici=0002-9300%28199310%2987%3A4%3C552%3ATLOTCA%3E2.0.CO%3B2-E> (accessed April 20, 2009).

<sup>13</sup> See Rosalyn Higgins, "The Place of International Law in the Settlement of Disputes by the Security Council", *The American Journal of International Law*, vol. 64:1 (1970): 6, <http://links.jstor.org/sici?sici=0002-9300%28197001%2964%3A1%3C1%3ATPOILI%3E2.0.CO%3B2-7> (accessed March 17, 2009).

Security Council to address situations threatening international peace and security based on the established facts and abiding by the principles and norms of international law enshrined in the U.N. Charter and on the other hand safeguarding of interests of the permanent members of the Council. Such quest for “middle ground” that would accommodate interests of all permanent members while remaining in the realm of the legal framework set by the U.N. Charter over years transformed into an institutional constraint. Thus, the Council in critical moments was preoccupied more with hammering the “convenient” text of its resolutions rather than scrupulously exploring the merits of a particular case. Thus said, throughout its history the Security Council has established a pattern of avoiding pointing fingers to those perpetuating the unlawful acts (this proposition is especially relevant in the cases, when the permanent members had a particular interest in the matter) and at the same time trying to maintain international peace and security through outlining the measures that were believed to prevent further exacerbation of the situation, if not resolving a conflict. From this perspective, due to the complex decision-making process in the Security Council, the recommendations and decisions adopted by this central body of the United Nations can indeed be qualified as the art of the possible. The process of adoption of the resolutions related to the Armenia-Azerbaijan conflict and the terminology used in their texts reinforces this pattern.

### **1991: internal conflict becomes international**

The conflict between Armenia and Azerbaijan has a complex nature with elements of ethnicity, identity and historical narratives closely interconnected with the territorial claims. This article is far from being an attempt to provide a detailed historical account of the conflict. An extensive literature exists on this topic.<sup>14</sup> It should be mentioned though that the conflict between Armenia and Azerbaijan triggered by the Armenian claims to the Nagorny Karabakh region of Azerbaijan was left simmering throughout the Soviet period only to erupt with renewed intensity in 1988, when loosening of the central authority of Moscow over the periphery of the U.S.S.R. gave new impetus to the Armenian separatist tendencies in the Nagorny Karabakh<sup>15</sup> Autonomous Oblast (NKAO) of the then Soviet Socialist Republic of Azerbaijan. These tendencies quickly materialized into the secessionist movement actively supported by the neighbouring Soviet Socialist Republic of Armenia with first instances of sporadic violence marked already at the end of 1987. The unilateral attempts of the local authorities in NKAO to secede from Azerbaijan<sup>16</sup> in contravention of the national and the

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<sup>14</sup> For the detailed account of the conflict see Svante Cornell (ed.) *Small Nations and Great Powers: A Study of Ethno-political Conflict in the Caucasus*, (London: Curson Press, 2000); Thomas Goltz, “*Azerbaijan Diary*”, (New York: M.E. Sharpe, 1998); Thomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, (New York & London: NYU Press, 2004).

<sup>15</sup> The term “Nagorny Karabakh” is a Russian translation of the original name of the geographic area in Azerbaijani language – Dağlıq Qarabağ (pronounced Daghlygh Garabagh), which literally means mountainous Garabagh. In order to avoid confusion the term “Nagorny Karabakh” referred to in the U.N. documents will be used here. For the similar purposes the names of the geographic locations will be used as they are referred to in the U.N. terminology.

<sup>16</sup> On February 20, 1988, the representatives of the Armenian community at the session of the Soviet of People’s Deputies of the NKAO adopted a decision to petition to the Supreme Soviets of the Azerbaijan SSR and the Armenian SSR for the transfer of the NKAO from the Azerbaijan SSR to the Armenia SSR. On December 1, 1989, the Supreme Soviet of the Armenia SSR adopted a resolution on the re-unification of the Armenia SSR and Nagorny Karabakh. On September 2, 1991, the joint session of the Nagorny Karabakh regional and Shaumian district Soviet of People’s Deputies declared the establishment of the “Nagorny Karabakh Republic” within the administrative frontiers of the NKAO and Shaumian district of Azerbaijan.

Union legislation prompted the authorities of Azerbaijan to abolish the autonomy of the Nagorny Karabakh region.<sup>17</sup>

The critical dates of the conflict are September 21 and October 18, 1991, when respectively Armenian SSR and Azerbaijani SSR declared their independence. Since then what in pure legal terms could be regarded as an internal strife between the Union Republics (when the two Republics were formally an integral part of the Soviet Union) turned into an armed conflict between the two sovereign neighbouring States.<sup>18</sup> By the end of 1991 the tensions spiralled gradually into the military phase, when isolated armed attacks by the Armenian informal paramilitary groups<sup>19</sup> across the border with Azerbaijan and within the former NKAO took the form of planned combat operations. With the creation of the State Defence Committee in Armenia (1991) and at a later stage of the Armenian Ministry of Defence in January 1992 the separate armed detachments of Armenia transformed into national army units, which coordinated their combat activities with the unlawful Armenian paramilitary forces within the former NKAO.<sup>20</sup>

Since February 1992 the number of the armed attacks from the territory of Armenia on the border villages in Azerbaijan as well as artillery bombardments from the territory of Armenia along the perimeter of the international frontier increased drastically. The notorious attack on the town of Khojaly on 25-26 February was the first instance of overt involvement of the regular Armenian forces together with the 366<sup>th</sup> infantry guards regiment of the former Soviet Army stationed in the area in the slaughter against the civilian population leaving hundreds of civilians dead and many more wounded.<sup>21</sup> Another critical date in the escalation of conflict was May 17, 1992, when the Lachin district of Azerbaijan bordering Armenia was attacked and subsequently occupied.<sup>22</sup> The seizure of this district was crucial for the Armenian armed forces, as the strategic road passing through this district was the only way through which the military personnel as well as arms and military equipment, which were reportedly air-lifted to Armenia from Beirut<sup>23</sup> and elsewhere could be transported to the Nagorny Karabakh region. From now on the conflict quickly escalated into a full-fledged war.

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<sup>17</sup> This autonomy existed until November 26, 1991, when the Supreme Soviet of Azerbaijan adopted Law “On Abolition of the Nagorny Karabakh Autonomous Oblast of the Republic of Azerbaijan”.

<sup>18</sup> See Elizabeth Fuller, “*Nagorno-Karabakh: Internal Conflict Becomes International*”, RFE/RL Research Report, (March 13, 1992).

<sup>19</sup> See Elizabeth Fuller, “*Paramilitary Forces Dominate Fighting in Transcaucasus*”, RFE/RL Research Report, Vol.2:25 (June 18, 1993).

<sup>20</sup> The fact of coordination of activities between State Defence Committee of Armenia and paramilitary structures in Nagorny Karabakh was confirmed by the Ministry of Defence of Armenia on its official web page at <http://www.mil.am/eng/index.php?page=25> (accessed May 12, 2008).

<sup>21</sup> See Tomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, (New York and London: NYU Press, 2004), 169-172; Thomas Goltz, “*Azerbaijan Diary*”, (New York: M.E. Sharpe, 1998), 117-129;

<sup>22</sup> See Statement of the Ministry of Foreign Affairs of the Republic of Azerbaijan annexed to the letter of the Chargé d’Affaires of the Permanent Mission of Azerbaijan to the United Nations, U.N. Doc. S/23926 (May 14, 1992).

<sup>23</sup> See Svante E. Cornell, “The Nagorny-Karabakh Conflict Reconsidered”, *Journal of South Asian and Middle Eastern Studies*, vol. 20:4 (1997): 8.



## Appearing on the radar screen of the U.N. Security Council

The conflict appeared officially on the radar screen of the U.N. Security Council only after both Armenia and Azerbaijan formally became members of the United Nations.<sup>24</sup> Since May 1992 the members of the Security Council, amid the reports coming from the region indicating the escalation of the conflict between the two neighbouring countries,<sup>25</sup> engaged in series of consultations<sup>26</sup> followed by the statements of the President of the Council (which are ranked second in importance after the Security Council Resolutions).<sup>27</sup> In these carefully drafted statements the members of the Security Council expressed concern over the deterioration of the situation, called upon the parties to take all steps to bring the violence to an end and to help to facilitate the provision of humanitarian assistance.<sup>28</sup> The members of the Security Council supported the efforts undertaken within the framework of the CSCE aimed at assisting the parties in arriving at a peaceful settlement of the dispute and decided to “consider further the role of the United Nations in Nagorny Karabakh at an appropriate time in the light of the development of the situation in the area.”<sup>29</sup>

It is noteworthy that in their first statement on the conflict dated 12 May 1992 the members of the Security Council found it necessary to recall the statements on the admission respectively of Armenia and Azerbaijan to the United Nations made on their behalf by the President of the Council<sup>30</sup>, in particular the reference to the Charter principles relating to the peaceful settlement of disputes and the non-use of force.<sup>31</sup> Such a reference seems to indicate that the Security Council was aware of the involvement of the two neighbouring states into the conflict and sought to remind these states of their relevant obligations under the U.N. Charter.

The most important decision at this stage was that of the U.N. Secretary-General to dispatch a fact-finding mission in March 1992 to assess the situation on the ground.<sup>32</sup>

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<sup>24</sup> Both Armenia and Azerbaijan became members of the United Nations on March 2, 1992.

<sup>25</sup> See letter dated March 13, 1992 from the Chargé d’Affaires of the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General, (U.N. Doc. A/47/122-S/23716); Letter dated March 27, 1992 from the Permanent Representative of Islamic Republic of Iran to the United Nations addressed to the Secretary-General U.N. Doc. S/23760; Letter dated May 10, 1992 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council, U.N. Doc. S/23894.

<sup>26</sup> See U.N. doc. S/PV.3072, (May 12, 1992).

<sup>27</sup> See *Repertoire of the Practice of the Security Council*, Supplement 1989-1992 (ST/PSCA/1/Add. 11), Item 19 related to the Armenia-Azerbaijan conflict, <http://www.un.org/Depts/dpa/repertoire> (accessed June 10, 2009).

<sup>28</sup> See Statements by the President of the Security Council U.N. Doc. S/23904 (May 12, 1992); U.N. Doc. S/24493 (August 26, 1992); U.N. Doc. S/24721 (October 27, 1992); U.N. Doc. S/25199 (January 29, 1993); U.N. Doc. S/25539 (April 6, 1993).

<sup>29</sup> See Statement by the President of the Security Council UN Doc. S/24493 (August 26, 1992).

<sup>30</sup> See statements of the President of the Security Council on January 29, 1992 (U.N. Doc. S/23496) and on February 14, 1992 (U.N. Doc. S/23597) on the admission respectively of Armenia and Azerbaijan.

<sup>31</sup> Statement by the President of the Security Council, U.N. Doc. S/23904 (May 12, 1992).

<sup>32</sup> There were two other U.N. missions to the region from 21-28 May and 4-10 July 1992 See “*Report of the Secretary-General on the Work of the Organization*” submitted to the U.N. General Assembly U.N. Doc. A/47/1(September 11, 1992), at 18.

## The Security Council's decision to act in the aftermath of the armed attack of April 1993

Perhaps the critical point for the Security Council in regard to the conflict between Armenia and Azerbaijan was the invasion of the Kelbadjar district of the Republic of Azerbaijan.<sup>33</sup> Since the outbreak of the conflict Armenia alleged that it was not involved into the conflict with Azerbaijan, referring to the Armenians in the Nagorny Karabakh region.<sup>34</sup> However, after the armed attack and subsequent invasion by April 2, 1993 of Kelbadjar district, which is located outside of the administrative line of former NKAO, the international community began expressing serious doubts in this regard.<sup>35</sup>

Overt military invasion from Armenia and violation of the international border prompted the Ministry of Foreign Affairs of Azerbaijan to register a strong protest with the Ministry of Foreign Affairs of Armenia.<sup>36</sup> The evidences made available to the Security Council by Azerbaijan confirmed that Kelbadjar district was invaded from at least two directions: from the territory of Vardenis district of Armenia bordering Azerbaijan and from within the former NKAO.<sup>37</sup>

The well-documented direct evidences (including military ID cards of Armenian servicemen, call-up papers to active service, passports, vacation cards, discharge tickets, petitions to confer regular military ranks and other documents) captured by the Azerbaijani Army units in the course of military actions<sup>38</sup> from December 1993 to February 1994 as well as testimonies of the Armenian soldiers from the 555<sup>th</sup> separate motor rifle regiment (military unit of 59016) of the Armed Forces of Armenia<sup>39</sup> captured during the combat operations not only proved the supply of ammunitions and deployment of troops of the Republic of Armenia into the territory of Azerbaijan to engage in combat activities, but indicated that the invasion of Kelbadjar and other districts of Azerbaijan was a pre-planned armed attack<sup>40</sup> aimed at

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<sup>33</sup> See statement by the President of the Security Council, U.N. Doc. S/25539 (April 3, 1993).

<sup>34</sup> See letters from the Permanent Representative of Armenia to the United Nations addressed to the President of the Security Council, U.N. Doc. S/23896, (May 11, 1992); U.N. Doc. S/24656, (October 12, 1992); U.N. Doc. S/25510, (April 1, 1993).

<sup>35</sup> See Elizabeth Fuller, "Paramilitary Forces Dominate Fighting in Transcaucasus", RFE/RL Research Report, Vol.2:25 (June 18, 1993): 75; "Azerbaijan: Seven Years of Conflict in Nagorny-Karabakh", Human Rights Watch Report, USA (1994), 67-73; Svante E. Cornell, "The Nagorny-Karabakh Conflict Reconsidered", *Journal of South Asian and Middle Eastern Studies*, vol. 20:4 (1997): 8; Thomas Goltz, "Azerbaijan Diary", (New York: M.E. Sharpe, 1998), 341; Tomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* (New York and London: NYU Press, 2004), 212;

<sup>36</sup> See "Note of the Ministry of Foreign Affairs of the Azerbaijani Republic" annexed to the letter from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council, U.N. Doc. S/25488 (March 29, 1993).

<sup>37</sup> See Letters of the Chargé d'Affaires of the Permanent Mission of the Republic of Azerbaijan to the United Nations addressed to the President of the Security Council U.N. Doc. S/1994/108 (February 2, 1994) and U.N. Doc. S/1994/147 (February 14, 1994) (with annexed photocopies).

<sup>38</sup> See Letters of the Chargé d'Affaires of the Permanent Mission of the Republic of Azerbaijan to the United Nations addressed to the President of the Security Council U.N. Doc. S/1994/108 (February 2, 1994) and U.N. Doc. S/1994/147 (February 14, 1994) (with annexed photocopies).

<sup>39</sup> See "Azerbaijan: Seven Years of Conflict in Nagorny-Karabakh", Human Rights Watch Report, USA (1994);

<sup>40</sup> The Charter of the United Nations makes clear distinction between threat or use of force and an armed attack, the later being the gravest form of the use of force by a State against another sovereign State invoking under Article 51 of the Charter a right of self-defence. This implies that an armed attack by definition is possible only in the context of inter-State conflict.

acquisition of territory of another sovereign State.<sup>41</sup> That the hostilities in and around the Nagorny Karabakh region were attacks was also obvious to the Security Council, which in its statement dated 18 August 1993 demanded “a stop to all attacks and an immediate cessation of the hostilities and bombardments, which endanger peace and security in the region...”<sup>42</sup> The Chairman of the Minsk Conference of the CSCE in his report addressed to the President of the Security Council also confirmed the fact of “armed attacks” on the city of Agdam, while underlining that the military situation was such that Agdam posed no serious military threat.<sup>43</sup>

Of particular importance are the military maps captured by the Azerbaijani Army units during the military operations, since they can serve as evidence of planning, control and direction of the combat operation by Armenia in the territories of Azerbaijan. The operational map of the commander of third motor-rifle battalion<sup>44</sup> of third separate motor-rifle brigade of the Armed Forces of Armenia Major S. Barsegyan had superscriptions of combat orders to seize the Kelbadjar district of Azerbaijan on April 1, 1993.<sup>45</sup> Another map signed by the Chief of Staff of the Armed Forces of the Republic of Armenia Lieutenant-General G. Adresyan contained written operation order addressed to the commander of the 555<sup>th</sup> separate motor rifle regiment to retain captured territories.<sup>46</sup>

The Western news agencies reporting on the Kelbadjar offensive also reported on the direct involvement of Armenia. *The Independent* wrote on 8 April that “[i]t is Armenia that invaded Azerbaijani territory”. *The Times* wrote on 14 April that “[o]ne thing is certain: the Kelbadjar region was attacked from Armenia itself, to the west, as well as from Nagorno-Karabakh to the east”. *The Washington Post* came to the same conclusion stating on 28 April that “[t]he war involving the former Soviet Republics of Armenia and Azerbaijan has moved into a dangerous new phase...”, while the *Agence France Presse* wired on 22 April that “Azerbaijan has suffered a series of setbacks in the war after Armenia carried out a major offensive early this month...”.<sup>47</sup> These press reports indicate that the events received wide coverage in the world press and hence constitute a matter of public knowledge, which contribute to corroborating the existence of the facts on the ground.<sup>48</sup>

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<sup>41</sup> For the detailed analysis of the use of force against the Republic of Azerbaijan qualified as an “armed attack” in international law terms see “*Report on the Legal Consequences of the Armed Aggression of the Republic of Armenia against the Republic of Azerbaijan*”, U.N. Doc. A/63/662-S/2008/812 annexed to the letter dated December 22, 08 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, <http://daccessdds.un.org/doc/UNDOC/GEN/N08/669/16/PDF/N0866916.pdf?OpenElement> (accessed April 20,2009).

<sup>42</sup> See statement by the President of the Security Council, U.N. Doc. S/26326 (August 18, 1993).

<sup>43</sup> See Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorny Karabakh to the President of the Security Council dated July 27, 1993 annexed to the letter from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council U.N. Doc. S/26184 (July 28, 1993) at 3.

<sup>44</sup> The map indicated that on the eve of the attack on Kelbadjar district the battalion was deployed in the settlement of Basargechar of the Republic of Armenia.

<sup>45</sup> See Letter of the Chargé d’Affaires of the Permanent Mission of the Republic of Azerbaijan to the United Nations addressed to the President of the Security Council U.N. Doc. S/1994/147 (February 14, 1994).

<sup>46</sup> *Ibid.* (The copies of the maps were made available to the U.N. Security Council).

<sup>47</sup> See letter dated April 30, 1993 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council, U.N. Doc. S/25701 (provides excerpts from the news reports).

<sup>48</sup> ICJ ruled on press reports as a source for establishing existence of the facts in its *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* case, *Merits Judgement*, Para. 62 and 63 (1986). All ICJ cases are available online at <http://www.icj-cij.org/>.



The direct evidences and the news reports from the ground, the assessment of the situation by the Chairman of the CSCE Minsk Conference in his report<sup>49</sup> and the statement dated July 27, 1993<sup>50</sup> as well as the subsequent similar statement by the European Community<sup>51</sup> refuted the argument of the Government of Armenia that the military activities conducted by the Armenian forces were exclusively countermeasures carried out in self-defence.<sup>52</sup>

On April 3, 1993 Turkey requested the Security Council urgently to consider the situation between Armenia and Azerbaijan, citing reports of a large-scale offensive by Armenian armed forces on Kelbadjar district of Azerbaijan.<sup>53</sup> The Council convened on 6 April and following consultations with the members of the Council, the President issued a statement. If before the Kelbadjar offensive the Security Council was rather cautious in its statements on the matter referring to “all the parties and others concerned” while appealing for an immediate cease-fire<sup>54</sup>, in the aftermath of the attack on Kelbadjar, the Council was unequivocal in its statement and expressed serious concern at the “deterioration of relations between the Republic of Armenia and the Republic of Azerbaijan”<sup>55</sup>.

Pursuant to the request by the Security Council made in the above-mentioned statement to ascertain facts, the UN Secretary-General submitted a report to the Council containing an assessment of the situation on the ground. The report has a particular significance, because for the first time it indicated that the scale of the conflict exceeds an internal ethnic tension. It observed *inter alia* that “reports of the use of heavy weaponry, such as T-72 tanks, Mi-24 helicopter gunships and advanced fixed wing aircraft are particularly disturbing and would seem to indicate the involvement of more than local ethnic forces.”<sup>56</sup>

The Security Council decided to remain seized of the matter and already on April 30, 1993 having considered the report of the Secretary-General and the letters submitted by the Permanent Representatives of Azerbaijan and Armenia as well as Denmark<sup>57</sup> and Turkey,<sup>58</sup> the Council unanimously adopted its first resolution 822.<sup>59</sup>

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<sup>49</sup> See *Supra* note 43.

<sup>50</sup> See *Infra* note 121.

<sup>51</sup> See *Infra* note 138.

<sup>52</sup> See letters of the Permanent Representative of Armenia to the United Nations addressed to the President of the Security Council: U.N. Doc. S/25776 (May 14, 1993); U.N. Doc. S/26036 (July 4, 1993); U.N. Doc. S/26044 (July 6, 1993); U.N. Doc. S/26135 (July 22, 1993); U.N. Doc. S/26154 (July 26, 1993); U.N. Doc. S/26328 (August 18, 1993); U.N. Doc. S/26394 (September 1, 1993); U.N. Doc. S/26409 (September 7, 1993).

<sup>53</sup> See U.N. Doc. S/25524 (April 3, 1993).

<sup>54</sup> See Statements by the President of the Security Council U.N. Doc. S/23904 (May 12, 1992); U.N. Doc. S/24493 (August 26, 1992); U.N. Doc. S/24721 (October 27, 1992); U.N. Doc. S/25199 (January 29, 1993).

<sup>55</sup> See statement by the President of the Security Council U.N. Doc. S/25539, (April 6, 1993).

<sup>56</sup> See Report of the Secretary-General Pursuant to the Statement of the President of the Security Council in Connection with the Situation Relating to Nagorny Karabakh, para.10, U.N. Doc. S/25600 (April 14, 1993).

<sup>57</sup> See statement of the European Community dated April 7, 1993 annexed to the letter dated April 7, 1993 from the Permanent Representative of Denmark to the United Nations addressed to the President of the Security Council U.N. Doc. S/25564 (April 7, 1993).

<sup>58</sup> See U.N. Doc. S/25660 (April 8, 1993) and U.N. Doc. S/25671 (April 27, 1993).

<sup>59</sup> For the voting records as well as the texts of the statements made after the adoption of the resolution see Provisional Verbatim Record of 3205<sup>th</sup> meeting of the Security Council, U.N. Doc. S/PV.3205 (April 30, 1993).

## **The resolution 822: resolving a dilemma between the undeniable and the unacceptable**

The resolution 822, which was the first in series of resolutions adopted by the U.N. Security Council related to the conflict, is significant from several points. First, the timing of the adoption of the resolution is by itself noteworthy. As is seen from the above-mentioned chronology of the unfolding events on the ground the Security Council decided to step in only after acquiring evidences indicating the spiralling of the fighting into full-fledged combat operations with involvement of heavy military equipment causing wide-spread heavy destruction and losses of human life.<sup>60</sup>

Secondly, and perhaps more importantly at this stage, it seems that based on the reports coming in from the region and its assessment of the situation, the Security Council had established for itself that the conflict was of international nature and endangers regional peace and security. From this perspective, the wording of the first and subsequent resolutions is of particular importance in the light of the controversy around the direct involvement of Armenia in the conflict and continuous attempt to camouflage its direction and control over the military operations in the territory of Azerbaijan. Thus, the resolution expressed serious concern at the “deterioration of relations between the Republic of Armenia and the Republic of Azerbaijan”, clearly indicating Armenia’s role in the conflict.<sup>61</sup> More importantly the document reaffirmed the “respect for sovereignty and territorial integrity of all the states in the region” and “the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory.”<sup>62</sup> The reference to these fundamental principles of international law would have been needless unless the Security Council would not have established for itself that there was a military confrontation between the neighbouring states and that there was a use of force threatening the territorial integrity of a State. The fact that applicability of these principles by the Security Council is case specific can be seen, if we compare the text of this resolution with the one adopted by the Council in regard of the on-going conflict in neighbouring Georgia involving the break-away secessionist region of Abkhazia. In that case, in recognition of the fact that the conflict in Georgia was essentially an internal ethnic conflict, the Security Council did not find it appropriate to refer specifically to the principles of the inviolability of international borders and inadmissibility of the use of force for the acquisition of territory.<sup>63</sup>

Clearly, the Security Council reaffirms the inadmissibility of the use of force for the acquisition of territory generally in the context of inter-state conflict, when there is an attempt of acquisition of a territory by force. In order to sustain this argument it is suffice to look at the text of the resolution 242, for example, which was adopted by the Security Council on November 22, 1967 in the wake of the Six-Day War between Israel and Egypt, Jordan and Syria. In that resolution the Council framed its position along the same lines emphasising the “*inadmissibility of the acquisition of the territory by war*”.<sup>64</sup>

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<sup>60</sup> See Provisional Verbatim Record of the statements of the members of the Security Council made at the 3205<sup>th</sup> meeting of the Security Council, U.N. Doc. S/PV.3205 (April 30, 1993) at 11.

<sup>61</sup> See U.N. Doc. S/RES/822 (1993), April 30, 1993, Preamble part.

<sup>62</sup> See U.N. Doc. S/RES/822 (1993), April 30, 1993, Preamble part.

<sup>63</sup> See U.N. Doc. S/RES/849 (1993), July 9, 1993; U.N. Doc. S/RES/854 (1993), August 6, 1993; U.N. Doc. S/RES/858 (1993), August 24, 1993; U.N. Doc. S/RES/1781 (2007) October 15, 2007; U.N. Doc. S/RES/1808 (2008), April 15, 2008.

<sup>64</sup> See U.N. Doc. S/RES/242 (November 22, 1967) (Emphasis added).

While reaffirming this important principle the Security Council was guided by one of the core principles of international law enshrined in Article 2 (4) of the U.N. Charter, which declares that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state ...”. The prohibition of the threat or use of force is one of the consequential principles generated from the fundamental norm of territorial integrity of States and meant to protect the international boundaries of independent States.<sup>65</sup> It should be mentioned here that the principle of non use of force enshrined in a number of international instruments of both global and regional nature<sup>66</sup> is not only a rule of customary international law (i.e. binding for all States), but is also accepted as a peremptory norm *jus cogens*.<sup>67</sup> Hence, by making such reference to this fundamental principle of international law the Security Council made it clear that no territorial acquisition resulting from the use of force shall be recognised as lawful as a result of the military activities.

As the resolution 822 indicates the principal preoccupation of the Security Council was to stop the fighting and to prevent further escalation of the conflict. The Council demanded “the immediate cessation of all hostilities and hostile acts with a view to establishing a durable cease-fire...”. The Council was specifically concerned with the situation in Kelbadjar district of Azerbaijan, which is reflected in the preamble part of the resolution, where the Security Council noted with alarm the “*invasion* of Kelbadjar district of the Republic of Azerbaijan by local Armenian forces” and the first paragraph, in which the Council demanded “...immediate withdrawal of *all occupying forces* from the Kelbadjar district and other recently occupied areas of Azerbaijan.”<sup>68</sup> The Council requested also the Secretary-General to “assess the situation in the region, in particular in the Kelbadjar district of Azerbaijan”.<sup>69</sup>

The resolution shows, that the Security Council has unequivocally established for itself that there was an *invasion* of Kelbadjar district and that there was a fact of *occupation* of territory of a sovereign state. As far as the term *occupation* is concerned two aspects should be mentioned here. First, it should be noted that according to Article 42 of the Regulations annexed to Hague Convention IV, Respecting the Laws and Customs of War on Land (1907) (hereinafter the Hague Regulations) the occupation in international law terms is by itself possible only in the context of inter-state conflict, when at least a part of the territory of a sovereign state is “actually placed under the authority of the hostile army”<sup>70</sup>, i.e. is subject to belligerent occupation by the army of another State. In fact it is widely accepted that “there

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<sup>65</sup> For a more detailed account of these principles see “*Report on the Fundamental Norm of the Territorial Integrity of States and Right to Self-determination in the Light of Armenia’s Revisionist Claims*”, U.N. Doc. A/63/664-S/2008/823 annexed to the letter dated December 26, 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, available online at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/670/89/PDF/N0867089.pdf?OpenElement> (accessed April 20, 2009).

<sup>66</sup> See for example “The Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the UN” adopted by the U.N. General Assembly resolution 2625 (XXV) on October 24, 1970; The “Draft Declaration on Rights and Duties of States” annexed to the U.N. General Assembly resolution 375 (IV) adopted on 6 December 1949; Principle IV of the Declaration of Principles adopted by the CSCE in the Helsinki Final Act (1975).

<sup>67</sup> See Article 53 of the “Vienna Convention on the Law of Treaties” (May 22, 1969).

<sup>68</sup> See U.N. Doc. S/RES/822 (1993), April 30, 1993, Preamble part and para. 1.

<sup>69</sup> See U.N. Doc. S/RES/822 (1993), para., 4.

<sup>70</sup> See Article 42 of the Regulations annexed to Hague Convention IV, Respecting the Laws and Customs of War on Land (1907).

can be no occupation in an international law sense of the concept as between contending forces in an internal conflict.”<sup>71</sup>

Secondly, the determination by the Security Council that the territories of Azerbaijan were occupied in a sense of the concept as defined in the Hague Regulations and the Geneva Convention IV on the Protection of Civilians in Time of War (1949) (hereinafter the Geneva Convention IV) and that “all parties are bound to comply with the principles and rules of international humanitarian law”<sup>72</sup> implies that the rights and obligations of States identified in these international legal instruments apply to this particular conflict.<sup>73</sup>

As far as the determination by the Security Council that the Kelbadjar district of the Republic of Azerbaijan was invaded by “local Armenian forces” is concerned, careful consideration of the terminology used in the resolution reveals one particular contradiction. Thus, the word “invasion” in international law terms is primarily applied in the context of international conflict, which can be clearly established from the consensus definition of aggression, which was adopted by the U.N. General Assembly in 1974. The resolution states that the armed aggression against a sovereign state occurs as a result of “[t]he *invasion* or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.”<sup>74</sup>

Wood elaborating on the general rules of interpretation of the Security Council resolutions noted that “[t]he terms used in...[resolutions], to the extent that they are standard, will presumably bear the same meaning in each resolution”.<sup>75</sup> Hence, attribution of the word “invasion” by the Security Council to the context of inter-state conflict can be clearly seen, if we compare this resolution with resolutions adopted in regard of other conflict situations. The most vivid example could be the resolution 660 of August 2, 1990 and the subsequent resolutions in regard of the armed attack of Iraq on Kuwait, in which the Security Council condemned Iraq’s *invasion* and occupation of Kuwait.<sup>76</sup>

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<sup>71</sup> See the “*Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory*”, U.N. Doc. A/63/692-S/2009/51 annexed to the letter dated January 27, 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, at 6, <http://daccessdds.un.org/doc/UNDOC/GEN/N09/221/70/PDF/N0922170.pdf?OpenElement> (accessed April 20, 2009).

See also Reports “*Military Occupation of the Territory of Azerbaijan: a Legal Appraisal*”, U.N. Doc. A/62/491-S/2007/615 annexed to the letter dated October 8, 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, <http://daccessdds.un.org/doc/UNDOC/GEN/N07/558/52/PDF/N0755852.pdf?OpenElement> (accessed April 20, 2009);

<sup>72</sup> See UN Doc. S/RES/822 (April 30, 1993), para 3. The above-mentioned instruments are part of the body of treaties forming the International humanitarian law.

<sup>73</sup> See the “*Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory*”, U.N. Doc. A/63/692-S/2009/51 annexed to the letter dated January 27, 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, <http://daccessdds.un.org/doc/UNDOC/GEN/N09/221/70/PDF/N0922170.pdf?OpenElement> (accessed April 20, 2009), at 4-5.

<sup>74</sup> See Article 3(a) of the Definition of Aggression, General Assembly Resolution 3314 (XXIX) (1974), (Emphasis added).

<sup>75</sup> See Michael C. Wood, “The Interpretation of Security Council Resolutions”, *Max Planck Yearbook of United Nations Law*, 2:73, (1998): 89, [http://www.mpil.de/shared/data/pdf/pdfmpunyb/wood\\_2.pdf](http://www.mpil.de/shared/data/pdf/pdfmpunyb/wood_2.pdf) (accessed: July 17, 2009).

<sup>76</sup> See UN Doc. S/RES/660 (August 2, 1990), (Emphasis added).

Furthermore, the fact that the conflict was between Armenia and Azerbaijan was also recognised by the Minsk Group of the CSCE, which in its “Adjusted timetable of urgent steps to implement United Nations Security Council Resolutions 822 (1993) and 853 (1993)” dated September 28, 1993 defined the area of conflict as to include the territories on both sides of the international border between Armenia and Azerbaijan (including the segment of the international frontier between Armenia and the Nakhichevan province of Azerbaijan, which is hundreds kilometres away from the Nagorny Karabakh region).<sup>77</sup>

So, on one hand, the wording of the resolution suggests that the Security Council was aware of the involvement of more than local ethnic forces in the conflict. But, strangely enough, on the other hand the resolution attributes the invasion of Kelbadjar district to “local Armenian forces”, omitting the fact that the district was also attacked from the territory of Armenia.<sup>78</sup> This is in clear dissonance with the terms used in other paragraphs of the resolution, let alone the facts on the ground, which, as was mentioned above, were confirmed also by the independent foreign news reports.

The source of this obvious inconsistency should be looked for in the practice of adoption of the Security Council resolutions and the attitudes of several permanent members of the Security Council towards this particular conflict. Since no on-the-record debates were conducted in the Security Council preceding the adoption of the first and subsequent resolutions, for the purpose of establishing the positions of the members of the Council I have looked through the publicly available verbatim records of the proceedings of the meeting of the Security Council after the vote.

Although the rules of the Security Council require that at least nine of the fifteen members of the Council must vote affirmatively (including five concurring votes of the permanent members) for an action, in practice, due to this voting procedure, the decisions are dominated by the subgroup of two, three or all five permanent members holding “veto” power.<sup>79</sup> This partially explains the widely held belief that on many occasions the resolutions of the Security Council are watered down in an effort to forge a unanimity that would satisfy the interests of the permanent members of the Council. From this perspective, the last thing a country involved in an armed conflict dealt with by the Security Council would want is to have permanent members of the Council to have an interest in the matter. Yet, the conflict between Armenia and Azerbaijan is a case in point.<sup>80</sup> One can argue that the attitude of at least three of the five permanent members (Russia, The United States and France)<sup>81</sup> towards the conflict between Armenia and Azerbaijan had a decisive influence on shaping the attitude

<sup>77</sup> See U.N. Doc. S/26522 (October 1, 1993); U.N. Doc. S/26718 (November 10, 1993); U.N. Doc. S/26732 (November 12, 1993).

<sup>78</sup> See *supra* note 61.

<sup>79</sup> For the analysis of the consequences of the domination in the Security Council by subgroup of permanent members see David D. Caron, “The Legitimacy of the Collective Authority of the Security Council”, *The American Journal of International Law*, vol. 87:4 (1993): 552-588, <http://links.jstor.org/sici?sici=0002-9300%28199310%2987%3A4%3C552%3ATLOTCA%3E2.0.CO%3B2-E> (accessed April 20, 2009). See also Frederic L. Kirgis, Jr., “The Security Council’s First Fifty Years”, *The American Journal of International Law*, vol. 89:3, (1995): 506-539, <http://links.jstor.org/sici?sici=0002-9300%28199507%2989%3A3%3C506%3ATSCFFY%3E2.0.CO%3B2-U> (accessed May 14, 2009).

<sup>80</sup> For example, the French representative in his statement in the aftermath of the adoption of the second resolution by the Security Council on the matter (S/RES/853) underlined that “[his] Government has long taken a special interest in this painful conflict...”. U.N. Doc. S/PV.3259 (July 29, 1993), at 6. The interest of Russia is elaborated in section VII of this article. For the factors affecting U.S. position towards the conflict see *Infra* n. 79.

<sup>81</sup> Since 1997 the three countries are Co-Chairs of the OSCE Minsk Group dealing with the conflict.

of the Security Council towards the conflict as was reflected in this and subsequent resolutions.<sup>82</sup>

The analysis of the verbatim records of the 3205<sup>th</sup> meeting of the Security Council, during which the draft resolution was discussed and subsequently voted in favour of, allows concluding that the proposal to add the word “local” before the phrase “Armenian forces” had a specific purpose behind it, rather than reflected the general knowledge of the factual situation on the ground, which was widely discussed in the couloirs of the United Nations during the off-the-record consultations among the members of the Security Council. Interestingly enough the representative of the Russian Federation Mr. Vorontsov, who apparently was one of the principal sponsors of the incorporation of the word “local” into the draft resolution,<sup>83</sup> in his statement after the voting on the resolution informed the Security Council that in the light of the escalation of the conflict the President of the Russian Federation B. Yeltsin “...appealed to the Presidents of *Armenia and Azerbaijan for an immediate halt to all hostilities...*”<sup>84</sup> The French representative Mr. Merimee in his statement on behalf of the delegation of France did not hide his satisfaction that the resolution “...strike[s] a reasonable balance between acknowledging that the tension exists between *Armenia and Azerbaijan* and recognizing the localized nature of the fighting.”<sup>85</sup> It is noteworthy that both the Russian and the French Presidents in their joint statement on the conflict dated March 16, 1993 underlined that “[t]he non-use of force for political purposes and the peaceful settlement of disputes must remain the fundamental principles *guiding the conduct of democratic States*”, recognizing implicitly that the conflict is of inter-state character.<sup>86</sup>

It is not excluded that by this ‘*jeu de mots*’ the intention was to fence off Armenia from any legal responsibilities under international law,<sup>87</sup> and to prevent the issue of an “enforcement action” under chapter VII to be brought to the agenda of the Security Council in the future had it not complied with the provisions of this resolution. The comparison of the assessment of the situation contained in the report drafted by the fact-finding mission and submitted to the Security Council by the Secretary-General two weeks before the voting with the final wording of the adopted resolution sustains the above mentioned supposition. The report in question in its assessment of the situation on the ground had clearly established that “[t]he intensification of fighting in and around the Nagorny Karabakh, especially the recent attack against the Kelbadjar and Fizuli districts of Azerbaijan, poses a *serious threat to the maintenance of international peace and security in the entire Transcaucasus region.*”<sup>88</sup>

<sup>82</sup> The domestic political considerations linked to the presence of large Armenian diasporas in these countries could have played its role in framing of the positions of these countries towards the conflict in which Armenia was involved. For the impact of Armenian lobby on the domestic politics of states see Heather S. Gregg, “Divided They Conquer: The Success of Armenian Ethnic Lobbies in the United States”, (The Rosemary Rogers Working Paper Series, Working paper #13, Massachusetts Institute of Technology, USA, August 2002).

<sup>83</sup> There are anecdotal evidences pointing to this fact.

<sup>84</sup> See *Supra* note 60, at 19, (Emphasis added).

<sup>85</sup> See *Supra* note 60, at 11.

<sup>86</sup> See Annex to the letter dated March 31, 1993 from the Permanent Representatives of France and the Russian Federation to the United Nations addressed to the Secretary-General. U.N. Doc. S/25499 (March 31, 1993), (Emphasis added).

<sup>87</sup> For the applicable responsibilities see in particular Articles 4 to 8 and 11 of the International Law Commission’s Articles on Responsibility of States for International Wrongful Acts, annexed to U.N. General Assembly resolution 56/83 adopted on December 12, 2001.

<sup>88</sup> See Report of the Secretary-General Pursuant to the Statement of the President of the Security Council in Connection with the Situation Relating to Nagorny Karabakh, U.N. Doc. S/25600 (April 14, 1993) para.10 at 3, (Emphasis added).



However, the Security Council chose to disregard for some reason the assessment of the Secretary-General, which was essentially based on the fact-finding mission visiting the conflict zone and, instead, pointed in its first and subsequent resolutions that the situation “*endangers peace and security in the region.*”<sup>89</sup>

It should be noted that determination of the existence of a *threat* to international peace and security and identifying its seriousness is the first step the Security Council takes before deciding on action. Although the difference in practical terms between the existence of a situation posing a “threat” or “endangering” international peace and security is unclear,<sup>90</sup> in the U.N. Charter terms there is a difference in the meaning, which entails different implications. According to Article 39 of the Charter the Security Council has to determine that there is a *threat* to the peace, breach of the peace or act of aggression and to identify how serious it is before recommending measures to maintain or restore international peace and security under Chapter VII, whereas the phrase “endangering the maintenance of international peace and security” is referred to in Chapter VI, which does not entail immediate enforcement actions by the Security Council.<sup>91</sup> It can be argued that by avoiding reference to the existence of a “threat” the drafters of the resolutions intended to prevent any action under Chapter VII. This partially explains why there were no on-the-record public deliberations on the matter in the Security Council’s chamber. Instead, perhaps in an effort to avoid scrutiny by the U.N. Member States of the decisions, which were to be taken in this delicate conflict situation, the Security Council followed the pattern established since the early 1990s to work out the texts of resolutions in its closed consultation room and meeting in its normal chamber only to vote on the agreed upon resolutions.<sup>92</sup>

Unwillingness of the several permanent members of the Security Council to explicitly mention Armenia’s role in the escalation of this conflict was already mentioned as a possible reason for the cautious approach dominating in the Council. However, it should not be overlooked either that the resolutions towards the Armenia-Azerbaijan conflict were adopted in 1993, i.e. in early years after the end of the Cold War. The primary consequence of the decades of impasse in the Security Council during the Cold War period was that the reluctance to assess the conflict situations in heavy terms and admitting the existence of a threat to international peace and security in the sense contemplated in Article 39 of the U.N. Charter was still there. This self-restraint was to a large extent necessitated to preserve the strategic stability in the world through avoiding overt involvement by the major powers into regional conflicts that could trigger larger East-West confrontation. Interestingly enough, with the end of the bloc confrontation the practice of the Security Council has gradually changed, which was manifested in more resolutions under Chapter VII adopted in regard of

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<sup>89</sup> See U.N. Docs. S/RES/822 (1993); S/RES/853 (1993); S/RES/874 (1993) and S/RES/8884 (1993), (Emphasis added).

<sup>90</sup> See “*Report on the Legal Consequences of the Armed Aggression of the Republic of Armenia against the Republic of Azerbaijan*”, U.N. Doc. A/63/662-S/2008/812 annexed to the letter dated December 22, 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, <http://daccessdds.un.org/doc/UNDOC/GEN/N08/669/16/PDF/N0866916.pdf?OpenElement> (accessed April 20, 2009), at 21-22.

<sup>91</sup> For the analysis of the practice of the Security Council see Frederic L. Kirgis, Jr., “The Security Council’s First Fifty Years”, *The American Journal of International Law*, vol. 89:3 (1995): 511-514, <http://links.jstor.org/sici?sici=0002-9300%28199507%2989%3A3%3C506%3ATSCFFY%3E2.0.CO%3B2-U> (accessed May 14, 2009).

<sup>92</sup> See Frederic L. Kirgis, Jr., “The Security Council’s First Fifty Years”, *The American Journal of International Law*, vol. 89:3 (1995): 518, <http://links.jstor.org/sici?sici=0002-9300%28199507%2989%3A3%3C506%3ATSCFFY%3E2.0.CO%3B2-U> (accessed May 14, 2009).

the matters where existence of a threat to international peace and security was not that obvious.<sup>93</sup> It should be noted that the factors identified above are not contradictory, but rather reinforce each other and indicate the impact of the institutional constraints of the Security Council on its daily practice.

Furthermore, it should be mentioned that the statements by other members of the Security Council in the aftermath of the voting on the first resolution show that the views held by the French and several other permanent members were not shared in the Council. For example, the representative of Djibouti Mr. Olhaye was more explicit than others and did not hide his disappointment with the attitude of several permanent members stating that "...we all know only too well that the truth is that this is a conflict between Armenia and Azerbaijan" and expressing hope that in the near future the Security Council will be in a position "to call a spade a spade."<sup>94</sup>

The representative of the United Kingdom Mr. Richardson also did not seem to have any delusions as to the root-causes of the conflict unequivocally stating that "...the only realistic solution, given the United Nations and CSCE principles, is for continued Azerbaijani sovereignty over Nagorny Karabakh, with real autonomy for the local Armenian population."<sup>95</sup> It is noteworthy that in his statement Mr. Richardson elaborated on the reasons why the Security Council decided to act at this moment and time. Speaking on the value of the resolution he underlined that "...it includes the essential elements of a draft statement [by the senior officials of the CSCE] which could not be agreed upon at [the] Prague [meeting] because of the opposition of one party."<sup>96</sup>

The representative of Hungary Mr. Erdos also pointed to the international nature of the conflict stating that "the resolution reaffirms that the United Nations will not accept a policy of *faits accomplis*, threats to regional stability, the use of force for the acquisition of territory, and the violation of international borders."<sup>97</sup> Likewise, the representative of Venezuela Mr. Arria reminded the Republic of Armenia and the Republic of Azerbaijan that they assumed obligations by signing the Charter of the United Nations, in particular showing "absolute respect for one another's independence and territorial integrity and renounce the use of force as a way of solving dispute."<sup>98</sup>

The President of the Security Council Mr. Marker in his capacity as the representative of Pakistan expressed belief that the adopted resolution "...would lead to an expeditious withdrawal of all Armenian forces from the territory of Azerbaijan Republic and called upon the "concerned *States* to respect scrupulously the sovereignty and territorial integrity of all the States of the region" and "...to respect the inviolability of international borders of all States..."<sup>99</sup>

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<sup>93</sup> See Frederic L. Kirgis, Jr., "The Security Council's First Fifty Years", *The American Journal of International Law*, vol.89:3 (1995): 511-514, <http://links.jstor.org/sici?sici=0002-9300%28199507%2989%3A3%3C506%3ATSCFFY%3E2.0.CO%3B2-U> (accessed May 14, 2009).

<sup>94</sup> See *Supra* note 60, at 7.

<sup>95</sup> See *Supra* note 60, at 13.

<sup>96</sup> See *Supra* note 60, at 13.

<sup>97</sup> See *Supra* note 60, at 14.

<sup>98</sup> See *Supra* note 60, at 17.

<sup>99</sup> See *Supra* note 60, at 21, (Emphasis added).



Having recreated the overall atmosphere that prevailed in the Security Council on the eve and during the adoption of the first resolution, it is possible to assume that the majority if not all the members of the Security Council did not suffer from the lack of information and had established for themselves the factual situation on the ground. Under these circumstances, the attribution of the invasion of Kelbadjar district to “local Armenian forces”, while keeping all the elements pointing implicitly to the international nature of the conflict was a result of an inevitable compromise forged among the members of the Security Council. The wording of the resolution reflected the effort of the members of the Council to solve a dilemma of reconciling the need to fulfil their obligations under the U.N. Charter and address urgently the issue impartially, taking in due account the irrefutable evidences contained in the incoming reports from the conflict zone and at the same time safeguarding the interests of several permanent members of the Council, which in this particular case seemed to be avoiding direct reference to Armenia as perpetrator of the invasion and occupation of the territories of another sovereign State with all the consequences which this could entail.

### **The Security Council action in response to further escalation of the conflict**

Perhaps it would have been possible to prevent further escalation of the conflict with more destruction of civilian settlements and mass fleeing of the population from the occupied territories, had the Security Council adopted a resolution with an enforcement clause in it. There were proposals voiced in the Council during the proceedings before the adoption of the forth resolution 884 on the matter to include into the text an expression of the Council’s intention to take further appropriate steps in case these resolutions continue to be defied.<sup>100</sup> In any case, although the first resolution is not without value in terms of providing together with the subsequent resolutions overall legal framework for the ongoing peace negotiations, it did not prevent the conflict from further spiralling down into the full-fledged war. The possible rationale behind the positions of at least several permanent members of the Security Council elaborated above explains why the subsequent resolutions adopted by the Council in response to the increasing violence and advancement of Armenian forces deeper into the territory of Azerbaijan by and large repeated the pattern and were watered down to certain extent. However, the other resolutions adopted in the course of 1993 introduced a number of new elements, which are important to elaborate on with a view to trace the evolution in the assessment of the situation by the Security Council.

Amid the escalation of the hostilities and intensifying armed attacks in the course of the four months the Security Council has adopted three more resolutions.<sup>101</sup> The second resolution (853) openly acknowledges the existence of tensions between Armenia and Azerbaijan (in previous resolution the Council only expressed concern over deterioration of relations between the two countries).

The paragraphs 3, 4, 5, 8 and 12 of the resolution are of particular interest and should be analysed together, since in these provisions the Security Council essentially outlined the step-by-step approach for the conflict settlement. Thus, in the paragraph 3, the Council excluded any conditionality in regard of withdrawal of the occupying forces, explicitly demanding “...*immediate, complete and unconditional* withdrawal of the occupying forces involved

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<sup>100</sup> See U.N. Doc. PV.3313 (November 12, 1993) at 5, (Pakistan).

<sup>101</sup> See U.N. Doc. S/RES/853 (July 29, 1993); U.N. Doc. S/RES/874 (October 14, 1993); U.N. Doc. S/RES/884 (November 12, 1993).

from the district of Agdam and all other recently occupied areas of the Azerbaijani Republic”.<sup>102</sup> By this unequivocal demand the Security Council left no room for interpretation of the text of the resolution and *a priori* excluded any trade-off of the occupied territories for some sort of political gains at the negotiation table. The importance of this position by the Council is even more apparent, if compared with other cases, when ambiguity in the text of the resolutions of the Security Council resulted in endless interpretation and “chicken-and-egg” type debates over the terms of the conflict settlement. The classic case in point is the resolution 242 (1967).<sup>103</sup> The ambiguous design of the resolution meant different things to the different parties involved. As a result, the Arab States referring to the resolution demanded immediate withdrawal of Israel from the occupied territories, while Israel, referring to the provisions of the same resolution, maintained that withdrawal is conditioned by the permanent peace agreement, security and recognition of Israel by its Arab neighbours.<sup>104</sup>

In paragraph 4 of the resolution 853 the Security Council calls for the parties to reach and maintain durable cease-fire arrangements, whereas in paragraph 5 it “[r]eiterates in the context of paragraphs 3 and 4 above its earlier calls for the restoration of economic, transport and energy links in the region”. In paragraph 8 the Council “[u]rges the parties concerned to refrain from any action that will obstruct a peaceful solution to the conflict, and to pursue negotiations within the Minsk Group of the CSCE, as well as through direct contacts between them, towards a final settlement”.

The Security Council expressed its grave concern at the displacement of large numbers of civilians in the Azerbaijani Republic...” and in paragraph 12 of the resolution requested the Secretary-General and relevant international agencies “...to assist displaced persons to return to their homes”. It is noteworthy that the Council did not put any conditions on the return of the displaced population, suggesting that the return should start immediately as soon as the situation on the ground will allow doing so. Thus, already at this stage, the Council clearly showed that it favours a phased approach in the settlement of this conflict as the only viable option, which would consist of the sequence of steps, which in its view, need to be taken to remove the results of the conflict and foster a resolution, starting with withdrawal of occupying forces, establishment and maintenance of durable cease-fire arrangements, restoring communications in the region, return of the displaced population to their homes and continuing negotiations towards a final settlement.

Another noteworthy element, which was absent in the first resolution, was coining by the Security Council of the term ‘Nagorny Karabakh region of the Azerbaijani Republic’, which was used in the subsequent resolutions of October and November 1993.<sup>105</sup> Armenia was continuously referring in its correspondence to the Security Council to the self-proclaimed “Nagorny Karabakh Republic” implying that it was an independent “state” and was distributing documents on its behalf.<sup>106</sup> Azerbaijan categorically rejected any attempts to introduce into United Nations usage of any concepts that would undermine its sovereignty and territorial integrity and registered its vigorous objection with the Security Council

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<sup>102</sup> See U.N. Doc. S/RES/853 (July 29, 1993), para. 3.

<sup>103</sup> See U.N. Doc. S/RES/242 (November 22, 1967).

<sup>104</sup> *Ibid.*, para 1.

<sup>105</sup> See U.N. Doc. S/RES/853 (1993); U.N. Doc. S/RES/874 (1993); U.N. Doc. S/RES/884 (1993).

<sup>106</sup> See letters of the Permanent Representative of Armenia to the United Nations addressed to the President of Security Council. U.N. Doc. S/23896 (May 11, 1992); U.N. Doc. S/26036 (July 4, 1993); U.N. Doc. S/26154 (July 26, 1993); U.N. Doc. S/26393 (September 1, 1993); U.N. Doc. S/26409 (September 7, 1993);

President<sup>107</sup> to the use of term “Nagorny Karabakh Republic” in the letters circulated as a Security Council document at the request of Armenia.<sup>108</sup> By using the term the ‘Nagorny Karabakh region of the Azerbaijani Republic’ in the operative paragraph<sup>109</sup> of the above-mentioned resolution the Security Council decided which of the legal propositions presented by Armenia and Azerbaijan was in accord with international law and reaffirmed that the Nagorny Karabakh region was part of the territory of the Republic of Azerbaijan.

Furthermore, the fact that unlike the resolution 822, in which the Security Council reaffirmed “the *respect* for sovereignty and territorial integrity of all States in the region”,<sup>110</sup> in its second and subsequent resolutions the Council was more specific and reaffirmed “*the sovereignty and territorial integrity of the Azerbaijani Republic* and of all other States in the region” should not escape one’s attention either.<sup>111</sup> Removal of the word “respect” from the phrase put an additional emphasis on the recognition of the *sovereignty* of Azerbaijan over its territory, including the Nagorny Karabakh region.

This opinion of the Security Council essentially reflected the general view of the international community,<sup>112</sup> which, based on the principle *uti possidetis juris*, recognised the former administrative borders between the Union Republics of the former Soviet Union as the international boundaries of the newly independent States protected by international law.<sup>113</sup> The Government of Armenia was alarmed with such a position of the Security Council and could not hide its irritation with the language of the resolutions.<sup>114</sup>

This assessment by the Security Council of the Nagorny Karabakh region as being a part of the territory of the Republic of Azerbaijan under international law was in line with other paragraphs of this and other resolutions, in which the Council reaffirmed the inviolability of international borders and inadmissibility of the use of force for the acquisition of territory.<sup>115</sup>

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<sup>107</sup> See letter of the Permanent Representative of Azerbaijan to the United Nations addressed to the President of Security Council. U.N. Doc. S/24771 (November 7, 1992).

<sup>108</sup> See letter of the Permanent Representative of Armenia to the United Nations addressed to the President of Security Council. U.N. Doc. S/24751 (October 31, 1992).

<sup>109</sup> The operative paragraphs of the U.N. Security Council resolutions state the opinion of the Council or the action to be taken, whereas the preamble clauses of the resolutions generally recite the considerations on the basis of which action is taken.

<sup>110</sup> See U.N. Doc. S/RES/822 (April 30, 1993), (Emphasis added).

<sup>111</sup> See U.N. Doc. S/RES/853 (July 29, 1993), (Emphasis added).

<sup>112</sup> See for example the Declaration of the European Commission on “The Guidelines on Recognition of New States in Eastern Europe and the Soviet Union” adopted on December 16, 1991 at the Extraordinary European Political Cooperation Ministerial Meeting (Doc.4a/21), reproduced in *European Foreign Policy: Key Documents*, ed. Christopher Hill & Karen E. Smith, (London & New York: Routledge, 2000), 282.

<sup>113</sup> For the detailed review of this and other legal aspects of the conflict see Tofiq Musayev, “From Territorial Claims to Belligerent occupation: Legal Appraisal”, *Diplomatiya Alami* (“Diplomatic World”), Journal of the Ministry of Foreign Affairs of the Republic of Azerbaijan, No. 18-19 (2008), available online at <http://mfa.gov.az/images/stories/jurnal/18-19.pdf>; See also “Report on the Fundamental Norm of the Territorial Integrity of States and Right to Self-determination in the Light of Armenia’s Revisionist Claims”, U.N. Doc. A/63/664-S/2008/823 annexed to the letter dated December 26, 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, available online at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/670/89/PDF/N0867089.pdf?OpenElement> (accessed April 20, 2009).

<sup>114</sup> See statements issued on August 2, 1993 and October 20, 1993 by the Ministry of Foreign Affairs of the Republic of Armenia annexed to the letters of the Permanent Representative of Armenia to the United Nations addressed to the President of Security Council U.N. Doc. S/26236 (August 4, 1993) and U.N. Doc. S/26612 (October 21, 1993).

<sup>115</sup> See *Supra* note 105.

The statements by the permanent members of the Security Council during the proceedings leading to the adoption of these resolutions indicate that the members of the Council were alarmed with the continuing military activities and seizure of additional territory by force. The members of the Security Council wanted to send a clear message that “the international community will no longer tolerate the continuation of bloodshed and the ever-more-dangerous escalation of the conflict.”<sup>116</sup> It seems that in order to make their appeal to stop hostilities more convincing the members of the Security Council chose to reaffirm in the subsequent resolutions the uselessness of territorial acquisitions by force since, as was mentioned above, any occupation under international law would not lead to the automatic transfer of sovereignty over that particular territory or change of its legal status.

Interestingly, the nine members of the Minsk Conference<sup>117</sup> spoke in similar terms in their statement endorsed by the Security Council,<sup>118</sup> in which they stressed that “[n]o acquisition of territory by force can be recognized, and the occupation of territory cannot be used to obtain international recognition or to impose a change of legal status.”<sup>119</sup>

The Security Council went even further in its second resolution (reiterated in its forth resolution) and for the first time urged “the Government of the Republic of Armenia to continue to exert its influence to achieve compliance by the Armenians of the Nagorny Karabakh region of the Azerbaijani Republic with its [resolutions] ...”.<sup>120</sup> The appearance of such explicit reference to the link between the Government of the Republic of Armenia and the separatist regime in Nagorny Karabakh region and the apparent influence of the former over the latter is noteworthy. The strong link between the Government of Armenia and the forces in the Nagorny Karabakh region was also obvious to the European Community, which in its statement of September 3, 1993 in line with the second resolution adopted by the Security Council called the Government of Armenia to “use its *decisive* influence over the Armenians of Nagorny Karabakh to see that they comply with the Security Council [resolutions]...”.<sup>121</sup>

The report of the Chairman of the Minsk Conference of the CSCE addressed to the President of the Security Council, which was discussed in the Security Council before the adoption of the second resolution can shed some light on the reasons why the Security Council found it necessary at this point to refer to the Government of Armenia in its resolution.<sup>122</sup> In this report, which was drafted in the aftermath of the armed attack and seizure of the city of Agdam located beyond the administrative line of the former NKAO, the Chairman of the Minsk Conference Mr. Raffaelli noted that the situation in the conflict zone changed

<sup>116</sup> See U.N. Doc. S/PV.3313 at 8 (November 12, 1993), (Russia); See also S/PV.3292 (October 14, 1993) at 4, (France); S/PV.3313 (November 12, 1993).

<sup>117</sup> Germany, the United States of America, Belarus, France, Italy, Russian Federation, Sweden, Czech Republic and Turkey.

<sup>118</sup> See U.N. Doc. S/PV.3313 (November 12, 1993).

<sup>119</sup> See “Declaration of Nine” Enclosure I to the letter dated November 9, 1993 of the Permanent Representative of Italy to the United Nations addressed to the President of Security Council, U.N. Doc. S/26718 (November 10, 1993);

<sup>120</sup> U.N. Doc. S/RES/853 (July 29, 1993), para 9.

<sup>121</sup> See Statement annexed to the Letter dated September 7, 1993 from the Permanent Representative of Belgium to the United Nations addressed to the President of the Security Council U.N. Doc. S/26417 (September 15, 1993), (Emphasis added).

<sup>122</sup> See Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorny Karabakh to the President of the Security Council dated July 27, 1993 annexed to the letter from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council U.N. Doc. S/26184 (July 28, 1993).

dramatically and that further territories of the Azerbaijani Republic were occupied. While noting in his report that the attitude of the leaders of the local Armenian community in Nagorny Karabakh is governed by military, rather than diplomatic considerations, in his statement supported by the nine countries of the Minsk Conference issued earlier he warned that “[t]hose who *encourage* the Armenian community of Nagorny Karabakh to continue the fighting and the encroachment on the surrounding territories share responsibility for the continuing loss of Armenian lives and the destruction of the *Armenian economy*.”<sup>123</sup> He came to conclusion that under the circumstances political pressure by the international community is necessary to give impetus to the peace process and called for the early action by the Security Council.<sup>124</sup> It is noticeable that the Chairman of the Minsk Conference while noting that the forces in Nagorny Karabakh are encouraged by a third party, warned of the negative consequences of the continuing military operations for the economy of Armenia, implicitly acknowledging in this way that those, who encourage further occupation of the territories of Azerbaijan were in Armenia.

Given the overall military context in which the Security Council adopted its second resolution and the reports from the CSCE indicating the existence of forces encouraging further military advances in the conflict zone, one can argue that by urging the Government of Armenia to continue to exert its influence to achieve compliance by the Armenians of the Nagorny Karabakh region with its resolutions, the Security Council had established for itself that the Government of Armenia was in a position to exert influence to have all occupying forces cease hostile acts and withdraw from the occupied territories of Azerbaijan (this is what it demanded in its resolutions). The Security Council was more specific in this regard and in its statement of August 18, 1993 amid the intensification of the fighting in the Fizuli district of Azerbaijan demanded the immediate, complete and unconditional withdrawal of occupying forces from the occupied areas of Azerbaijan and called “the Government of the Republic of Armenia to use its *unique* influence to this end”.<sup>125</sup>

The Security Council in its resolution 853 of July 1993 urged “states to refrain from the supply of any weapons and munitions which might lead to an intensification of the conflict or the continued occupation of territory”.<sup>126</sup> But already in its forth resolution in the wake of occupation of Zangelan district of the Republic of Azerbaijan and the attack on the city of Goradiz in the Fizuli district the Council went even further and specifically called “the Government of the Republic of Armenia to use its influence to... ensure that forces involved are not provided with the means to extend their military campaign further.”<sup>127</sup> The Security Council apparently was aware that due to the complex geography of the area of conflict, the only direction through which the forces in and around the Nagorny Karabakh region could be resupplied with ammunition was through the roads linking Armenia and the Nagorny Karabakh region passing through the Lachin and Kelbadjar districts, which were occupied by then and were under the Armenian control.

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<sup>123</sup> See Appendix “Statement of the Chairman of the CSCE Minsk Conference on the offensive on and the reported seizure of the Azerbaijani city of Agdam”, at 5, to the Report by the Chairman of the Minsk Conference of the Conference on Security and Cooperation in Europe on Nagorny Karabakh to the President of the Security Council dated July 27, 1993 annexed to the letter from the Permanent Representative of Italy to the United Nations addressed to the President of the Security Council U.N. Doc. S/26184 (July 28, 1993), (Emphasis added).

<sup>124</sup> See *Supra* note 119, at 3.

<sup>125</sup> See U.N. Doc. S/26326 (August 18, 1993), (Emphasis added).

<sup>126</sup> See U.N. Doc. S/RES/853 (1993), para. 10.

<sup>127</sup> U.N. Doc. S/RES/884 (November 12, 1993), para 2.

At the same time, the drafters of these resolutions wanted to balance the reports coming from the region pointing to the direct involvement of Armenia in the conflict by presenting the role of the Government of Armenia in a maximum positive way.<sup>128</sup> By urging the Government of Armenia to *continue* to exert its influence, the Security Council seems to be convinced that this influence was taking place for a while. Yet, not only as a result of this influence by Armenia the fighting was halted, on the contrary, the conflict zone expanded even further with more territories of Azerbaijan falling under the occupation.<sup>129</sup> However, the important thing is that by stating that the Government of Armenia is in a position to exert continuous influence over the occupying forces it seems that the Security Council was under the impression that the advancing occupying forces were under the control of the Government of Armenia.<sup>130</sup>

It should be mentioned that the determination of a potential of control by the *de-jure* organs of a State over the course of the military actions allegedly carried out by the paramilitary forces on the territory of another sovereign State was used by the International Court of Justice in its judgment in the *Nicaragua case*<sup>131</sup> and elaborated further in the *Bosnian Genocide case*<sup>132</sup> to attribute the unlawful conduct by the paramilitary forces to the outside State and thus establishing that State's responsibility for this conduct under international law. Elaboration in detail of the question of the control by an outside State over the paramilitary forces carrying out military activities in the territory of another State is beyond the scope of this article and requires separate consideration.<sup>133</sup>

Further advance of the Armenian forces and the expansion of the conflict deeper into Azerbaijani territories and closer to the international borders of Azerbaijan with Iran and Turkey alarmed these regional countries. In the wake of the occupation of Djabrail and Kubatli districts and the real threat of seizure of Zangelan district of Azerbaijan, the Minister of Foreign Affairs of Iran Mr. Ali Akbar Vilayati in his letter addressed to the UN Secretary-General expressed his concern with the developments and called the United Nations [to] "...take immediate and effective measures to implement Security Council Resolutions 822 (1993) and 853 (1993) and decisively compel the aggressive forces to accept a cease-fire and

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<sup>128</sup> The representative of Brazil in his statement after the voting on the resolution S/RES/853 echoed the arguments, which reportedly were put forward during the off-the-record consultations in the Security Council and described the influence of Armenia as "constructive", U.N. Doc. S/PV.3259 (July 29, 1993) at 13.

<sup>129</sup> The fact that the attacks by the Armenian armed units continued even at a time when there was a real progress in the negotiating process was recognised even by the Permanent Members of the Security Council. See Statement by the Russian representative Mr. Vorontsov after the vote on the resolution S/RES/853 U.N. Doc. S/P.3259 (July 29, 1993), at 9-10.

<sup>130</sup> The fact that the Armenian forces on the ground responded instantaneously to the "appeals" of the Government of Armenia can be seen from the letters of the Permanent Representative of Armenia to the United Nations addressed to the President of the Security Council (although there is no reported evidence on the ground, nor can it be verified that the retreat of the Armenian forces from the previously occupied territory had actually taken place). See U.N. Docs. S/26394 (September 1, 1993) and S/26393 (September 1, 1993).

<sup>131</sup> See *Supra* note 48.

<sup>132</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, ICJ Judgment of February 26, 2007. All ICJ cases are available online at <http://www.icj-cij.org/>.

<sup>133</sup> For an extensive analysis of the issues of control by the State over the military activities of paramilitary forces see Stefan Talmon, "The Various Control Tests in the Law of State Responsibility and the Responsibility of Outside Powers for Acts of Secessionist Entities", Materials of the International Conference entitled "Basic Principles for the Settlement of the Conflicts on the Territories of the GUAM States", Baku, April 15-16, 2008. Modified version of the article was published in *International and Comparative Law Quarterly*, vol. 58 (May 2009).

to withdraw to the internationally recognised borders.”<sup>134</sup> This recognition of the fact that the attacks on the south-western districts of Azerbaijan were mounted from the territory of Armenia is particularly noteworthy, since Iran from the beginning of the conflict was pursuing a neutral policy and, secondly, the geographic proximity of the fighting allowed Iran to monitor the events right across its border with Azerbaijan.

Similarly, the Government of Turkey after the Kelbadjar offensive and especially with the occupation of other districts of Azerbaijan as well as the armed attacks on the Nakhichevan province urged Armenia to stop aggression against Azerbaijan, to respect its commitments under the U.N. Charter and made improvement of its relations with Armenia<sup>135</sup> conditional upon the withdrawal of the Armenian forces from the occupied territories.<sup>136</sup>

The Member States of the European Community also in response to the attacks of the Armenian armed forces against the south-western districts of Azerbaijan<sup>137</sup> issued a statement on September 3, 1993 in which they called these forces to fully respect the Security Council resolutions and withdraw from the regions of Kelbadjar, Agdam, Fizuli and Djebail emphasizing that the “...member States have no evidence that Azerbaijan would be capable of initiating major attacks from these regions.”<sup>138</sup> Indeed, the sequence of the occupation of the territories of Azerbaijan suggests that the advances of the Armenian armed forces resembled more pre-planned military operations rather than sporadic spill-over of fighting into the neighbouring areas.<sup>139</sup>

It is interesting to note that Russia, which after the retreat from the South Caucasus in the wake of the demise of the Soviet Union, thought to make a comeback through offering to the parties a peace plan on its own terms, perceived any mediation efforts of Iran and especially of Turkey as attempts to expand their influence into the region.<sup>140</sup> The coincidence of the intensification of the fighting and further advances of the Armenian armed forces deeper into the territory of Azerbaijan with the reluctance of Azerbaijan to accept the terms of the proposed Russian deal<sup>141</sup> is striking and reveals the geopolitical dimension of the conflict.<sup>142</sup>

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<sup>134</sup> See letter dated August 30, 1993 from the Chargé d’Affaires a.i. of the Permanent Mission of the Islamic Republic of Iran addressed to the Secretary-General, U.N. Doc. S/26387 (August 31, 1993), (Emphasis added).

<sup>135</sup> In April 1993, protesting against the attack and occupation of Kelbadjar district Turkey cut diplomatic relations with Armenia and suspended shipment of goods through its territory to this country, which complicated already strained relations between these two countries.

<sup>136</sup> See letters dated April 5, 1993 and April 27, 1993 of the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council, U.N. Docs. S/25524 (April 5, 1993) and U.N. Doc. S/25671 (April 27, 1993).

<sup>137</sup> See letter dated August 23, 1993 of the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council, U.N. Doc. S/26345 (August 24, 1993).

<sup>138</sup> See letter dated September 7, 1993 of the Permanent Representative of Belgium to the United Nations addressed to the President of the Security Council, U.N. Doc. S/26417 (September 15, 1993).

<sup>139</sup> The occupation of the Lachin (May 18, 1992) and Kelbadjar (April 2, 1993) districts created land connection between the Nagorny Karabakh region of Azerbaijan and Armenia, which was crucial for resupply of arms and ammunitions, while the seizure of Agdam (July 23, 1993) and Fizuli (August 23, 1993) districts cut off the north-western districts from the rest of Azerbaijan thus paving the way for the occupation of Djabrail (August 23, 1993), Gubatly (August 31, 1993) and Zangelan (October 23, 1993) districts.

<sup>140</sup> See Elizabeth Fuller, “Russia, Turkey, Iran, and the Karabakh Mediation Process”, RFE/RL Research Report, vol.3:8 (February 25, 1994);

<sup>141</sup> The Russian-sponsored plan envisaged signing of a cease-fire and deployment of the CIS peacekeeping forces (essentially Russian) to the region. For more on this see Svante Cornell (ed.) *Small Nations and Great Powers: A Study of Ethno-political Conflict in the Caucasus*, (London: Curson Press, 2000), 99-102.

<sup>142</sup> See Thomas Goltz, “Letter from Eurasia: The Hidden Russian Hand”, *Foreign Policy*, CEIP, No. 92, (Fall

Under the circumstances, in the course of the three months the Security Council adopted two more resolutions (874 and 884). The Security Council seems to be convinced that the south-western districts of Azerbaijan were attacked also from the territory of Armenia and in its fourth resolution (884) in the paragraph concerning the occupation of the Zangelan district condemned "...attacks on civilians and *bombardments of the territory of the Azerbaijani Republic*"<sup>143</sup> The evolution in the assessment of the situation by the Council is even more revealing, if compared with its previous resolutions, in which the Security Council spoke in general terms and condemned "bombardments of inhabited areas".<sup>144</sup>

It is noteworthy that the third resolution (874) unlike the two previous ones mentions the role of the Russian Federation in establishing the cease-fire, while urging the states in the region "to refrain from any hostile acts and from any interference or intervention which could lead to the widening of the conflict and undermine peace and security in the region."<sup>145</sup> Although no states were singled out, given the frustration of Russia with various international mediation efforts, one can argue that the primary sponsor of this paragraph was Russia, which under the pretext of preventing possible spill-over of the conflict into neighbouring regions wanted to put the weight of the Security Council behind its efforts to rebuff possible involvement of Turkey and to a lesser extent of Iran. In this regard, the distinction, which the Security Council is making in this resolution between the terms interference and intervention, is particularly noteworthy.

In its fourth resolution (884) the Security Council while reiterating its previous demands to cease armed hostilities, make effective and permanent the cease-fire and demanding unilateral withdrawal of occupying forces from the Zangelan district and from other recently occupied areas of Azerbaijan, expressed once again its concern at the displacement of a large numbers of civilians in the Republic of Azerbaijan and requested the Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population and to assist displaced persons to return to their homes.<sup>146</sup>

The resolution 853 and subsequent resolutions 874 and 884 are particularly noteworthy since in these resolutions the Security Council used its authority under Article 34 and determined that the continuation of the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic, and of the tensions between the Republic of Armenia and the Azerbaijani Republic, would endanger peace and security in the region. Such a determination is a prerequisite for invoking the relevant provisions of Chapter VI, particularly Article 33(2), Article 36, and Article 37(2), which give the Council authority to recommend terms of settlement of the conflict. By making such determination on the situation the Council indicated that it was acting under these provisions.

The fact that the Security Council did not specifically mention in these resolutions that it was acting under Chapter VII diminishes neither the power of the Council to express its authoritative position towards the conflict, nor the value of the recommendations of the terms

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1993); Elizabeth Fuller, "*Karabakh Mediation Process: Grachev versus the CSCE?*", RFE/RL Research Report, vol.3:23 (June 10, 1994); Elizabeth Fuller, "*Nagorno-Karabakh: Internal Conflict Becomes International*", RFE/RL Research Report, (March 13, 1992).

<sup>143</sup> See U.N. Doc. S/RES/884 (1993), para. 1, (Emphasis added).

<sup>144</sup> See U.N. Doc. S/RES/853 (1993), para. 2.

<sup>145</sup> See U.N. Doc. S/RES/874 (1993) and S/RES/884 (1993), paras. 10 and 6 respectively.

<sup>146</sup> See U.N. Doc. S/RES/884 (1993).



of the settlement that in its assessment would restore international peace and security. What is essential is that the Council is empowered through these Articles to consider the merits of the conflict situation and reach a conclusion, which, as was pointed out by Kirgis, would have “normative consequences”.<sup>147</sup> And this is what the Security Council did. The text of the adopted resolutions indicate that the Security Council made it clear that it would not accept any *fait accompli* situations arising as a result of the use of force for the acquisition of territory. The determination by the Council of the fact of *occupation* of the territories of Azerbaijan and qualification of occupation as unlawful under international law is by definition requires that the perpetrator of this unlawful act is obliged to end this occupation immediately and unconditionally. In other words, the obligation to put an end to internationally wrongful act derives not only from principles and norms of international law<sup>148</sup>, but also from the acts of application of these norms through, *inter alia* the UN Security Council resolutions. The existence of the fact of occupation also puts obligation on all States not to recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor render aid or assistance in maintaining this situation.

Furthermore, it is well worth reminding here that the resolutions adopted by the Security Council are binding on the basis of Article 25 of the U.N. Charter, which states that “[t]he Members of the United Nations agree to accept and to carry out the decisions of the Security Council in accordance with the present Charter”. This understanding of the meaning of Article 25 is reflected in the interpretation by the authoritative Venice Commission of the Council of Europe of the recommendations contained in the resolutions adopted by the Security Council<sup>149</sup> in the wake of the escalation of the armed conflict in Georgia in August 2008.<sup>150</sup>

### **Conclusion: The implications of the U.N. Security Council action for the conflict settlement**

The analysis of the terminology used in the four resolutions of the Security Council and the statements by its President viewed within the overall context of the unfolding events on the ground as well as the attitudes of the several permanent members of the Council towards the conflict confirmed the supposition made in the introduction part of this article that the adopted resolutions were the result of the complex web of interrelated factors. The decision-making process of the Security Council, which transformed over the decades into an institutional constraint, the special interests of at least several permanent members of the Council on the one hand as well as the obligation to abide by the U.N. Charter in its daily practice had a decisive impact on the actions by the Security Council in relation to the conflict between Armenia and Azerbaijan.

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<sup>147</sup> See Frederic L. Kirgis, Jr., “The Security Council’s First Fifty Years”, *The American Journal of International Law*, vol.89:3, (1995): 519, <http://links.jstor.org/sici?sici=0002-9300%28199507%2989%3A3%3C506%3ATSCFFY%3E2.0.CO%3B2-U> (accessed May 14, 2009).

<sup>148</sup> See Article 3 of the International Law Commission’s Articles on Responsibility of States for International Wrongful Acts, annexed to U.N. General Assembly resolution 56/83 adopted on December 12, 2001.

<sup>149</sup> See U.N. Doc. S/RES/1839 (2008) (October 9, 2008); U.N. Doc. S/RES/1866 (2009) (February 13, 2008).

<sup>150</sup> See Opinion No. 516/2009 on “The Law on Occupied Territories of Georgia” approved by the Georgian parliament on October 28, 2008, adopted in March 2009 on the 78<sup>th</sup> plenary session of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe.

The resolutions did not prevent further escalation of the conflict. By May 1994, when a cease-fire was brokered, the Nagorny Karabakh region and surrounding seven administrative districts, which constitute almost one-fifth of the territory of Azerbaijan, were occupied by the Armenian forces. Approximately one out of every eight persons in Azerbaijan became an internally displaced person or refugee, tens of thousands of people were killed, wounded or injured and about 5,000 citizens since then are missing. The peaceful negotiations between Armenia and Azerbaijan with the mediation of the Co-Chairs of the OSCE Minsk Group conducted for over fifteen years have yet to yield results.

Nevertheless, the gravity of the situation threatening international peace and security prevented the Security Council from adopting more watered-down and neutral resolutions, which was often the case, when at least several permanent members of the Council had particular interest towards a conflict situation. Although the Security Council followed the established pattern and fell short of pointing finger, guided by the obligation to preserve objectivity and abide by the U.N. Charter, the Council determined that the territories of Azerbaijan were under occupation as a result of military activities. This determination put in motion the international legal instruments, which were designed specifically to address the situations emerging out of belligerent occupation and to protect these territories and to ensure that their legal status remains unaffected by the occupation pending their return to the sovereign. Thus, the law on occupation, which is essentially framed by the 1907 Hague Regulations and the Geneva Convention IV provides that the fact of occupation is considered temporary by international law and, hence, no transfer of sovereignty over the occupied territory to the occupier is possible. Furthermore, the law on occupation puts clear-cut obligations on the occupying power in regard of the occupied territory. Among them are the obligations not to change the existing legal system and to respect the existing institutions. The law on occupation also prohibits the acts of pillage, looting and the exploitation of resources, the destruction by the occupying power of any real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities. Of particular importance is Article 49 of Geneva Convention IV, which prohibits the establishment of settlements in the occupied territories consisting of the population of the occupying power or of persons encouraged by the occupying power with the intention of changing the demographic composition in these territories.<sup>151</sup>

Hence this recognition of the fact by the Security Council allowed Azerbaijan to keep the situation in the occupied territories under the scrutiny of the international community.<sup>152</sup> In 2005 in response to the concerns regarding the illegal settlements in the occupied territories

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<sup>151</sup> See the “*Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory*”, U.N. Doc. A/63/692-S/2009/51 annexed to the letter dated January 27, 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General. Available online at <http://daccessdds.un.org/doc/UNDOC/GEN/N09/221/70/PDF/N0922170.pdf?OpenElement> (accessed April 20, 2009).

<sup>152</sup> On October 29, 2004, the U.N. General Assembly decided to include the item entitled “The situation in the occupied territories of Azerbaijan” to the agenda of its 59<sup>th</sup> session. The issue of the situation in the occupied territories of Azerbaijan has been also included into the agenda of the subsequent sessions of the U.N. General Assembly. On March 14, 2008, the General Assembly adopted at its 62<sup>nd</sup> session resolution A/RES/62/243 on the situation in the occupied territories of Azerbaijan, in which the General Assembly expressed concern that the armed conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan continued to endanger international peace and security, and reaffirmed *inter alia* its continued strong support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders.

raised by Azerbaijan before the U.N. General Assembly<sup>153</sup> the OSCE dispatched a fact-finding mission to assess the situation on the ground.<sup>154</sup> In 2006 alarmed by the reports<sup>155</sup> of the wide-scale fires in the occupied territories of Azerbaijan the U.N. General Assembly adopted a resolution entitled “The situation in the occupied territories of Azerbaijan”, as proposed by Azerbaijan, which stressed the necessity of the urgent conduct of an environmental operation and called for an assessment of the short-term and long-term impact of the fires on the environment of the region and its rehabilitation.<sup>156</sup> As a follow-up another OSCE fact-finding mission was conducted in the occupied territories in October 2006.<sup>157</sup>

Furthermore, the Security Council resolutions provided rather clear appraisal of the situation on the ground and identified the principles and norms of international law applicable to this conflict, while reminded of the inadmissibility of violating those norms. By pointing to internationally wrongful acts in the context of this conflict the Security Council established the obligations of the perpetrator of those acts as well as the rights of the victim.

While reiterating its full support for the peace process being pursued within the framework of the OSCE, the Security Council through its resolutions established the overall legal framework for the conflict settlement in the context of the Minsk process and outlined the principles that should provide guidance for the mediation efforts to find a just and lasting solution to the conflict. In particular, the resolutions reaffirmed the sovereignty and territorial integrity of the Republic of Azerbaijan, stressed the inadmissibility of the use of force for the acquisition of territory, demanded immediate, complete and unconditional withdrawal of the Armenian forces from all the occupied territories, called for the restoration of economic, transport and energy links in the region and called to assist the displaced persons to return to their homes. It is noteworthy that in the aftermath of the Budapest summit of the CSCE (1994), which decided to intensify CSCE action in relation to the conflict, the Security Council returned to this matter and issued a statement<sup>158</sup>, in which it reaffirmed all its relevant resolutions on the principles of sovereignty and territorial integrity as well as the inviolability of international borders and stressed the urgency of concluding a political agreement on the cessation of the armed conflict on the basis of the relevant principles of the Charter of the United Nations and of the OSCE.

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<sup>153</sup> See “*Information on the transfer of population into the occupied territories of Azerbaijan*”, annexed to the letter dated November 11, 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the General Assembly, U.N. Doc. A/59/568, (November 11, 2004).

<sup>154</sup> Based on the findings of the OSCE Fact-Finding Mission carried out from 30 January–5 February 2005 the OSCE Minsk Group Co-Chairmen in their recommendations have emphasized the inadmissibility of changes in the demographic composition of the region and urged appropriate international agencies to conduct needs assessment for resettlement of the population located in the occupied territories and return of the internally displaced persons to their places of permanent residence. For the details see Letter dated March 18, 2005 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General. Annex II: *Report of the OSCE fact-finding mission to the occupied territories of Azerbaijan surrounding Nagorny Karabakh*, U.N. Doc. A/59/747-S/2005/187, (March 21, 2005).

<sup>155</sup> See Letter dated July 28, 2006 from the Minister for Foreign Affairs of the Republic of Azerbaijan annexed to the letter dated July 28, 2006 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, U.N. Doc. A/60/963.

<sup>156</sup> See U.N. Doc. A/RES/60/285 (September 7, 2006).

<sup>157</sup> For details see letter dated December 20, 2006 from the Permanent Representative of Belgium to the United Nations addressed to the Secretary-General. Annex: *OSCE-led environmental assessment mission to the fire-affected territories in and around the Nagorny Karabakh region. Report to the OSCE Chairman-in-Office from the Coordinator of OSCE Economic and Environmental Activities*. U.N. Doc A/61/696.

<sup>158</sup> See Statement by the President of the Security Council, U.N. Doc. S/PRST/1995/21 (April 26, 1995).

The step-by-step approach to the settlement of the conflict suggested by the U.N. Security Council through its resolutions is of practical relevance to the current peace negotiations conducted in the framework of the OSCE. The phased settlement model built into these resolutions and advocated for by Azerbaijan for the past decade is increasingly accepted not only by the international community, but also by Armenia as the only viable strategy to break the stalemate in the resolution of this protracted conflict. The Joint declaration<sup>159</sup> signed in Moscow on November 2, 2008 by the Presidents of Azerbaijan, Armenia and the Russian Federation - the first ever document signed between Armenia and Azerbaijan since the cease-fire of 1994 – reflect the acceptance by the parties of the step-by-step approach to the settlement of the conflict on the basis of the principles and norms of international law and the decisions and documents adopted in this framework.

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<sup>159</sup> For the English version of the text of the Joint declaration see annex to the letter dated November 10, 2008 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2008/702, (November 11, 2008).

# POLITICAL ECONOMY OF OLD-AGE PENSION REFORMS IN GEORGIA

Alexi Gugushvili\*

## Abstract

*The paper<sup>1</sup> examines the factors that played a major role in development of the old-age pension system in Georgia. Based on data collected from 1991–2009, this analysis centers on the system's patterns of development and identifies four main attempts to reform the old-age pension system. Economic performance, demographic aging, domestic political constellations, and external influence are traditionally thought to be responsible for the pension system reforms. Qualitative data analyses and in-depth interviews have been used to test these explanations. This analysis did not confirm the hypotheses, but it revealed that fiscal constraints and international technical assistance were the main factors behind reforms during the first two chronological attempts to change the system. Political factors and liberal economic ideology influenced the patterns of old-age pension policy development from 2004–2008, while the negative outcomes of the Russian-Georgian War and World Financial Crisis are currently the major obstacles for comprehensive pension reforms. The limitations of this study suggest that in order to clarify the exact nature of old-age pension system, shorter time periods and separate reform initiatives should be investigated.*

**Keywords:** transition, political economy, retirement, pension reforms, Georgian government

## Introduction

In Soviet Georgia the old-age pension system had been gradually developing as an integral part of the state welfare policy. In accordance with the ideological and political goals, the pension system was born entirely of the state and retirement payments that were financed on a pay-as-you-go (PAYG) basis through the transfer of funds from state-owned enterprises to the USSR State Insurance Company, *Gosstrakh*, which had a department in Georgia. The Soviet retirement pension system consisted of two parts, a public component and a voluntary component, which together provided relatively generous old-age pension benefits.<sup>2</sup> To receive a pension, workers were required to have participated in the labor force for a minimum of twenty years for women and twenty-five for men.<sup>3</sup> According to Castel and

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<sup>2</sup> Irakli Koplatadze, *The role of pension funds in macroeconomic regulation at the transition stage towards market economy* (Tbilisi, 2000), 206.

<sup>3</sup> John B. Williamson, Stephanie A. Howling and Michelle L. Maroto, "The political economy of pension reform in Russia: Why partial privatization?" *Journal of Ageing Studies*, vol. 20 (2006): 165.

Fox, the pre-transition Soviet pension system was a complex and expensive mechanism, “combining elements of a Western European 1960s PAYG system with peculiar communist features.”<sup>4</sup> In the late 1980s old-age pension coverage nearly reached a universal level, paying between 60 percent and 100 percent of the average wage.<sup>5</sup>

However, as almost all dimensions of economic and social life, the public pension systems had been challenged by the turmoil of the 1990s. After the first few years of transition, institutions of representative democracy have emerged, a new legal infrastructure has been installed, and the private sector has developed; whereas the question of fundamentally reforming the existing set of welfare policies, including pension arrangements, had attracted little attention.<sup>6</sup> Although the problems facing Georgia were common to all transition economies, they were aggravated by the specific circumstances of the country. On the revenue side, shrinking contribution bases and poor administration of revenue-generating systems had destabilized resources for pension expenditure. On the benefit side, demographic aging, shrinking participation in the labor force, and growing informal employment had led to a marked increase in the number of pensioners compared to the number of contributors. Old-age pensions became low, unfair, and were not sufficient to protect the pensioners from falling into extreme poverty.<sup>7</sup>

The inability of the new socioeconomic environment to provide sustainable social security system was “one of the reasons for the general mistrust of democratic and market reforms.”<sup>8</sup> After the Rose Revolution in 2003, the Georgian government made an unequivocal choice for the liberalization of economy with fundamental changes in existing social policies. These tendencies inevitably affected the old-age pension system. Therefore this paper seeks to answer what determined the development<sup>9</sup> of the old-age pension system in Georgia, and whether policy changes and unimplemented reforms can be explained by economic and fiscal problems, by political limitations on available reform choices, by a combination of these factors, or by some other circumstances. To reach any conclusions about the relative validity of the arguments surrounding Georgia’s pension system reforms, it essential to establish the nature of the development of pension system from a specific starting point: the dissolution of the Soviet Union. This study also intends to reveal the problems the old-age pension system has faced and to evaluate the achievability of the reform endeavors.

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<sup>4</sup> Paulette Castel and Louise Fox, “Gender dimensions of pension reform in the Former Soviet Union,” in *New ideas about old age security: Toward sustainable pension systems in the 21st century*, ed. Robert Holzmann and Joseph E. Stiglitz (The World Bank, Washington, D.C., 2001), 426.

<sup>5</sup> Cynthia Buckley, “Obligations and expectations: Renegotiating pensions in the Russian Federation,” *Continuity and Change*, vol. 13:2 (1997): 317.

<sup>6</sup> Janos Kornai, “Editorial: Reforming the Welfare State in Post-socialist Societies,” *World Development*, vol. 25:8 (1997): 1183-86.

<sup>7</sup> Marta De Castello-Branco, “Pension Reform in Baltics, Russia, and other Countries of the Former Soviet Union (BRO),” (International Monetary Fund Working Paper, 1998), <http://www.imf.org/external/pubs/ft/wp/wp9811.pdf> (accessed May 13, 2008).

<sup>8</sup> Alexander Tvalchrelidze, “Part II. The social security system in Georgia and possible trends in its development,” in *Building Democracy in Georgia. Democratization in Georgia: Economic Transformation and Social Security* (Discussion Paper 8 by International Institute for Democracy and Electoral Assistance, May 2003).

[http://www.idea.int/publications/georgia/upload/Book-08\\_scr.pdf](http://www.idea.int/publications/georgia/upload/Book-08_scr.pdf) (accessed June 10, 2008), 16.

<sup>9</sup> Throughout this research the terms the “reforms” and “development” will be used interchangeably except when necessary to distinguish between specific circumstances.

In order to answer the research questions, the methodology of this study analyzes the scope of the changes that occurred and reveals the factors determining the old-age pension system's development. In addition to the nature of the research questions, the methodological approach was defined by time and resource constraints. There are substantial trade-offs between qualitative and quantitative analysis, the dependent and independent variables, the length and depth of the account, and the availability and reliability of data sources. Nonetheless, to achieve the research goals, this study consecutively applied the evaluation of relevant academic scholarship, qualitative data analysis, and in-depth interviews as complementary approaches. As a result of the field data collection, much of the information came directly from the Ministry of Labor, Health and Social Affairs (MOLHSA), Social Subsidies Agency (SSA), and the Parliament of Georgia. In-depth interviews were conducted with major stakeholders, including decision-makers at the Ministry on Reforms Coordination, MOLHSA, SSA, economic experts, and the representatives of private insurance companies and relevant civil society organizations.

## Hypothetical Explanations on Old-Age Pension Reforms

This section presents hypothetical explanations on both old-age pension policy change and the system's resistance to reforms given by various authors and observations mainly from the transition economies. On the one hand, economic recession and demographic aging are assumed to destabilize public pension finances and consequently create pressures for policy reform; while on the other hand, political actors and the environment can affect old-age pension system development.

### *Pressure Factors*

Theories on the economic sustainability of old-age public pension systems assume that pressures for change derive from financial deficits.<sup>10</sup> Chlon-Dominczak and Mora, through a survey of policymakers and pension experts, found that the scope of fiscal problems influences reform commitment and leads toward change.<sup>11</sup> Growing expenditure and decreasing revenues could create opportunity for reformers who were previously prevented from taking the initiative.<sup>12</sup> The recession, during the first years of transition, was associated with enormous shifts in production structures and a corresponding decrease in wages and increase in unemployment.<sup>13</sup> As a response to this situation, governments often applied a policy of substituting open unemployment with early retirement programs at the expense of increased expenditure of public pension systems.<sup>14</sup> The harsh recessions considerably deteriorated the revenue base of the old-age pension system and created imminent fiscal deficits.<sup>15</sup> In line with the decline of the formal economy and employment, transition countries saw rapid growth in informal activity levels

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<sup>10</sup> John B. Williamson and Fred C. Pampel, *Old-age security in comparative perspective* (Oxford: Oxford University Press, 1993).

<sup>11</sup> Agnieszka Chlon-Dominczak and Marek Mora, "Commitment and Consensus in Pension Reform," in *Pension reform in Europe: process and progress*, ed. Robert Holzmann et al., (Washington D.C.: The World Bank, 2003).

<sup>12</sup> John Williamson, "In Search of a Manual for Technopols," in *The political economy of policy reform*, ed. John Williamson (Institute for International Economics, Washington, D.C., 1994).

<sup>13</sup> Marie Lavigne, *The economics of transition. From Socialist economy to market economy* (Houndmills: Palgrave Macmillan, 1999).

<sup>14</sup> Sabine Horstmann and Winfried Schmahl, "Explaining reforms," in *Transformation of pension systems in Central and Eastern Europe*, ed. Winfried Schmahl and Sabine Horstmann (Edward Elgar, 2002).

<sup>15</sup> Emily S. Andrews, *Pension reform and the development of pension systems: An evaluation of World Bank assistance* (Washington, D.C.: The World Bank, 2006).



which was beyond the reach of old-age social security contribution agencies, further resulting in a loss of revenues for financing public pension benefits.<sup>16</sup>

The economic stagnation and fiscal deficits represented the immediate pressures on the consecutive governments in transition economies to adjust the pension system, but the intensifying long-term strains also resulted from the impact of demographic aging, as the proportion of the elderly in populations had been rapidly rising.<sup>17</sup> As benefits paid out were rising accordingly, outflow from the old-age pension systems were exceeding contributions, requiring increases in employees' or employers' contributions or budget transfers.<sup>18</sup> The old-age dependency ratio, measuring the share of the population aged 65 years or over to the population aged 15–64, most noticeably increased in the Baltic States and Croatia.<sup>19</sup> In turn, this rise could be explained by the changing life expectancy and mortality patterns, the decreasing fertility rates below the replacement rate,<sup>20</sup> and the intensifying trends of the negative net migration.

Despite the severe socioeconomic situation, life expectancy had been increasing among the elderly during the 1990s, creating a strain on old-age pension systems.<sup>21</sup> Simultaneously, mortality rates among the working-age population, which had increased in the majority of transition countries, might also have had an immediate effect on old-age dependency ratios. Also, a pattern of changes in fertility rates affects the old-age dependency ratios and creates strong pressure for reforms within several years because the current fertility rates are typically employed for the extrapolation of future trends as a rationale for changes.<sup>22</sup> In less than a decade after 1989, total fertility in transition economies had fallen from a replacement rate to about two-thirds of this level, making Eastern Europe the region with the lowest fertility rate in the world.<sup>23</sup> In the short term the most important demographic factor creating pressure for public pension policy reform could be negative net migration, because it led to the outflow of a predominantly working-age population.<sup>24</sup>

### ***Political Factors***

An account of the political set of hypothesized relationships is a more challenging task than considering the effect of pressure factors on pension system development. Most political economy

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<sup>16</sup> Elaine Fultz and Markus Ruck, "Pension Reforms in Central and Eastern Europe: Emerging Issues and Patterns," *International Labour Review*, vol. 140:1 (2001): 19.

<sup>17</sup> Mukesh Chawla, Gordon Betcherman and Arup Banerji, *From red to gray. The "Third Transition" of Aging Populations in Eastern Europe and the Former Soviet Union* (Washington D.C.: The World Bank, 2007).  
[http://siteresources.worldbank.org/ECAEXT/Resources/publications/4547631181939083693/full\\_report.pdf](http://siteresources.worldbank.org/ECAEXT/Resources/publications/4547631181939083693/full_report.pdf) (accessed July 26, 2008).

<sup>18</sup> Sheetak K. Chand and Albert Jaegar, "Aging populations and public pension schemes," International Monetary Fund, Occasional Paper No. 147 (Washington, D.C.: International Monetary Fund, 1996).

<sup>19</sup> United Nations, "World population prospects: the 2006 revision population database" (United Nations Population Division, 2006) <http://esa.un.org/unpp/index.asp?panel=3> (accessed May 20, 2008).

<sup>20</sup> Replacement rate means 2.1 births of children per woman.

<sup>21</sup> United Nations, "World population prospects: the 2006 revision population database," 2006.

<sup>22</sup> Henning Finseraas, "The politics of pension reform: An empirical analysis of pension reform intensity in 23 OECD-countries" (Paper prepared for presentation at the International Social Security Association's meeting in Warszawa, 5-7 March 2007), [http://www.ecpr.visionmd.co.uk/paper\\_info.asp?paperNumber=PP651](http://www.ecpr.visionmd.co.uk/paper_info.asp?paperNumber=PP651) (accessed July 11, 2008).

<sup>23</sup> UNECE, "Fertility Decline in the Transition Economies, 1989-1998: Economic and Social Factors Revisited," *Economic Survey of Europe*, vol. 1 (2000): 189-207.

<sup>24</sup> Silke Uebelmesser, *Unfunded Pension Systems: Ageing and Migration* (Elsevier, 2004).



theories consider the political environment, such as the fragmentation of political power<sup>25</sup> and differences in governing bodies and institutions,<sup>26</sup> as a central explanation for policy development. State-centered theories recognize the state and its policies as more than neutral, influencing pension system development as an autonomous agent;<sup>27</sup> while the new-pluralism assumes that public pension systems are determined by patterns of democratic political competition among different non-class based interest groups.<sup>28</sup> It is assumed that the politicians in the beginning of transition enjoyed a “honeymoon” period and greater freedom for maneuver in policies, as difficult decisions could simply be blamed as being part of the outgoing government’s legacy.<sup>29</sup> According to Wagener, however, during the first years of transition, social policy reform seldom deserved “[its] own chapter either in reform literature or in reform policy program.”<sup>30</sup>

In addition to reformers, other domestic actors in pension policy development were the political parties, the ministries and other governmental agencies, the experts and trade unions, public opinion, and representatives of financial and capital markets. The impact of political actors on pension system development may be illustrated by the electoral competition among parties in the Czech Republic for the 1996 elections, when five main political forces designed their own approaches and included public pension system development in their electoral programs,<sup>31</sup> while in Estonia trade unions successfully opposed employers’ organizations which were suggesting taxing both employers and employees.<sup>32</sup> According to Crepaz, parliamentarianism arguably creates more opportunities for policy development because it establishes stronger party discipline, greater legislative power, and the centralization of accountability.<sup>33</sup> On the contrary, Brooks argues that presidential systems generally mean lower incomes and smaller social security system – two variables that simplify policy change.<sup>34</sup> Political environments in which these institutions function also matter. In a democracy, parties which decrease old-age benefits can expect to face the wrath of the old-age population, while authoritarian governments are granted more freedom to conduct policy adjustment.<sup>35</sup>

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<sup>25</sup> Sarah Brooks, “Social Protection and the Market: Pension Reform in an Era of Economic Integration” (Paper presented at the annual meeting of the American Political Science Association, Atlanta, GA., September 1999).

<sup>26</sup> Michael J.G. Cain, “Globalizing Tendencies in Social Policy,” *Emergo: Journal of Transforming Economies and Societies*, vol.7:2 (2000): 6-19.

<sup>27</sup> Katharina Müller, *The Political Economy of Pension Reform in Central-Eastern Europe* (Edward Elgar Publishing, Inc., 1999).

<sup>28</sup> Morris Janowitz, *Social control of the welfare state* (Chicago: University of Chicago Press, 1977).

<sup>29</sup> John Williamson and Stephan Haggard, “The Political Conditions for Economic Reforms,” in *The political economy of policy reform*, ed. John Williamson (Washington, D.C.: Institute for International Economics, 1994).

<sup>30</sup> Hans-Jurgen Wagener, “Social security – A second phase transformation phenomenon?” in *Transformation of Social Security: Pensions in Central-Eastern Europe*, ed. Müller et al. (Physica-Verlag, 1999), 13.

<sup>31</sup> Jiri Kral and Martin Macha, “Transformation of old-age security in the Czech Republic,” in *Transformation of Pension Systems in Central and Eastern Europe*, eds. Winfried Schmahl and Sabine Horstmann (Edward Elgar, 2002).

<sup>32</sup> Lauri Leppik and Georg Mannik, “Transformation of Old-Age Security in Estonia,” in *Transformation of pension systems in Central and Eastern Europe*, eds. Winfried Schmahl and Sabine Horstmann (Edward Elgar, 2002).

<sup>33</sup> Markus M.L. Crepaz, “Inclusion versus Exclusion: Political Institutions and Welfare Expenditures,” *Comparative Politics*, vol. 31 (1998): 61-80.

<sup>34</sup> Sarah Brooks, 1999.

<sup>35</sup> Paul Pierson and Kent Weaver, “Imposing Losses in Pension Policy,” in *Do Institutions Matter? Government Capabilities in the United States and Abroad*, ed. Kent Weaver and Bert A. Rockman (Washington D.C.: The Brookings Institution, 1993).

Another explanation on pension policy reforms is the direct and indirect influence of external economic, political, and ideological factors in shaping the old-age pension policies.<sup>36</sup> According to Deacon and Hulse, the making of transitional pension policy was a “testing ground for the future of social policy elsewhere in the industrialized world.”<sup>37</sup> Throughout the 1990s the analysis of pension systems, the design of recommendations and reform strategies, and assistance in various forms for the reformer countries have been the central issues on the agenda of the influential international and regional organizations.<sup>38</sup> Since its main interest stemmed from the macroeconomic and fiscal policy implications of public pension development, the World Bank specifically addressed in its seminal report the public pension systems in the transition economies.<sup>39</sup> Contrary to this position, an underlying assumption of the European Union and the Council of Europe’s policy for transition countries was the duty of the state to protect the vulnerable regardless the concerns of the economic efficiency.<sup>40</sup> The International financial institutions also frequently discussed old-age security systems in the transition states in connection to the financial sector, capital markets, and domestically available sources for long-term investment.<sup>41</sup>

## First Stage of Development: Economics of Pensions

Reforms of the pension system are the changes in the totality of institutions, procedures, and resources drawn on to ensure a replacement income during retirement age. Four attempts of initiating systemic changes in the old-age pension system can be distinguished: the first two were made consecutively in 1998–99 and 2002–03, while from 2004 the reforms continued in two different directions.

### *Emergence of a Reform Agenda*

The socioeconomic collapse associated with the dissolution of the Soviet Union in Georgia was reinforced by the civil wars, which sparked the national macroeconomic crisis, precarious fiscal conditions and completely destroyed the inherited old-age pension system. Simultaneously, Georgia unsuccessfully tried to recover its share of the *Gosstrakh*’s funds, approximately 550 million USD, which had been seized by the Russian Federation.<sup>42</sup> Throughout the first half of 1990s the tax system malfunctioned, and in 1994 the amount of pensions became nominal. In 1995 the Government turned down the system of differentiated pensions and replaced it with flat payments. The pension benefits were determined by simple arithmetic: the number of those formally employed in the population was multiplied by the average salary and tax tariff, and then revenues were divided by the number of pensioners.<sup>43</sup> This meant that equal pensions were granted to all retirees regardless of their salaries during employment, length of service, or differences in pension type. In 1996 the parametric

<sup>36</sup> Bob Deacon, *The new Eastern Europe: Social Policy Past, Present and Future* (London: Sage Publication, 1992).

<sup>37</sup> Bob Deacon and Michelle Hulse, “The making of post-communist social policy: The role of the international agencies,” *Journal of Social Policy*, vol. 26:1 (1995): 43.

<sup>38</sup> Monika Queisser, “Pension Reform and International Organizations: from Conflict to Convergence,” *International Social Security Review*, vol. 53:2 (2000): 31-45.

<sup>39</sup> World Bank, *Averting the Old Crisis: Policies to Protect the Old and Promote Growth* (Washington, D.C.: The World Bank, 1994).

<sup>40</sup> Deacon and Hulse, 1995.

<sup>41</sup> Queisser, 2000.

<sup>42</sup> This matter was closed when, following international pressure in the late 1990s, Georgia agreed to the so-called zero option of interstate debt restructuring with Russian Federation.

<sup>43</sup> David Kodua, “Description of Georgian Social Security System” (The document was drafted within the framework of the Project on Social Security Reform of Georgia, Tbilisi, 2004).

adjustments of the system resulted in the retirement age being increased by five years for men and women respectively, cancellation of the early retirement provisions and introduction of a right on old-age pension benefits only for those who previously contributed to the system.<sup>44</sup>

The problems of the pension system were further aggravated by a serious economic crisis at the end of the 1990s. This critical situation created by the poor collection of tax revenues was transformed into the large-scale financial crisis, mainly as a result of the economic problems that developed in the CIS countries.<sup>45</sup> The economic reforms, including privatization, were in their early stages, and the inefficient public sector remained large. At the same time, the country had one of the lowest tax collection rates (9 percent of GDP) among the transition economies, and the government had been reluctant to initiate taxation reforms.<sup>46</sup> The non-compliance with the plan for the state budget occurred, and was followed by the growth of arrears in state liabilities. The National Bank, however, reported that the final outcome only came to 68 percent of what had originally been projected.<sup>47</sup> Economic reform produced significant changes in the employment structure, while the number of self-employed significantly exceeded the number of those in formal employment. The economic hardship also determined that many Georgian citizens decided to leave the country. The demographic burden was intensified by the growing mortality and decreasing fertility rates. At the end of the 1990s the population over age fifty-nine made up 18.6 percent, up from only 14.4 percent in 1989.<sup>48</sup>

The impact of fiscal constraints on the old-age pension system was first recognized by the officials of the Ministry of Labor and Social Security who initiated an initial agenda on old-age pension reforms. It was assumed that the first step for changes had to be part of a well-drafted legislative framework to give to ultimate decision-makers a clear picture what needed to be done. After the introduction of a new state constitution in 1995, all Soviet laws, including those on social security, were annulled.<sup>49</sup> Therefore, every reform attempt of the old-age pension system was associated with changes in the broader concept of social security in the country. The legislative package that was developed in line with the Act on State Pensions involved the Acts on State Social Insurance and Medical Examination. Although the bills envisaged the differentiation of old-age pensions according to amounts of contributions and period of payments, they did not imply any pension formula or other means to calculate differentiated pension benefits.<sup>50</sup>

Ultimately, the bill was not approved, and in 1999 the government established a working group with a more ambitious initiative in which the influence of the World Bank, with its retirement pension orthodoxy, became apparent. According to this reform project, the three pillar old-age pension system was considered as a suitable option for Georgia. The proposed model envisaged the establishment of the mandatory state pension fund, providing payment of minimal old-age pensions, the mandatory non-state pension insurance, and the voluntary private old-age pension insurance. The actors behind the

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<sup>44</sup> Gia Jandieri, Interview by author (Bakuriani, Georgia, July 10, 2008).

<sup>45</sup> National Bank of Georgia, *Annual Report 1998* (Tbilisi: National Bank of Georgia, 1999).  
<http://nbg.ge/uploads/publications/annualreport/2003/nbg7.2annualreport1998geo.pdf> (accessed August 17, 2008).

<sup>46</sup> International Women's Rights Action Watch, *Georgia: Country Report* (1998).  
<http://www1.umn.edu/humanrts/iwraw/georgia.html#24> (accessed September 6, 1998).

<sup>47</sup> National Bank of Georgia, *Annual Report 1998, 1999*.

<sup>48</sup> Mzia Shelia, "Population Ageing in Georgia under Conditions of Economic Crisis (working paper, 2004).

<http://epc2006.princeton.edu/download.aspx?submissionId=60107> (accessed Jul 3, 2008).

<sup>49</sup> Vakhtang Megrelishvili, Interview by author (Tbilisi, Georgia, September 1, 2008).

<sup>50</sup> Kodua, 2004.

proposed scheme hoped that it would attract a reputable international insurance company that would assume repayment of the existing arrears and provision of old-age pensions benefits by assigning to it the exclusive right to administer 13.5 percent of social taxes.<sup>51</sup> However, the implementation of reforms was problematic mainly because the government was still engaged in broad political and economic reforms. The political environment was fragile, with the president's assassination attempt and the hotly contested parliamentary elections. Other obstacles were systemic corruption, poor administration of the pension system, high social taxes, and ongoing underperformance by the tax administration. In addition, there were no strong leaders who would project the future benefits of pension reforms.<sup>52</sup>

### ***“Revolutionary Victim”***

A new, ambitious initiative on reforming the state's social assistance schemes was declared in 2002–03. This period turned out to be very hard on the pension system. At the end of 2003 the ongoing pension arrears amounted 14 percent of the central budget, while the average pension equaled 19 percent of the minimum subsistence level of an adult.<sup>53</sup> The beginning of the 2000s was characterized by the low level of economic growth, moderate rates of inflation, and permanent sequestering of the state budget. As a result, the employment level, labor productivity, and real income of the population remained unchanged. Internal demand failed to become a stable factor of economic growth.<sup>54</sup> The vast majority of the population was forced to engage in poorly paid, temporary jobs and was unable to secure minimum living standards. The negative net migration remained high, while fertility levels continued to decrease.<sup>55</sup> The government was unable to fulfill its core budget parameters, mainly due to the fiscal authorities' ineffectiveness, and deficiencies in the tax legislation. In addition, after the suspension of financing under the IMF-supported financial program, external sources became unavailable.<sup>56</sup> In 2003 expenditures constituted only 77 percent of the initial plan, leading to growing pension arrears. The precarious condition of the budget sector drove the country to the real threat of default.<sup>57</sup>

These developments had a twofold impact on the old-age pension system. On the one hand, it generated the understanding that the old-age pension policy had to be amended, but, on the other hand, the stakeholders realized that in order to implement paradigmatic reforms, the administrative and parametric mechanisms of the system had to be fixed. These constraints created a vicious circle, though in the light of upcoming parliamentary elections, the government announced the systemic pension reforms to establish a new multi-pillar and financially sustainable old-age pension system.<sup>58</sup> At the same time, the World Bank actively engaged in the process, trying to advocate its own vision of pension reforms, and helped the government to draft new bills and design tax incentives for voluntary pension accounts. The authorities believed that their initiative was a compromised model of pension

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<sup>51</sup> Ibid.

<sup>52</sup> David Gelashvili, Interview by author (Tbilisi, Georgia, August, 25, 2008)

<sup>53</sup> GEL 14, which at that time was approximately 6.40USD.

<sup>54</sup> National Bank of Georgia, *Annual report 2003* (Tbilisi, 2004),

<http://nbg.ge/uploads/publications/annualreport/2003/nbg7.2annualreport2003geo.pdf> (accessed August 18, 2008).

<sup>55</sup> Department of Statistics, *Statistical Yearbook of Georgia: 2003*. (Department of Statistics under Ministry of Economic Development of Georgia, Tbilisi, 2004), <http://statistics.ge/main.php?pform=39&plang=2> (accessed July 5, 2008).

<sup>56</sup> Global Security, “Georgia – Economy,” *GlobalSecurity.Org*, <http://www.globalsecurity.org/military/world/georgia/intro-econ.htm> (accessed August 5, 2008).

<sup>57</sup> National Bank of Georgia, 2004.

<sup>58</sup> Devi Khechinashvili, Interview by author (Tbilisi, Georgia, September, 1, 2008).

reforms; however, virtually no parties lobbied for these amendments through formal or informal consultations. The stakeholders only agreed on the necessity of repayment of pension arrears and on the introduction of the three-pillar pension model in principle, while a unified approach could not be reached on a transition to the mandatory private schemes, reduction of taxes for pension savings, and differentiation of public pension benefits.<sup>59</sup>

Nevertheless, the pension reforms had become one of the mainstream policy issues for the government. In particular, a package of draft bills was drawn up by the State United Social Insurance Fund together with the MOLHSA and the World Bank. It included bills on Mandatory Social Insurance, Mandatory Pension Insurance, and Introducing Individual Registrations and Individual Accounts for Mandatory Social Insurance System.<sup>60</sup> Old-age pensions were comprised of two components: a minimal base part, which would be warranted and common for everybody who satisfied the requirements for retiring, and an insurance part, the amount of which would be differentiated and dependent upon the insurance service length and the amount of individual payments put into the account.<sup>61</sup> The main characteristic of the 2003 initiative was that the mandatory second pillar had to be nominal in nature, which meant that the contributions would not be invested through real funded accounts.<sup>62</sup> The retirement age for both men and women had to be changed to sixty-five<sup>63</sup> and minimum insurance longevity to fifteen years. The pensions granted had to be increased on an annual basis in accordance with the consumer price index. This package of bills was passed by the Parliament and had to enter into force on January 1, 2004.

However, the implementation of this reform was canceled due to the fundamental political changes in late 2003 when a new government came to power. Initially, the introduction of the draft bills was postponed until the beginning of 2005, and later the proposal was completely rejected. The opponents of this reform initiative criticized its economic rationality. Their own financial projections showed that individuals had to save all their working lives and then it would be reflected in extremely low replacement rates. These calculations were based on the existing socioeconomic variables, including economic growth rates, employment levels and dependency ratios<sup>64</sup>. The model did not consider potential external shocks of an economic, a political, or a military nature. Furthermore, the central justification of the reforms – that people would be interested in legalization of their incomes – was criticized on the grounds that individuals would not be motivated to participate in a system which was ineffective from an economic point of view.<sup>65</sup>

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<sup>59</sup> Open Society Georgia Foundation, *Annual Report 2001* (Tbilisi: Open Society Georgia Foundation, 2002).

<sup>60</sup> Tsiuri Antadze, “Social Protection System” in *European Neighbourhood Policy and Georgia: Analyses of Independent Experts*, Friedrich-Ebert-Stiftung et al. (Tbilisi, 2007), <http://www.enp.ge/?l=1&i=117> (accessed July 7, 2008).

<sup>61</sup> *I-News*, “New Social Insurance Principles to be Introduced from 2004,” September 29, 2003, [http://archiveinews.internet.ge/stat\\_relatives.html?date=2003-09-29&stat=11](http://archiveinews.internet.ge/stat_relatives.html?date=2003-09-29&stat=11) (accessed May 24, 2008).

<sup>62</sup> This element is also known as the NDC (Notional defined contribution) framework, which explicates the actuarial mathematics and trade-offs inherited in any PAYG system. Employees pay a certain percentage of their earnings into notional individual accounts, and governments also credit these accounts with notional interest rates according to their fiscal capacity that, in turn, is affected by aging trends.

<sup>63</sup> Retirement age for women would gradually increase by half a year in each calendar year up to 65 years of age.

<sup>64</sup> Soso Bregvadze, Interview by author (Tbilisi, Georgia, September 4, 2008).

<sup>65</sup> Megrelishvili, 2008.

## Second Stage of Development: Politics of Pensions

From 2004 two dimensions of the pension system development can be distinguished. On the one hand, the changes sought to fight poverty among the elderly, while the government also aimed to create an environment for consumption smoothing during the retirement.

### *Retirement without Poverty*

The new government improved the welfare of elderly by improving the public pension system and developing a general means-tested social assistance program. The old-age pension system was greatly affected by the measures to establish economic and financial order in the country. In 2004 the total revenues of the state budget grew by 91.3 percent, while the share of tax revenues of GDP increased to 18.5 percent. It became possible to redeem salary and pension arrears from previous years.<sup>66</sup> The authorities also largely managed to eradicate corruption, identify database falsifications, and dismantle the special preferences among and within the different groups of pensioners. In December 2005 a new Act on State Pensions was adopted. All citizens of Georgia were granted a right to receive the old-age pension benefits any time after the age of sixty for women and sixty-five for men. The legislative changes were accompanied by the administrative amendments on which the SSA was founded.<sup>67</sup> At first sight, the introduction of the new legislative framework had to be considered as a major change in the old-age pension system, but in reality, the fundamental elements were not amended. The system was still based on the principles of solidarity payments and equal pension benefits, and did not anticipate the differentiation of pension benefits.<sup>68</sup>

On the revenue side, the old-age pension system was also affected by new changes to the tax code. With regard to social policies, a decision was made to abolish the personified social insurance contributions and introduce a common social tax at a rate of 20 percent of all salaries and wages.<sup>69</sup> After this consolidation, the maintenance of records on individual employees and their taxable incomes was abolished, which meant that the possible future differentiation of old-age pension became technically unfeasible. From 2008 further major changes to the Tax Code were introduced. The social tax was annulled, and individuals became responsible for the payment of income tax, at a rate of 25 percent of their gross earnings.<sup>70</sup> Moreover, pension benefits were financed by the general revenues line of the state budget. Previously, these contributions were separately accounted for in the state budget, and the Tax Department paid less attention to administrating these collections. After their inclusion in the central budget, there was an increased incentive for the Tax Department to enhance the collection performance of the social contributions.<sup>71</sup>

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<sup>66</sup> National Bank of Georgia, *Annual report 2004* (Tbilisi: National Bank of Georgia, 2005), [http://nbg.ge/uploads/publications/annualreport/2003/141.04.2004\\_1.pdf](http://nbg.ge/uploads/publications/annualreport/2003/141.04.2004_1.pdf) (accessed September 22, 2008).

<sup>67</sup> Social Subsidies Agency (SSA), “The objective of Social Subsidies Agency,” Description of Social Subsidies Agency, <http://www.ssa.gov.ge/index.php?id=31> (accessed July 13, 2008).

<sup>68</sup> Antadze, 2007.

<sup>69</sup> Vakhtang Megrelishvili, “Social sector reforms,” in *Georgia Human Development Report 2008, Background Papers* (Tbilisi: UNDP, 2008).

<sup>70</sup> Ministry of Finance, “Basic Data and Directions,” Tbilisi, 2008.

<sup>71</sup> USAID, *Georgia Fiscal Assessment* (The publication produced for review by the United States Agency for International Development, 2005). <http://georgia.usaid.gov/pdf/2.pdf> (accessed August 4, 2008).



On the benefit side, from 2004 the amount of minimal flat old-age pension was initially increased by GEL 28 per month, and then by GEL 38 in 2006. After the social unrest in November 2007,<sup>72</sup> the government increased the old-age pensions by GEL 55. Before this political stalemate, however, the increase initially applied only to those pensioners who qualified as being extremely poor in the unified social assistance database.<sup>73</sup> During the 2008 presidential campaign,<sup>74</sup> the opposition coalition proposed designing an old-age social security system in which pensions would be calculated based on the years of service and individual accomplishments.<sup>75</sup> Nonetheless, the existing government remained in office, with a consequential announcement that the parametric pension reforms would be one of the central elements of its “50-day Program”.<sup>76</sup> Since March 2008 minimum pensions have increased by GEL 70. The pension replacement rate, however, remained at a very low level, which further highlighted the inadequacy of the existing old-age pension system.<sup>77</sup> In 2009 the authorities planned to increase pensions by USD 100,<sup>78</sup> which, for the first time in recent history, would be more than the minimum subsistence level of an average consumer.

After effectively dealing with the main technical problems of the public pensions, the government realized there were still many obstacles that would burden the system. Senior government officials believed that the PAYG scheme was not sustainable in a country which had a shrinking and aging population, a negative net migration, and high life expectancy rates.<sup>79</sup> Negative trends in the labor market, such as high unemployment and informal employment rates, were also weighing the system down. At the same time, high levels of poverty in the population required “increasing the efficiency and effectiveness of state measures against poverty.”<sup>80</sup> According to prevailing logic, growing pension expenditure and anti-poverty social assistance had to be financed from the same source of revenues, which meant that prioritizing one would come at the expense of the other. Concentrating on the increasing universal pension benefits would mean that the government was oriented toward segments of the population with medium income, while the most poor would still remain in precarious conditions. The trade-off for the government was clear, and the political decision was made to prioritize the general means-tested poverty reduction measures over the pension policy.<sup>81</sup>

From 2004 to 2006 intensive work was performed to introduce properly functioning means-tested social assistance system, and in 2008 its database included 41 percent of Georgian households and 38

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<sup>72</sup> In November 2007 the government dismantled opposition parties’ rally using the force. This development eventually resulted in political crisis and snap presidential and parliamentary elections.

<sup>73</sup> Vakhtang Baramidze, Interview by author (Tbilisi, Georgia, August, 28, 2008).

<sup>74</sup> The political leaders, however, did not define any clear strategy on pension reforms, any exact meaning, or the form of the calculation of the pensions according to the years of service and individual accomplishments.

<sup>75</sup> IATP, *Levan Gachechiladze, IATP-Forum, 2008 presidential elections*, Question presidential candidate, (December, 2007), <http://forum.iatp.ge/lofiversion/index.php/t53.html> (accessed May 20, 2008).

<sup>76</sup> Open Society Georgia Foundation, “50-day Program” of the government of Georgia: Analysis and conclusions,” *Policy Paper N15: Report, Analysis, Recommendations* (Tbilisi: Open Society Georgia Foundation, 2008).

<sup>77</sup> Irina Badurashvili, “Generational Relations and Intergenerational Solidarity in Modern Georgian Society,” *CRRC Research Paper*, No. 9, Tbilisi, 2008, <http://www.crrc.ge/index.php/en/8/999/183> (accessed June 6, 2008).

<sup>78</sup> But there is a misunderstanding regarding this amount of pensions promised from 2009: the government’s initial action plan declared that “as a result of pension reforms, social pension amount and quality will be increased – the pension package will grow by USD 100 and will be one of the central elements of overcoming poverty.” The pension package logically can include not only cash payment but also other services. Ideally, the government would need twenty-one months to deliver on its promises.

<sup>79</sup> Kakha Bendukidze, 2008, Interview by author, Bakuriani, Georgia, July 10 (in Georgian).

<sup>80</sup> Megrelishvili, “Social Sector Reforms,” 204.

<sup>81</sup> Khechinashvili.



percent of the population of Georgia. The idea was that the government, based on proxy means-tested mechanisms, had to spend tax-payers money on those unable to care for themselves by giving them cash and different in-kind benefits, such as compensations for communal services, health care, and education scholarships.<sup>82</sup> Simultaneously, the program has also included about 240,000 of the poorest old-age pensioners, almost a third of all retirees. The scheme had potential, if accordingly financed and developed, to drastically reduce extreme poverty in the general population. The government also presumed that it could maintain the old-age pension system without substantially increasing of the universal pension benefits.<sup>83</sup> Nevertheless, after the November 2007 unrest, a political decision was made that the scarce resources had to be devoted to increasing the general pension benefits for the entire aged population, which in turn reduced resources for the effective implementation of the means-tested social assistance program.<sup>84</sup>

### *Achieving a Decent Retirement*

From 2004 the authorities started to consider a transition to private pension schemes in order to create an environment in which people would be able to independently secure a decent retirement. The old-age pension reforms were originally at the centre of the political agenda<sup>85</sup>, but, in fact, there was no sound policy framework developed, and no special task force or working group was engaged in pension issues on a full-time basis. The government began to argue, however, that within the existing environment, current consumption might be more effective than depositing savings for retirement.<sup>86</sup> In defense of this argument, three main points were emphasized: first, if individuals would deposit savings into pension funds, their real benefits from pension annuities would be roughly five times less than their pre-retirement incomes due to the existing high economic growth and inflation rates;<sup>87</sup> second, the government was reluctant to bear the costs of any guarantees of protecting workers' savings if a mandatory system was introduced;<sup>88</sup> and third, the introduction of an obligatory system would mean, as in the Soviet era, that individuals would not know what was in their best interest.<sup>89</sup> Based on these notions, the government preferred to withhold the final pension reform decisions and simultaneously worked on tax incentives to stimulate general savings.

In early 2008 the parliament approved the government's package of draft bills, which implied the gradual reduction of income tax and the introduction of tax reliefs for incomes stemming from various types of deposits.<sup>90</sup> The authorities considered this decision as a step toward pension reform because it made all investments, including pension savings, more profitable,<sup>91</sup> though it did not imply any special treatment of retirement accounts. This decision was partially justified by the earlier experience in 2004

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<sup>82</sup> Bregvadze.

<sup>83</sup> Jandieri.

<sup>84</sup> Megrelishvili, "Social Sector Reforms," 204.

<sup>85</sup> For instance, during the Georgia–Italy business forum in March 2007, then-Prime Minister Nogaideli stressed that in spite of the fact that the government paid the flat rate pensions to individuals who have achieved the pensionable age, a transition to funded pension arrangements was planned.

<sup>86</sup> Baramidze.

<sup>87</sup> Bendukidze.

<sup>88</sup> Jandieri.

<sup>89</sup> Megrelishvili, Interview.

<sup>90</sup> At the same time, the government declared that private insurers would invest their funds in businesses and receive profits which are taxed again; however, since the resources which are used in these activities are already taxed when they enter the pension funds, then the profit of pension funds should be tax free.

<sup>91</sup> Baramidze.

when the introduction of special tax incentives for private insurance failed to generate a boom in pension accounts, although the licensing of the voluntary pension funds substantially increased.<sup>92</sup> The size of annual old-age public pension payments for 2007 was roughly 300 times larger than the size of combined private old-age pension savings since 2001.<sup>93</sup> Despite the argument by those who supported the tax reliefs that the initiative required a longer time-span before the financial institutions, insurance companies and the population would adjust to the new environment: from 2005 the amendments in the Tax Code eliminated all tax preferences and depreciated the positive prospects in the private pension schemes.<sup>94</sup>

To counterbalance the government's approach toward the old-age pension reforms, an initiative was taken by parliament in 2006 to establish the Pension Task Force, which was facilitated by the EU delegation in Georgia.<sup>95</sup> The Pension Task Force saw that the worst option was merely retaining the existing pension structure and enabling the increase of pension benefits as the government resources allowed.<sup>96</sup> After the extensive public consultations, the Pension Task Force proposed the introduction of a contributory funded pension system in which currently workers would have the option to join such a system. Future pensions would have two components: a monthly pension for life, from age sixty-five, equivalent to a capital reserve which would have been built up in a contributor's personal pension account; and second, a transfer to the contributor's personal pension account of the value of the proportion of the current state pension. The pension account would be administered in an autonomous pension fund, the assets of which would be managed by private-sector investment managers.<sup>97</sup> The calculations indicated that with the contribution of 10 percent of earnings, annuities in constant GEL 2007 would grow from GEL 38 to GEL 100 in some twenty years' time,<sup>98</sup> and in forty years would exceed GEL 250.<sup>99</sup>

In spite of being the most elaborate and up-to-date pension reform plan, the executive government disregarded the proposal based on the abovementioned arguments. Among others, the Ministry of Finance strongly opposed this initiative due to the projected reduction of current revenues during the transition period. It was also argued that the statistical calculations employed in the model were not reliable.<sup>100</sup> This confrontation indicated that senior executive officials had not only a better understanding of the political economy of pensions but also more leverage on the final decision-making process, which meant that the Pension Task Force reform initiative could hardly succeed even if its approach had been completely credible.<sup>101</sup> After the government effectively blocked the proposed initiative, the Pension Task Force was forced to adjust its agenda to the government's line. The idea on partially mandatory pension insurance was dismissed, and the work continued just on the development

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<sup>92</sup> USAID, 2005

<sup>93</sup> GPI, "Private Pension Insurance," Description of the Company, Tbilisi, 2008, [http://gpi.ge/Default.aspx?sec\\_id=680&lang=1](http://gpi.ge/Default.aspx?sec_id=680&lang=1) (accessed May 20, 2008).

<sup>94</sup> Niko Rijamadze, Interview by author (Tbilisi, Georgia, August 6, 2008).

<sup>95</sup> The Task Force functioned within the framework of the Policy Advice on Pension Reform in Georgia project which was funded by the European Union. David Callund was the team leader and served as a consultant under the chairmanship of MP George Tsereteli.

<sup>96</sup> Manana Vardiashvili, "Quasi-reform," *24 Saati*, June 13, 2008, N131, B3.

<sup>97</sup> David Callund, *Pension Task Force: Final Report*, Tbilisi, Georgia, 2007.

<sup>98</sup> Over the same period, the pension, as a percentage of final earnings before retirement, and the replacement rate would grow from around 15 percent to some 40 percent of final pay.

<sup>99</sup> Callund, 2007.

<sup>100</sup> Jandieri.

<sup>101</sup> Baramidze.

of voluntary pension schemes. The new model intended to enhance and formalize private pension mechanisms and create incentives for people to save in these schemes.<sup>102</sup>

### *Was Momentum Lost or Gained?*

The implementation of systemic pension reforms, as commonly agreed upon, would have been most plausible between 2004 and 2007 when the country had excellent fiscal standing. But the reforms still would have required substantial financial resources since the government would lose the portion of tax revenues redirected to mandatory private pension funds.<sup>103</sup> These transition costs could then be financed through grants from international organizations and privatization of public assets.<sup>104</sup> The systemic reforms most likely would also have worsened the government's political stance by affecting the well-being of those cohorts who would not have had the opportunity to save accordingly for their retirement.<sup>105</sup> Instead, the government preferred to increase the flat-rate pension benefits regularly and, as such, contributed to the transformation of the old-age pension expectations into the old-age pension liabilities, which not only assumed sustainable provision of benefits but also their ever-increasing nature. Furthermore, during the last presidential campaign, the increase of old-age pensions system became a way to win the votes of pensioners, a large and politically active group of the population. Taking into account the projected demographic and employment characteristics, it will gradually become even more difficult to increase pension benefits, whereas subsequent governments might occasionally experience heavy pressure from the elderly requiring a decent increase of pension benefits.<sup>106</sup>

The military confrontation with Russia in August 2008 and the intense effects of the international financial crisis had their consequences on old-age pension reform prospects. The slowing economic growth rates and shrinking budgetary revenues substantially affected the country's fiscal health.<sup>107</sup> The crisis made it much more difficult not only to implement comprehensive pension reforms with an introduction of any kind of mandatory private pension provision,<sup>108</sup> but it also, at least for several years, disrupted accomplishing the promised increase of the flat-rate general pensions benefit by USD 100.<sup>109</sup> However, the recent developments could be also viewed from a different perspective. The crisis can boost the position of those who think that a completely privatized pension system is the only feasible solution to the problem. Indeed, in the beginning of 2009 the government announced that the country needs the promotion of voluntary private pension schemes in which individuals will be able to independently secure their best possible retirement prospects.<sup>110</sup> The only threatening aspect, though, in this development is the potential for a final decision that is made abruptly, without adequate consideration of other policy alternatives.

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<sup>102</sup> Gelashvili.

<sup>103</sup> USAID, 2005

<sup>104</sup> Mirzashvili.

<sup>105</sup> Rijamadze.

<sup>106</sup> Jandieri.

<sup>107</sup> Ministry of Finance, "Act on State Budget of Georgia 2009," Tbilisi, 2009, [http://mof.ge/default.aspx?sec\\_id=3159&lang=1](http://mof.ge/default.aspx?sec_id=3159&lang=1) (accessed August 22, 2009).

<sup>108</sup> Gelashvili.

<sup>109</sup> *Civil.Ge, Daily News Online*, "Cabinet Wins Confidence Vote," February 6, 2009

<http://civil.ge/eng/article.php?id=20385&search=new%20government> (accessed August 2, 2009).

<sup>110</sup> *Commersant.Ge*, "President Saakashvili Talks about Necessity of Reforms," January 24, 2009, <http://www.commersant.ge/index.php?pg=nt&id=4435&ct=2> (accessed July 26, 2009).

## Conclusions

The purpose of this account was to clarify what factors have been affecting the old-age pension system's development in Georgia after the dissolution of the Soviet Union. Through the method of evaluation of the selected scholarly literature mainly on the transition economies, there are specific hypothetical determinants – economic, demographic, political and international factors – that explain pension system development. In order to examine these theoretical explanations, an assessment of the changes in old-age pension provision, and two consecutive and chronological attempts of systemic amendments as well as two simultaneous and ongoing reform agendas are identifiable. In the first stage of development, the bottom-up reform initiative stemming from the Ministry of Labor and Social Security was blocked by the political indifference in the upper echelons of executive power; and when the fiscal problems intensified, the government became interested in gaining political dividends through the top-down reform initiative mediated by the World Bank. Demographic aging worsened the scope of the pension problem and, therefore, affected reform initiatives, but not in such an illustrative manner as did the international influence that played a significant role in all major reform preparations. Since 2004, old-age pension reforms have been upgraded to a more mature policymaking level, though the government was not able to exploit the post-election “honeymoon” period to conduct systemic pension reforms. Thereafter, the state's priority deviated from the universal old-age pension system to the development of universal means-tested social assistance program and presented the general tax reduction trend as a component of broader pension reforms, successfully blocking parliamentary attempts to introduce mandatory pension savings. On this reform stage, the unbalanced fragmentation of political power played a decisive role for the reform outcome. This specific event can also be seen in light of the confrontation between the EU-backed reform approach, endorsed by the parliament, and the executive government's position, which was more closely associated with the World Bank's ideology. The military conflict with Russia and the world financial crisis, contrary to expectations, might facilitate rather than postpone reforms, though not within the best possible scenario.

Old-age pension reforms in Georgia were only marginally determined by the pluralistic style of democratic competition among stakeholders. The reforms were almost exclusively shaped by the ministerial, legislative, and government agencies. The political economy of this approach is more in line with a state-centered logic of pension policy development, which is mostly shaped by the structures that the state imposes. In addition, it is difficult to evaluate a role of democracy in Georgia's old-age pension reform process; however, the government's drive to introduce a new pension model before the 2003 parliamentary elections and the new government's promise to almost double flat-rate old-age pensions during the last presidential campaign may have some implications for committing to a policy option preferred by the average voter. Overall, one general observation from this paper is the contradictory fact that despite creating political justification for reform, the radical fiscal crisis did not lead to the systemic old-age pension changes, while the conducive fiscal environment dampened political aspirations toward important paradigmatic reforms.

Clearly, these findings are preliminary and deserve further examination. In spite of an attempt to access the most comprehensive data sources, apparently this paper considers a very broad time span, with some incomplete sources of information that we unavailable at the time of writing. Further, many key stakeholders did not have full information on up-to-date developments. Even the parliamentary Task Force and the team at the Ministry on Reform Coordination could not fully coordinate complementary activities. Therefore, it is important to promote debate on pension policy through sound research

practices. Although definitive answers as to what factors determined pension reforms are difficult to pin down, all economic, demographic, political, and international factors matter. The question is still how their constellations determine policies in different time periods. Considering this constraint, future efficient research designs should ideally concentrate on the analysis of a single reform attempt within a shorter research timeframe.

## **Appendix**

### **List of Interviewees**

Monika Ambrishevsk-Khechinashvili – Employee of the Parliamentary Committee on Health and Social Affairs; member of the Parliamentary Pension Task Force;

Vakhtang Baramidze – Employee of the State Ministry on Reforms Coordination;

Kakha Bendukidze, Former State Minister and Head of State Chancellery of Georgia;

Soso Bregvadze – Deputy Head of Social Subsidies Agency;

David Gelashvili – Former Actuary of GPI Holding; member the Parliamentary Pension Task Force;

Gia Jandieri – Vice-President of the New Economic School of Georgia;

Khatuna Jishiashvili – One of the founders of the Association of Actuaries and Financial Analysts (AAFA); Member of the Parliamentary Pension Task Force;

Devi Khechinashvili – Head of the Insurance Association of Georgia;

Vakhtan Megrelishvili – Former Deputy Head of the Ministry of Labor, Health and Social Affairs,  
Guram Mirzashvili – Chief Actuary of the Aldagi-BCI; member of the Parliamentary Pension Task Force;

Nika Rijamadze – Head of the GPI's sales department.

# CORRUPTION IN RUSSIA: A MODEL EXPLORING ITS ECONOMIC COSTS

**Michael P. Barry\***

## **Abstract**

*The Russian Federation is one of 116 countries which have ratified the United Nations Convention Against Corruption, a document which sets a tone and specific provisions aimed at reducing bribery in the public and private sector, unjust enrichment of officials, embezzlement, and other forms of corruption. However, based on survey data, government reports, and the writings of international organizations, Russia has not been successful in enforcing the provisions of the UNCAC. This paper will develop a computable general equilibrium (CGE) model to quantify the macroeconomic effects of corruption in Russia. Corruption is found to cost the Russian economy billions of dollars a year. A conclusion of the paper is that implementing and enforcing the UNCAC would be of significant economic benefit to Russia and its people.*

**Keywords:** *Russia, corruption, computable general equilibrium, CGE, UN Convention against Corruption, UNCAC, Global Trade Analysis Project, GTAP*

## **Executive Summary**

- The Russian Federation signed the convention on December 9, 2003, and ratified it on May 6, 2006. In total, 140 countries have signed the convention, and 116 have ratified it. Russia had a number of reservations, but none seemed very significant.
- According to the Preamble to the Convention, the purposes of the convention are: (a) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; (b) to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; (c) to promote integrity, accountability and proper management of public affairs and public property.
- According to the UN, the major highlights of the convention include an emphasis on (a) prevention, (b) criminalization, (c) international cooperation, and (d) asset recovery. Article 5

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of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption.

- Several provisions explicitly address bribery in the public and private sector, unjust enrichment and payments, and embezzlement of property. These provisions in particular focus on how corruption can serve as a major tax on business. These include Articles 15, 16, 20, and 21.
- Russia has ratified the UNCAC, but enforcement is a different matter. In September 2006, Russian President Vladimir Putin declared that an inability to make much progress in the battle against corruption was one of his administration's greatest failures. Several organizations seem to agree that corruption in Russia decreased in the early years of Putin's administration, but has increased again in the last two years, including Transparency International, the World Bank, Freedom House, the IMF, INDEP, Gallup, and others.
- The experiment in this CGE model is a 5 percent "corruption tax," applied to all sectors in the Russian economy. The "corruption tax" is added to each sector, resulting in the second column of numbers. The goal of the GGE model will be to track the ripple effects of these tax increases through the entire Russian economy.
- According to the model, the taxing effect of corruption results in a \$1.98 billion decrease in Russian GDP. In other words, assuming a modest 5 percent burden on Russian business, corruption in Russia is costing the economy nearly \$2 billion each year.
- Results suggest that corruption causes a \$2.4 billion decrease in consumer welfare. This measure is made up of three parts. First is the allocative efficiency loss of \$2.98 billion, a loss equivalent to the decrease in GDP. The second element to welfare loss is the \$3.6 billion loss in Russian terms of trade. A terms of trade loss represents a drop in global competitiveness caused by corruption. These welfare losses are only partially offset by a \$3.2 billion gain in savings and investment efficiency.
- Corruption causes both a decrease in total output as well as a significant shift of resources from some sectors to others. Output increases in several sectors, including oil and gas (3.5 percent), metals and minerals (9.3 percent), food crops (4.0 percent), and forest and fisheries (4.3 percent). But this is at the expense of other sectors in which production decreases, including electricity production (-0.1 percent), manufacturing (-0.3 percent), and the service industry (-2.7 percent).
- Possibly the most worrying output result is the 39.8 percent drop in the output of capital goods as the rate of return on capital in Russia decreases by 25.5 percent. Capital goods are expenditures by businesses to increase their future production capacity: factories, research and development, equipment, infrastructure. A decrease in this output represents both a current drop in output and, probably more importantly, a drop in future output potential.



- Corruption actually results in a \$22.2 billion *increase* in Russia’s trade balance. This would not be inconsistent with the large terms of trade loss Russia experiences. Given Russia’s terms of trade, it would now take more Russian exports to finance the same number of imports. This would explain an increase in net exports. While Russia’s net exports increase, the trade balances of its trading partners decrease, including those of the United States (-6.4 billion), the European Union (-\$5.8 billion), South and East Asia (-\$4.6 billion), South America (-\$1.0 billion), and the rest of the world (-\$3.6 billion).
- Due to corruption, Russian exports increase in every sector and Russian imports decrease in every sector, except in the electricity sector in which the opposite holds true.
- The main conclusion of this quantitative analysis is that Russians themselves would significantly benefit from closer compliance with its commitments to the UN under the Convention Against Corruption. While all of the provisions likely have benefits, this CGE Model would emphasize the economic benefits of enforcing the general Article 5 Provisions on Prevention and provisions of Articles 15, 17, 20, and 21 against bribery in the public and private sector, unjust enrichment and payments, and embezzlement of property.

### A. Russia and the UN Convention Against Corruption

In its resolution 55/61 of December 4, 2000, the U.N. General Assembly decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the United Nations Office on Drugs and Crime. The text of the U.N. Convention against Corruption was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of the Convention against Corruption, held between January 2002 and October 2003. This agreement was adopted by the General Assembly by resolution 58/4 in October 2003. The Convention needed 30 ratifications to come into force. In accordance with article 68 (1) of the resolution, the United Nations Convention Against Corruption entered into force on December 14, 2005.

The Russian Federation signed the convention on December 9, 2003, and ratified it on May 6, 2006.<sup>1</sup> In total, 140 countries have signed the convention, and 116 have ratified it. Russia had a number of reservations, but none seemed very significant:

**Table 1: Russian Federation Reservations to the UN Convention Against Corruption**

Reservation	Content
1	The Russian Federation declares, in accordance with article 44, paragraph 6, subparagraph (a) of the Convention, that it will take the Convention as the legal basis for cooperation on extradition with other States Parties to the Convention, on a foundation of reciprocity.
2	The Russian Federation declares, on the basis of the last sentence of article 46, paragraph 13, of the Convention, that it will, on a foundation of reciprocity and in urgent

<sup>1</sup> United Nations Office on Drugs and Crime, “UN Convention Against Corruption,” U.N. Office on Drugs and Crime, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (accessed April 12, 2008).

	circumstances, accept requests for mutual legal assistance and communications through the International Criminal Police Organization, provided that the documents containing such requests and communications are dispatched without delay in the prescribed manner.
3	The Russian Federation declares, in accordance with article 46, paragraph 14, of the Convention, that requests for mutual legal assistance and communications related thereto addressed to the Russian Federation must be accompanied by translations into Russian, unless otherwise established by an international agreement of the Russian Federation or unless otherwise arranged between the central authority of the Russian Federation and the central authority of the other State Party to the Convention.

*Source: United Nations*

Given these insignificant reservations, it would appear the Russian Federation was has signed on whole-heartedly to the convention (see Table 1). Given the transition history of the former Soviet Union, Russia committed itself to major improvements in its regulation of corruption. According to the Preamble to the Convention, the purposes of the convention are: (a) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; (b) to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; (c) to promote integrity, accountability and proper management of public affairs and public property.<sup>2</sup>

According to the UN, the major highlights of the convention include an emphasis on (a) prevention, (b) criminalization, (c) international cooperation, and (d) asset recovery. Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption. Significant provisions of Article 5 are presented in Table 2.

**Table 2: UN Convention Against Corruption: Article 5 Provisions Promoting Prevention**

Provision	Content
1	Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anticorruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
2	Each State Party shall endeavor to establish and promote effective practices aimed at the prevention of corruption.
3	Each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
4	States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional

<sup>2</sup> United Nations, “Chapter I, Article 1 of the UN Convention Against Corruption,” United Nations Office of Drugs and Crime, [http://www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf) (accessed April 16, 2008).

	organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programs and projects aimed at the prevention of corruption.
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*Source: Article 5 of UN Convention Against Corruption*

Russia has also committed itself to criminalizing corruption. The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. According to the UN Office of Drugs and Crime, the Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds but also trading in influence and the concealment and laundering of the proceeds of corruption.<sup>3</sup> Several provisions are aimed at criminalizing bribery or unjust enrichment of individuals. Table 3 presents selected provisions.

The UN Convention also commits Russia to cooperate with other signatories in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are “bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.”<sup>4</sup> Finally, Russia’s ratification of the convention commits it to significant provisions on asset-recovery. Article 51 provides for the return of assets to countries of origin as a fundamental principle of this Convention.<sup>5</sup> Article 43 obliges state parties to extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention.<sup>6</sup>

*Table 3: Selected Criminalization Provisions of the UN Convention Against Corruption*

Article	Provision
<b>Article 15</b>	<p><b>Bribery of national public officials</b></p> <p>Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:</p> <p>(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;</p> <p>(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the</p>

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> United Nations, “Chapter V, Article 51 of the UN Convention Against Corruption,” United Nations Office on Drugs and Crime, [http://www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf) (Accessed April 16, 2008).

<sup>6</sup> Id., Chapter IV, Article 43.

	official act or refrain from acting in the exercise of his or her official duties.
<b>Article 17</b>	<p><b>Embezzlement, misappropriation or other diversion of property by a public official</b></p> <p>Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.</p>
<b>Article 20</b>	<p><b>Illicit enrichment</b></p> <p>Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.</p>
<b>Article 21</b>	<p><b>Bribery in the private sector</b></p> <p>Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:</p> <p>(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;</p> <p>(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.</p>

*Source: UN Convention Against Corruption*

## **B. Russia’s Record on Corruption**

Russia has ratified the UNCAC, but enforcement is a different matter. As suggested by Robert Orttung, in September 2006, Russian President Vladimir Putin declared that an inability to make much progress in the battle against corruption was one of his administration’s greatest failures. In fact, rising corruption has been a direct consequence of Putin’s policies to strengthen the state and to crack down on many elements of Russia’s civil society.<sup>7</sup> Several organizations seem to agree that corruption in Russia decreased in the early years of Putin’s administration, but has increased again in the last couple years. These organizations include Transparency International, the World Bank, and Freedom House. While the overall number of bribes may be shrinking, the size of the bribes is growing.<sup>8</sup>

<sup>7</sup> Robert Orttung, “Causes and Consequences of Corruption in Putin’s Russia,” *PONARS Policy Memo No. 430*, Center for Strategic and International Studies, (Washington D.C.), December 2006.

<sup>8</sup> *Id.*

One study of corruption in the Russian Federation questioned 1,502 people on their views of corruption. Forty-three percent of respondents said that corruption did not affect their families' lives, and 29% said that it "affected it to a small degree." But 36% of the respondents held that there was a "medium" degree of influence of corruption in the business environment, and 32% described it as "strong." More than half the respondents (54%) said that corruption influences Russian political life "very strongly."<sup>9</sup>

A Gallup Poll from Russia suggests the problem is even more widespread. In answering the question "Is corruption widespread throughout the government in your country?", 80% of respondents gave an affirmative reply. Similarly, 79% replied affirmatively to the question "Is corruption widespread within businesses located in your country?"<sup>10</sup> Only seven percent of Russians say they are satisfied with efforts to control crime and corruption in the country. In comparison, more than three times as high a percentage (23%) claim satisfaction in Italy, Turkey, and Mexico.<sup>11</sup> The percentages in the United States (47%), Canada (47%), and France (50%) who say they are satisfied with control of crime and corruption are about seven times as high as that in Russia.<sup>12</sup>

Georgiy Satarov, the president of the INDEM Fund and a leading expert on corruption in Russia, argues that the country is seeing the most voluminous blossoming of bribery in its entire history. The total sum of bribes annually meted out by Russians has reached \$30 billion, Satarov claims, with the market of "everyday corruption" in which ordinary consumers pay bribes—for example, in the public health services, in the education system, on the roads, in institutions of higher learning, in Housing Management Agencies, and in child care centers—comprising about \$3 billion of that.<sup>13</sup>

Transparency International placed Russia at 121 out of 163 countries in its Corruption Perceptions Index for 2006. Moscow has been placed 28th out of 30 in the 2005 rating of which cities are desirable places in which to do business.<sup>14</sup> But in 2005, A.T. Kearney placed Russia in sixth place in its rating of attractiveness for investors. Russia's country risk ranking, according to Euromoney in March 2005, moved up to 61 out of 185 countries surveyed, while Institutional Investor for the same month placed Russia at 58 out of 173 countries.<sup>15</sup> In its 2006 corporate governance ratings, the World Bank placed Russia at 151 out of 208 countries, behind Zambia, Uganda, and Swaziland,<sup>16</sup> while its Doing Business survey put Russia at 96 out of 175 countries.<sup>17</sup> In the Transparency International's Bribe Payers Index for 2006, Russia was placed 28th out of 30

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<sup>9</sup> Elena Panfilova, "Corruption Levels in the Russian Federation: Research Data for 2006," (working paper for Center for Anti-Corruption Research and Initiatives, Transparency International-Russia, November 2006).

<sup>10</sup> Sergei Gradirovski and Neli Esipova, "Corruption in Russia: Greasing the Wheels to Get By," Gallup News Service, <http://www.gallup.com/poll/25435/Corruption-Russia-Greasing-Wheels-Get.aspx> (accessed November 14, 2006).

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> See Information Science for Democracy (INDEM), Diagnostics of Corruption in Russia 2001-05. Available at: <http://www.indem.ru/en/index.shtml>.

<sup>14</sup> *Novye izvestia*, "Business Today," October 10, 2005.

<sup>15</sup> *BOFIT Weekly*. "Russia," April 15, 2005.

<sup>16</sup> *Moscow Times*, "Corruption Issues," September 18, 2006.

<sup>17</sup> *BOFIT Weekly*, "Russia," September 15, 2006.

countries.<sup>18</sup> And in the 2007 International Property Rights ranking, Russia came in at 63rd out of 70 countries.<sup>19</sup>

In conclusion, while Russia has signed and ratified the UN Convention Against Corruption, survey and other data suggest that Russia has yet to enforce the provisions of that convention. The question for this paper is this: how much does a failure to enforce the UNCAC cost Russia? Answering this question will require some assumptions and the use of a large mathematical model.

### C. A CGE Model for Corruption in Russia

This section will develop a computable general equilibrium model to quantify the macroeconomic effects of corruption in Russia and on its trading partners. The section is broken into several parts, including, (a) a background of CGE models; (b) the Global Trade Analysis Project (GTAP); (c) the structure of this paper's model, (d) model results; (e) model limitations and future research.

#### a. Background of General Equilibrium Models

As explained by the Purdue University Global Trade Analysis Project (GTAP) website, general equilibrium, a concept which dates back to Leon Walras (1834-1910), is a pillar of modern economic thought.

*“General equilibrium recognizes that there are many markets in an economy, and that these markets all interact in complex ways with each other. In rough terms, everything depends on everything else. Demand for any one good depends on the prices of all other goods and on income. Income, in turn, depends on wages, profits, and rents, which depend on technology, factor supplies and production, the last of which, in its turn, depends on sales (i.e. demand). Prices depend on wages and profits, and vice versa.”<sup>20</sup>*

CGE modeling techniques attempt to summarize all economic markets (supply curves and demand curves) in a large, integrated system of simultaneous equations. All micro markets are aggregated into a macro system, which allows for discussion of economy-wide variables, such as national price level, national output, total factor productivity, sectoral output, and sectoral trade.

As in Adam Smith's discussion of the “invisible hand,” every sectoral market must clear: supply will equal demand. In the aggregate, “general equilibrium” occurs when supply equals demand in all individual markets (for goods, services, labor, exchange, resources, capital, and all).<sup>21</sup>

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<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> T. Hertel, R. Keeney, M. Ivanic and Alan Winters, “Distributional effects of WTO agricultural reforms in rich and poor countries,” *Economic Policy*, (April 2007): 289-337.

<sup>21</sup> Id.

A CGE model is a closed system. This means that no production or financial flow escapes the system and none are created outside of the system. As in basic GTAP modeling, the model means that,

*“We assume output will equal income. Households, businesses, the government, the financial sector, and the foreign sector are all connected by real flows and financial flows. Intuitively, the idea of a “general” equilibrium is captured; any given market is connected to all of the other markets for the system.”<sup>22</sup>*

**b. Structure of this Paper’s Model**

The model employed in this paper is that of the GTAP project. While the core database has 57 sectors and 66 regions, I have aggregated the matrices to simplify the world into just eight sectors, eight regions, and five factors of production. This aggregation is described in Table 4.

The data is first, “calibrated,” meaning the model is solved for its original equilibrium prices and volumes in all markets. This baseline is meant to represent the economy as is, before any shock takes place. Thousands of equations are created, each representing supply and demand conditions in markets inside each region, including markets for goods, services, factors of production, savings, government expenditure, and more. Equations are also generated for trade of all goods between each of the regions, separately created for each industry. The calibrated result is a large set of simultaneous equations, of which the solution matches the existing prices and quantity levels of the economy.

**Table 4: Aggregation used in the Model**

Regions	Sectors	Factors
Russia	Oil and Gas	Land
Rest of Former USSR	Electricity	Unskilled Labor
United States	Metals and Minerals	Skilled Labor
European Union	Food Crops	Capital
China	Meat and Animals	Natural Resources
SE Asia	Forest and Fisheries	
South America	Manufacturing	
Rest of the World	Services	

*Source: Generated by Author*

A “shock” is then introduced to system. Mathematically, a “shock” is the alteration of a single parameter or variable in the giant system. That change acts like a stone thrown in a pond, with waves created throughout every one of the thousands of equations in the system. The model is re-solved with the one autonomous change, and the effects on the system are then measured.

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<sup>22</sup> T. Hertel, R. Keeney, M. Ivanic and Alan Winters, “Distributional effects of WTO agricultural reforms in rich and poor countries,” *Economic Policy*, (April 2007): 289-337.



The “shock” in this model is the introduction of a tax on business, an income tax. In this sense, corruption is modeled as a cost of doing business (or participating in the economy). The revenues of this tax are not accrued to the government, but to other individuals in the economy. From a businessperson’s perspective, paying for corruption is just another cost of doing business, like a tax.

Theoretically, any tax on markets is thought to distort economic decisions and interfere with efficiency. From the producers’ side, a tax changes relative incomes. Producers change the amount of production, the type of production, and the method of production (inputs). On the consumers’ side, the tax changes the relative prices of goods. Income and substitution effects push the consumer to change the amount of his or her consumption and the choice of which goods to consume. Together these changes in production and consumption are thought to result in an efficiency loss. More inputs are used to produce the same outputs, and the economy consumes a different mix of goods.<sup>23</sup>

### c. Model Results

The experiment in this model is a 5 percent “corruption tax,” applied to all sectors in the Russian economy. The pre-shock tax rates of each sector are presented in the first column of Table 5. The “corruption tax” is added to each sector, resulting in the second column of numbers. The goal of the GGE model will be to trade the ripple effects of these tax increases through the entire Russian economy.

**Table 5: Russian Output tax by Sector  
(Percent)**

	Initial	With Shock
RTO	rTO	rTO
1 Land	6.8	11.8
2 UnSkLab	21.5	26.5
3 SkLab	21.5	26.5
4 Capital	6.8	11.8
5 Nat. Resources	6.8	11.8
6 Oil & Gas	18.7	23.7
7 Electricity	2.8	7.8
8 Metals & Min.	3.3	8.3
9 Food Crops	1.5	6.5
10 Meat Animals	-0.5	4.5
11 Forest & Fish	2.9	7.9
12 Mnfcs	2.5	7.5
13 Services	2.6	7.6
14 CGDS	0	5

*Source: Generated by Author*

<sup>23</sup> For more on economic efficiency and taxation, see Campbell R. McConnell and Stanley L. Brue, *Economics: Principles, Problems, and Policies* (McGraw Hill Publishing, 2006).

Gross Domestic Product (GDP) is a measure of the final value of all production of goods and services within the borders of the Russian Federation. As shown in Table 6, according to the model, the taxing effect of corruption results in a \$1.98 billion decrease in Russian GDP. In other words, assuming a modest 5 percent burden on Russian business, corruption in Russia is costing the economy nearly \$2 billion each year.

**Table 6: Change in Russian GDP  
 (Millions of Dollars)**

<b>Qgdp</b>	<b>(Sim)</b>	<b>Pre</b>	<b>Post</b>	<b>Change</b>
Russia	-0.64	309,948	307,963	-1,984.9
Rest of USSR	-0.03	104,328	104,296	-32.6
USA	0	10,082,155	10,082,199	44.0
EU	0.01	7,929,525	7,930,110	585.0
China	0	1,321,825	1,321,828	3.5
SEAsia	0	5,531,997	5,532,130	133.5
SAmerica	0.01	1,345,630	1,345,704	74.0
ROW	0.01	4,653,195	4,653,461	266.0

*Source: Generated by Author*

While GDP measures the amount of production in the Russian economy, a slightly different question is what effect corruption has on consumer welfare—the utility consumers in Russia enjoy from consuming goods. As shown in Table 7, according to the model, corruption causes a \$2.4 billion decrease in consumer welfare. This measure is made up of three parts. First is the allocative efficiency loss of \$2.98 billion. This loss is equivalent to the decrease in GDP and represents a loss in efficiency—that the same inputs produce less output in the presence of corruption. The second element to welfare loss is the \$3.6 billion loss in Russian terms of trade. A terms of trade loss represents a drop in global competitiveness caused by corruption. A country exports goods in order to earn foreign exchange needed to purchase imports. With corruption, Russia will receive fewer imports in exchange for its exports.

These welfare losses are partially offset by a gain in savings and investment efficiency. While corruption and rent-seeking is a distorting cost of doing business, there are individuals who are the recipients of the bribes and payoffs. These individuals have a source of extra funds now—available for savings, investment, or more consumption. This welfare gain, however, is not enough to make up for the loss in allocative efficiency and terms of trade. The total effect of corruption, according the model, remains a negative \$2.4 billion.

**Table 7: Welfare Effects**  
 (Millions of Dollars)

WELFARE	Allocative Efficiency	Endowments	Technology	Population	Terms of Trade	Savings and Investment	Total
1 Russia	-1,984.9	0.0	0.0	0.0	-3,570.6	3,165.5	-2,389.9
2 Rest of USSR	-32.6	0.0	0.0	0.0	68.6	-8.2	27.8
3 USA	44.4	0.0	0.0	0.0	1,524.5	-100.3	1,468.6
4 EU	584.8	0.0	0.0	0.0	1,793.6	-759.3	1,619.0
5 China	3.5	0.0	0.0	0.0	345.6	-529.5	-180.5
6 SE Asia	133.6	0.0	0.0	0.0	1,642.0	-1,116.7	658.9
7 S America	74.0	0.0	0.0	0.0	-70.2	-91.5	-87.7
8 ROW	266.0	0.0	0.0	0.0	-1,733.4	-559.9	-2,027.3
<b>Total</b>	<b>-911.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>-911.1</b>

*Source: Generated by Author*

These losses can be traced to individual sectors of the Russian economy. As shown in Table 8, the corruption tax causes both a decrease in total output, as well as a significant shift of resources from some sectors to others. Output increases in several sectors, including oil and gas (3.5 percent), metals and minerals (9.3 percent), food crops (4.0 percent), and forest and fisheries (4.3 percent). But this is at the expense of other sectors in which production decreases, including electricity production (-0.1 percent), manufacturing (-0.3 percent), and the service industry (-2.7 percent).

Possibly the most worrying output result, however, is the 39.8 percent drop in the output of capital goods. While the GTAP model is not well equipped to analyze dynamic changes in investment and future incomes, this decrease in capital good production is significant. Capital goods are expenditures by businesses to increase their future production capacity: factories, research and development, equipment, infrastructure. A decrease in this output represents both a current drop in output and, probably more importantly, a drop in future output potential. Even without corruption, the Russian Federation would be suffering from extremely low levels of business investment. That corruption would so strongly impact what little investment already takes place is striking. Corruption is hurting the present and the future of Russia.

**Table 8: Change in Output, by sector (Percent)**

Qo	Russia	Rest of USSR	USA	EU	China	SE Asia	S America	ROW
Oil & Gas	3.5	-0.72	-0.57	-0.66	-0.52	-0.63	-0.6	-0.63
Electricity	-0.14	0.14	-0.02	0	-0.02	-0.03	-0.02	0.03
Metals & Min.	9.31	0.01	-0.16	-0.17	-0.09	-0.25	-0.16	-0.15
Food & Crops	4.09	-0.21	-0.04	-0.05	-0.01	-0.05	-0.08	-0.05
Meat Animals	1.83	-0.1	-0.05	-0.1	0.01	-0.02	-0.06	-0.03
Forest & Fish	4.31	-0.04	-0.08	-0.09	-0.08	-0.11	-0.03	-0.02
Mnfc	-0.26	-0.04	-0.04	0	0.01	-0.08	0.16	0.29
Services	-2.73	0.13	0.02	0.02	0.03	0.04	0.02	-0.01

CGDS	-39.8	0.74	0.31	0.38	0.2	0.38	0.38	0.36
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*Source: Generated by Author*

The significant drop in production of capital goods is caused by a significant decrease in returns on business investment. As shown in Table 9, the rate of return on capital in Russia decreases by 25.5 percent.<sup>24</sup> Businesses and individuals in Russia see a much weaker incentive to take risks on innovation, invention, entrepreneurship, and investment. Apparently, a corruption tax disproportionately falls on capital good output. Again, this is a serious drag on economic growth for the Russian Federation.

**Table 9: Rate of Return on Capital  
(Percent Change)**

Rorc	(Sim)
Russia	-25.47
Rest of USSR	0.35
USA	0.06
EU	0.06
China	0.06
SEAsia	0.07
SAmerica	0.07
ROW	0.07

*Source: Generated by Author*

These results are consistent with economic literature. According to the International Monetary Fund (IMF), corruption may reduce investment by adding to its cost and by acting as a tax on its returns, and by adding to uncertainty. According to John Roaf of the IMF, high levels of corruption are likely to have been an especially important factor behind Russia’s extremely low level of foreign direct investment for several reasons: (i) the relatively large size of foreign investments, and the special regulations applying to them, are particularly conducive to rent-seeking; (ii) local companies may use corruption to shut foreign competitors out; and (iii) foreigners lack specific knowledge of how to operate in a particular corrupt environment.<sup>25</sup>

From a Russian consumer’s perspective, corruption leads results in decreased consumption. As shown in Table 10, according to the CGE model, a 5 percent “corruption tax” results in a 7.2 percent decrease in Russian private consumption. Corruption leads to lower personal income, and thus less consumption. It also changes relative prices, producing substitution effects as consumers try to change their consumption away from more expensive goods and towards cheaper ones.

<sup>24</sup> This does not represent a 25.5 percentage-point drop in the interest rate or yield on investment. Rather, it represents a 25.5 percent decrease in the yield itself. For example, if the rate of return had been 10 percent, a 25 percent drop would leave the rate of return at 7.5 percent. Either way, the decrease is still very large.

<sup>25</sup> James Roaf, “Corruption in Russia,” International Monetary Fund, European II Department, Conference on Post-Election Strategy, Moscow, April 5-7, 2000.

**Table 10: Private Consumption  
 (Percent Change)**

Yp	(Sim)
Russia	-7.15
Rest of USSR	-0.35
USA	0.19
EU	0.14
China	0.13
SEAsia	0.21
SAmerica	0.13
ROW	0.06

*Source: Generated by Author*

In addition to internal economic impacts, corruption appears to significantly affect Russia's trade with other countries of the world. As shown in Table 11, according to the CGE model, this five percent "corruption tax" actually results in a \$22.2 billion *increase* in Russia's trade balance. This would not be inconsistent with the large terms of trade loss Russia experiences. Given Russia's terms of trade, it would now take more Russian exports to finance the same number of imports. This would explain an increase in net exports. While Russia's net exports increase, the trade balances of its trading partners decrease, including those of the United States (-6.4 billion), the European Union (-\$5.8 billion), South and East Asia (-\$4.6 billion), South America (-\$1.0 billion), and the rest of the world (-\$3.6 billion).

**Table 11: Change in Trade Balances  
 (Millions of Dollars)**

DTBAL	(Sim)
Russia	22,224.9
Rest of USSR	-168.0
USA	-6,388.6
EU	-5,830.2
China	-726.4
SEAsia	-4,572.2
SAmerica	-968.5
ROW	-3,571.0

*Source: Generated by Author*

The change in trade balances can be broken down by sector, as presented in Table 12. For Russia, it sees an improved trade balance in every single sector except electricity. Russian services experience the greatest trade balance improvement (\$7.1 billion), mostly at the expense of services in the EU (-\$2.6 billion), the United States (-\$1.7 billion), and South and East Asia (-\$1.2 billion). Similarly, Russia's trade balance in manufactured goods improves by \$6.9 billion, mostly at the expense of the U.S. manufacturing trade balance (-\$4.0 billion) and that of the EU (-\$1.8 billion). Other major shifts occur in the trade balances of oil and gas, and that in metals and minerals.

**Table 12: Change in Trade Balances by Sector (Millions of Dollars)**

DTBALi	Russia	Rest of USSR	USA	EU	China	SEAsia	SAmerica	ROW
Oil & Gas	2513.74	-27.28	560.3	733.17	-23.77	489.11	-430.79	-3843.45
Electricity	-61.03	45.61	-9.54	3.21	-0.3	-0.41	-3.61	26.07
Metals & Min	3839.22	23.32	-753.25	1100.17	-253.82	-790.49	-177.43	-810.39
Food & Crops	1685.77	-167.49	-315.66	-376.29	-56.63	-316.55	-156.49	-231.74
Meat & animals	96.7	-11.93	-8.32	-36.72	-12.36	-9.87	-1.35	-17.1
Forest & Fish	180.51	-0.4	-13.62	-40.24	-24.77	-33.7	-2.2	-60.45
Mnfcs	6864.89	-136.57	-4048.72	2459.41	-114.6	-2669.8	79.98	2380.14
Services	7105.06	106.72	-1799.79	-2553.7	-240.16	-1240.46	-276.65	-1014.06

*Source: Generated by Author*

Exports and imports are examined individually in Table 13 and Table 14. In general, Russian exports increase in every sector and Russian imports decrease in every sector, except in the electricity sector. Sectors with the highest percent increase of exports in Russia include services (25.8 percent), meat and animals (23.6 percent), food crops (17.8 percent), and metals and minerals (15.0 percent). Sectors with the largest percent decrease in Russian imports include services (-23.1 percent), meat and animals (-22.1 percent), manufacturers (-10.8 percent), and forest and fisheries (-7.4 percent).

**Table 13: Value of Exports by Sector (Percent Change)**

Vxwfob	Russia	RestofUSSR	USA	EU	China	SEAsia	SAmerica	ROW
Oil & Gas	6.63	-2.04	-4.91	-2.12	-4.31	-2.48	-2.64	-1.93
Electricity	-7.24	2.43	-0.44	0.11	0.08	-0.01	-0.01	0.28
Metals & Min.	14.95	0.75	-0.74	-0.36	-0.32	-0.62	-0.37	-0.27
Food & Crops	17.75	-2.83	-0.3	-0.09	-0.1	-0.16	-0.24	-0.1
Meat & Animals	23.63	-3.47	-0.11	-0.37	-0.31	-0.13	-0.1	-0.12
Forest & Fish	10.51	0	-0.75	-0.61	-0.79	-0.85	-0.3	-0.81
Mnfcs	9.53	-1.39	-0.2	0	0.09	-0.13	0.36	0.47
Svces	25.81	0.53	-0.51	-0.26	-0.12	-0.32	-0.39	-0.25

*Source: Generated by Author*

**Table 14: Value of Imports by Sector (Percent Change)**

Viwcif	Russia	RestofUSSR	USA	EU	China	SEAsia	SAmerica	ROW
OilGas	-6.3	-1.18	-0.8	-1.14	-0.1	-1.15	-1.03	0.21
Electricity	4.65	-1.23	0.39	0.06	0.14	0.25	0.15	0.01
MetalsMin	-5.38	1.37	0.43	0.14	0.42	0.32	0.25	0.29
FoodCrops	-9.6	0.74	0.3	0.12	0.23	0.31	0.14	0.12
MeatAnimals	-22.12	2.87	0.32	0.23	0.22	0.25	0.17	0.3
ForestFish	-7.41	1.59	0.14	0.17	0.85	0.25	0.17	0.38
Mnfcs	-10.8	-0.34	0.32	0.17	0.15	0.22	0.15	0.12
Svces	-23.13	-0.66	0.34	0.19	0.18	0.34	0.26	0.16

*Source: Generated by Author*

#### **d. Model Limitations and Future Research**

This experiment raises several methodological questions. First, the magnitude and character of corruption costs to businesses are worth exploring. While this model imposes an empirically-supported “corruption tax” on businesses (as provided from survey data), the five percent tax on business is assumed to be the same across sectors. It would be reasonable to assume corruption is stronger in some sectors and weaker in others, so a better experiment would be one which allowed for these sectoral differences.

Second, this model is a static model. It does not capture the changes in capital infrastructure and production capacity over time. While the current effect on capital goods output is apparent, the long-term effect of that drop in production capacity is not modeled here. It would surely increase the final cost of corruption to society, as measured by a model.

Finally, while this experiment quantifies economic impacts of corruption, the causal relationship between anti-corruption laws and lower corruption remains an assumption of the model. A conclusion of the paper is that Russia should increase its laws and regulations in the battle against corruption, but exactly how much that campaign would change the numbers in this study is not clear.

### **D. Conclusion and Policy Implications**

The main conclusion of this quantitative analysis is that Russians themselves would significantly benefit from closer compliance with its commitments to the UN under the Convention Against Corruption. While all of the provisions likely have benefits, this CGE Model would emphasize the economic benefits of enforcing the general Article 5 Provisions on Prevention and provisions of Articles 15, 17, 20, and 21 against bribery in the public and private sector, unjust enrichment and payments, and embezzlement of property. These provisions in particular focus on how corruption can serve as a major tax on business. As with any tax, this “corruption tax” distorts markets and



causes change in producer and consumer behavior. The net result is a welfare loss to the Russia economy.

According to Ortung of the CSIS, four components would define an effective anti-corruption policy in Russia.<sup>26</sup> The first would be to reduce and reform the current bureaucracy.<sup>27</sup> The second would be to allow society to hold its government accountable through mechanisms such as a free press, an active and independent civil society, and competitive elections.<sup>28</sup> A third feature of an anti-corruption policy would be the decentralization of power from the federal level to regional and local levels, providing for a system of checks and balances between the three levels of government.<sup>29</sup> Finally, Russia should try to address inequality between Moscow and St. Petersburg and the rest of the country.<sup>30</sup>

Along the same lines, economists from the IMF suggest measures which would reduce opportunities for corruption by eliminating discretionary elements of government policy. In particular, a more transparent and well-administered tax-collection system would reduce bribery and official corruption.<sup>31</sup> Equally important is government regulation and licensing of economic activity. According to the IMF, the average new business applicant must deal with 20-30 registration and licensing agencies. Simply cataloguing all the regulations applying to business would be useful in helping expose which regulations are economically justifiable and which exist mainly to extort rents.<sup>32</sup>

The list of suggestions goes on and on, and the problems of corruption seem well appreciated. The contribution of this paper has been to quantify the impact of these problems. And in a general way, it emphasized the importance of adhering to a philosophy that corruption is detrimental to an economy. Whether it is the UN Convention Against Corruption, an agreement with the OECD, an internal campaign to reduce corruption, or a change in the behavior of Russian citizens themselves, the message is clear: Corruption comes at a cost. Russia should comply with the UNCAC.

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<sup>26</sup> Robert Ortung, "Causes and Consequences of Corruption in Putin's Russia," *PONARS Policy Memo No. 430*, Center for Strategic and International Studies, December 2006.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> James Roaf, "Corruption in Russia," International Monetary Fund, European II Department, Conference on Post-Election Strategy, Moscow, April 5-7, 2000.

<sup>32</sup> *Id.*

# EXPERIMENTS IN SOFT BALANCING: CHINA- LED MULTILATERALISM IN AFRICA AND THE ARAB WORLD

Nicola P. Contessi\*

## Abstract

*Multilateralism is a key feature associated with China's rise both at the global and regional level, particularly in South East and Central Asia. Consistently, China has opted for multilateralism to manage cooperation with African and Arab countries, establishing the Forum on China-Africa Cooperation, and the Sino-Arab Cooperation Forum. Multilateralism has also been described as China's chosen balancing tool in the post-2001 world. If the role of multilateralism can be inferred from an examination of the principled meanings it embodies, my paper investigates how the said structures might allow such form of balancing. It argues that it can provide a social infrastructure to embed alternative principles and values to those associated with the prevailing configuration of the international system, criticised for its 'double standards' as far as sovereignty, trade liberalisation and third party intervention are concerned. By the same token, multilateralism can also reproduce such principles through the performance of its functions, thereby translating them into norms. I investigate this process by reference to the role of institutions in allowing the adjustment of actors' preferences through socialisation and learning, and the achievement of interdependent goals. I further suggest that the promotion of alternative norms represents an area of interstate cooperation in its own right, where the development of norms in such non-trivial areas as the constitutive principles of the international system (sovereignty and equality), the rules of the international trading system (mutual benefit and win-win), and human rights (primacy of the right of development) should be seen as a collective good.*

**Keywords:** *China, Africa, Arab world, soft balancing, multilateralism*

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“The interstate system is a forum as well as a chessboard”<sup>1</sup>

## Introduction

China’s relationship with multilateral institutions<sup>2</sup> has been cautious and diffident for most of its communist history, fearing the machinations of hegemonic actors with unbridled ambitions. However, this attitude begun to shift with the election of Deng Xiaoping at the helm of the Chinese Communist Party, and has been accentuated at each leadership succession. This has been part and parcel of China’s opening up process, leading to her acceptance of peacekeeping in 1981,<sup>3</sup> and later to the entrance to the World Trade Organisation in 2001.<sup>4</sup> Goldstein has described multilateralism as a key element in the “diplomatic face of China’s grand strategy”, aimed at fostering reassurance, especially at the regional level.<sup>5</sup> Following Zheng Bijian’s original announcement to the world of China’s “Peaceful Rise” at the 2003 *Boao Forum for Asia*, which was later systematized in a *Foreign Policy* article of the Fall of 2005, this has become even more pronounced. It has been identified as the instrument to steer a strategy for “transcend[ing] the traditional ways for great powers to emerge.”<sup>6</sup> This strategic choice has indeed been regarded as a distinctively Chinese “alternate path” to global power.<sup>7</sup>

This choice has been explained as Beijing’s method for “managing relations with the superpower and work towards building the rules of a ‘new international order through multilateral security dialogue and with the cooperation of organizations.”<sup>8</sup> For this peculiar quality, the strengthening of policies favourable to multilateralism has also been described as China’s chosen balancing tool

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<sup>1</sup>James Caporaso, “International Relations Theory and Multilateralism: The Search for Foundations,” in *Multilateralism Matters*, ed. Helen Milner & John G. Ruggie (New York: Columbia University Press, 1993), 79.

<sup>2</sup>I am conscious of the definitional ambiguities between the concepts of institution, multilateral organisations, and multilateralism *per se* (For a treatment of the issue, see Lisa L. Martin, “Interests, Power, and Multilateralism,” in *International Institutions: An International Organization Reader*, ed. Lisa L. Martin & Beth A. Simmons (Cambridge, MA: The MIT Press, 2001); Lisa L. Martin “Interests, Power, and Multilateralism,” in *International Institutions: An International Organization Reader*, Lisa L. Martin & Beth A. Simmons (Cambridge, MA: The MIT Press, 2001). Here I will follow Ruggie’s position, which takes multilateralism as a qualifier for institution (John G. Ruggie, “Multilateralism: The Anatomy of an Institution,” in *Multilateralism Matters. The Theory and Praxis of an Institutional Form*, ed. John G. Ruggie (New York, NY: Columbia University Press, 1993), 109), therefore as an institutional form itself. In turn institutions can be generically defined as “persistent and connected sets of rules, formal and informal, that prescribe behavioural roles, constrain activity, and shape expectations” (Robert O. Keohane, “Multilateralism: An Agenda for Research,” *International Journal*, vol. 45:4 (1990): 731- 764).

<sup>3</sup>Y. Zhang, “China and UN peacekeeping: From condemnation to participation,” *International Peacekeeping*, vol. 3:3 (1996): 1 – 15.

<sup>4</sup>World Trade Organization. Press/243: *WTO successfully concludes negotiations on China's entry*. Geneva, 17 September 2001.

<sup>5</sup>Avery Goldstein, “The Diplomatic Face of China’s Grand Strategy: A Rising Power’s Emerging Choice,” *The China Quarterly*, vol. 168 (2001): 842-44.

<sup>6</sup>Zhang Bijian, “China’s ‘Peaceful Rise’ to Great-Power Status,” *Foreign Affairs*, September/October 2005.

<sup>7</sup>Marc Lanteigne, *China and International Institutions. Alternate Paths to Global Power* (London: Routledge, 2005); Guoguang Wu (ed.) *China Turns to Multilateralism. Foreign Policy and Regional Security* (London: Routledge, 2007).

<sup>8</sup>Christopher R. Hughes, “Nationalism and Multilateralism in Chinese Foreign Policy: Implications for South East Asia,” *The Pacific Review*, vol. 18:1 (2005): 127.

in the post-2001 world,<sup>9</sup> a solution which can be seen as consistent with the 'soft balancing' thesis. As a result, Beijing has strengthened its participation in multilateral institutions both at the global and regional levels. In the face of the post-2001 US unilateralist turn, and the waning solidity of norms of sovereignty outside of the international democratic space, authors have also pointed to the very pragmatic importance of fostering norms that are more in tune with Chinese interests.<sup>10</sup> Hence, China has gradually shifted its role from that of norm taker, moved by mere compliance, to that of norm broker, becoming a fully fledged entrepreneur. Since multilateral institutions have proved particularly effective in promoting normative change,<sup>11</sup> because of the *principled beliefs* they embed,<sup>12</sup> this explains at a very intuitive level the reasons for Beijing's paradigm shift.

This tendency has been observed most notably in South East<sup>13</sup> and Central<sup>14</sup> Asia. With some necessary distinctions, I argue that China has also opted for multilateralism to manage cooperation with African and Arab countries, creating the *Forum on China-Africa Cooperation (FOCAC)*, and the *Sino-Arab Cooperation Forum (SACF)*. As rules (or norms) are often epiphenomena of underlying interests, multilateralism has come to represent an effective way for China to increase her power projection in the two regions, while sidelining direct confrontation with the superpower.

With an eye to the soft balancing hypothesis, the following essay strives to explain the balancing function of multilateralism by looking at the two latter cases of China's multilateral entrepreneurship. If the role of multilateralism can be inferred from an examination of the principled meanings it embodies,<sup>15</sup> I argue the role of FOCAC and the SACF has to be seen as that of providing a social infrastructure giving permanence to embedded principles and values that stand in contrast to those associated with the present hegemonic configuration of the international system, particularly in regards to sovereignty, trade liberalisation and third party intervention. I investigate this process by reference to Caporaso's definition of the role of institutions.<sup>16</sup>

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<sup>9</sup> Zhiyuan Cui, "The Bush Doctrine: A Chinese Perspective," in *American Power in the 21<sup>st</sup> Century*, David Held & Mathias Koenig-Archibugi (Cambridge: Polity Press, 2004); Peter Van Ness, "China's Response to the Bush Doctrine," *World Policy Journal*, Winter 2005; Y. Jing-Dong, "Chinese Perspectives and Responses to the Bush Doctrine," in *Confronting the Bush Doctrine. Critical Views from South East Asia*, ed. Gurtov & Peter Van Ness (London: Routledge, 2005).

<sup>10</sup> Chweng-Chwee Kuik, "Multilateralism in China's ASEAN Policy: Its Evolution, Characteristics, and Aspiration," *Contemporary Southeast Asia*, vol. 27: 1 (2005): 102-122; J. Yuan, "Chinese Perspectives and Responses to the Bush Doctrine," in *Confronting the Bush Doctrine. Critical Views from South East Asia*, ed. Gurtov, & Peter Van Ness (London: Routledge, 2005).

<sup>11</sup> Amitav Acharya, "Multilateralism, Sovereignty and Normative Change in World Politics," in *Multilateralism under Challenge? Power, International Order, and Structural Change*, ed. Ramesh Thakur, E. Newman & J. Tirman (Tokyo: United Nations University Press, 2006), 105- 107.

<sup>12</sup> See John G. Ruggie, "Multilateralism: The Anatomy of an Institution," in *Multilateralism Matters. The Theory and Praxis of an Institutional Form*, ed. John G. Ruggie (New York, NY: Columbia University Press, 1993), 30.

<sup>13</sup> Christopher R. Hughes, "Nationalism and Multilateralism in Chinese Foreign Policy: Implications for South East Asia," *The Pacific Review*, vol. 18:1 (2005): 7-45; Chweng-Chwee Kuik, "Multilateralism in China's ASEAN Policy: Its Evolution, Characteristics, and Aspiration," *Contemporary Southeast Asia*, vol. 27:1 (2005): 102-122.

<sup>14</sup> Marc Lanteigne, *China and International Institutions. Alternate Paths to Global Power*; K. Sheives, "China Turns West: Beijing's Strategy towards Central Asia," *Pacific Affairs*, vol. 79:2 (2006).

<sup>15</sup> John G. Ruggie, "Multilateralism: the Anatomy of an Institution".

<sup>16</sup> John J. Caporaso, "International Relations Theory and Multilateralism: The Search for Foundations."

## Theoretical Perspectives on Multilateralism

China-led multilateralism in the two regions is hard to pinpoint from a theoretical point of view. At a heuristic level, the standard definition of multilateralism as “the practice of coordinating national policies in groups of three or more states, through *ad hoc* arrangements, or by means of institutions”<sup>17</sup> appears diminutive. On the other hand, Ruggie’s notion of *substantive* multilateralism specifying that coordination happens “on the basis of certain principles of ordering relations among those states,”<sup>18</sup> while fitting, is maximalistic. Whereas Ruggie sees *indivisibility*, *generalized principles*, and *diffuse reciprocity* as those constitutive principles, both the SACF and the FOCAC seem to depart from that kind of approach. As a baseline, the nature of relations is, if we can say so, more symmetrical than transitive,<sup>19</sup> by which I mean that the two frameworks act more as funnels channelling relations between China and the pool of regional countries in a bidirectional way, than multidirectionally among the plurality of actors involved, which may look like a classical ‘hub and spokes’ model, making Ruggie’s criteria essentially marginal. As far as generalised principles are concerned, as will appear from the cooperation patterns reviewed, these really shape behaviour between China and each individual country alone, rather than among all of them. As to the other two, they are sidestepped by the very nature of the principles that underpin relations, which foresee flexibility and differential treatment to accommodate for the particular conditions of each country, as far as indivisibility is concerned; and an understanding of mutual benefit that transcends diffuse reciprocity.

Hence in the distinction between nominal and substantive multilateralism it would seem to be neither. In this way the two institutional settings do not reflect much of the theoretical baggage from which the whole lot of collaboration problems on which IR theory has elaborated descend. Yet, they do bring together “three or more states”, and they do rely on principled meanings to guide behaviour, which is what makes it a very *sui generis* kind of multilateralism.

At an explanatory level, the pre-eminent role of China’s initiative in both contexts points in a certain hermeneutical direction, suggesting the use of multilateralism to further state goals, and a determination to design it accordingly. This view of multilateralism is also the one purported by the rationalist school.<sup>20</sup> However, while rational calculations are an important part of the package, the centrality of ideational factors to the institutionalised nature of cooperation under the two *fora* suggests that a constructivist approach has higher analytical leverage in exploring the processes of identity construction and norm promotion that these frameworks apparently serve.

The patterns of multilateral design characterising SACF and FOCAC are better explained assuming that “rationality cannot be separated from any politically significant episode of normative influence, or normative change, just as the normative context conditions any episode of

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<sup>17</sup> Robert O. Keohane, “Multilateralism: An Agenda for Research,” *International Journal*, vol. 45:4 (1990): 731.

<sup>18</sup> John G. Ruggie, “Multilateralism: the Anatomy of an Institution.”

<sup>19</sup> In set theory, the transitive property describes relations in which if an element A has a relationship with B, and B with C, then A has a relationship with C. Symmetrical relations describe relations in which all elements of a set have only biunivocal relationships to one another.

<sup>20</sup> Barbara Koremenos, Charles Lipson & Duncan Snidal, “The Rational Design of International Institutions,” *International Organization*, vol. 55:4 (2001): 761-799.

rational choice.”<sup>21</sup> As Wendt has argued, to explain the patterns of institutional design, it is fundamental to look at the underlying (cultural) structures that make choices rational.<sup>22</sup> Hence, if those specific ideational/normative factors do play such a central part in the two institutions, it is in light of the prevailing normative characteristics of the international system they set themselves against. At the same time it is so because of China’s commitment to broaden their acceptance as valuable with an eye at transforming them into legitimate international rules.

There are two paths through which norms can emerge in the social world: one is through social interaction based on specific principles, which creates the intersubjective recognition of a shared identity through which they are consolidated into custom. The other is through the active promotion of discrete rules or principles to regulate and discipline behaviour among actors. In both cases institutions play a central role in promoting the convergence towards a shared understanding of social reality, and embedding and embodying the principles on which they are based. Norms therefore are taken to be the standards of conformity that guide, direct, or bind state behaviour, also creating expectations of appropriate behaviour in other actors.

Finnemore and Sikkink’s concept of *strategic social construction* well captures the goal oriented-nature that norm-promotion can take under one actor’s leadership within structured social contexts. In this train of thought, I argue that SACF and FOCAC represent “institutional platforms”<sup>23</sup> in which China, acting as *entrepreneur*, can facilitate such intersubjective processes ultimately directed to the making of full-fledged international norms. It goes without saying that this amounts to an attempt to reshape the international rules, so to make them more consistent with her own interests and values. As Hedley Bull noted “an important means to the legitimisation of rules is to have them endorsed by international assemblies.”<sup>24</sup>

If, as Ruggie suggested, multilateralism emerges out of the projection of a “dominant normative orientation in the domestic practices” of a leading power, on which its leading co-members come to agree,<sup>25</sup> it seems that the two institutional settings are emerging out of a similar process, giving permanence to norms, and securing a wider numerical base for the legitimisation of her normative claim on the international arena.<sup>26</sup> Because of the following three roles of international institutions it may appear clearer why a multilateral approach may allow China to do so: first, it offers an environment for socialisation and learning that will lead actors to alter mutual preferences. Second, it can contribute to increase trust, by providing a framework through which

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<sup>21</sup> Martha Finnemore, & Catherine Sikkink, “International Norms and Political Change,” in *Exploration and Contestation in the Study of World Politics*, ed. Peter J. Katzenstein et al. (Cambridge, MA: The MIT Press, 1999), 249. On the overlap between the logic of consequences and the logic of appropriateness in political science see also K. Goldmann, “Appropriateness and Consequences: The Logic of Neo-Institutionalism,” *Governance*, vol. 18:1 (2005): 35–52.

<sup>22</sup> Alexander Wendt, “Driving with the Rear-view Mirror: On the Rational Science of Institutional Design,” *International Organization*, vol. 55:4 (2001): 1024.

<sup>23</sup> Martha Finnemore & Catherine Sikkink, “International Norms and Political Change,” 259.

<sup>24</sup> Hedley Bull, *The Anarchical Society. A Study of Order in World Politics* (New York, NY: Columbia University Press, 2002), 69.

<sup>25</sup> M.A. Levy et al, “The Study of International Regimes,” *European Journal of International Relations*, vol. 1:3 (1995): 276; John G. Ruggie, “Multilateralism: The Anatomy of an Institution,” 30.

<sup>26</sup> It should be noted that as a matter of fact, the Five Principles of Peaceful Coexistence are indeed inscribed in the Chinese Constitution of 1982. See footnote 5.

separate agents can achieve interdependent goals. Third it can promote norms, and their adherence.<sup>27</sup>

Following the theoretical approach outlined above, this paper will look into the actual make-up of the two frameworks in order to examine how they perform on the three above functions thanks to a structured focused comparison.<sup>28</sup> Because such functions imply the underpinning of specified principles, finding that they are observed would indeed support the view that such *fora* are more and more becoming the focal points for the emergence of international norms, acquiring the desired balancing function.

This inquiry will use the three functions of multilateralism as a ‘model’ to bring to light the ways in which their performance by the two institutional settings concurs to institutionalise the principled meanings that underwrite them, in their dual nature as *rules of the game*, by which I refer to the intersubjective criteria on which interstate interactions are premised, and as an *issue area* for cooperation, by which I mean a sector where cooperation and coordination of policy actually occurs.

Their nature as rules of the game will be investigated in light of the extent to which the two *fora* promote a learning process, whereby the actors involved come to embrace and endorse similar outlooks and value systems. This is done by providing evidence in favour of the emergence of a shared identity, and of the convergence of policy positions. The sources of data in the first two cases will be official speeches and statements appeared on the press and on institutional websites from the countries involved, as well as, newspaper articles and press reports.<sup>29</sup>

Their nature as an issue area will be investigated by reference to how the two *fora* contribute to the promotion of new norms. A better definition of this concept and the investigation will form the subject of the last part of the third section. Data sources will consist of the official documents of the *fora*, namely the Joint Declarations and Action Plans, to draw statements of policy positions and formulation of policy courses aimed at promoting new norms or altering existing ones.

The next section will briefly present the two case studies; the third section will proceed to the focused comparison of the two case studies on the three theoretical items here identified. Lastly, I draw some conclusions and relate them to the soft balancing thesis, tying the question to the broader issue of the growing primacy of soft-power in the 21<sup>st</sup> century.

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<sup>27</sup> James A. Caporaso, “International Relations Theory and Multilateralism: The Search for Foundations,” 76-77.

<sup>28</sup> On Structured Focused Comparison see A. George and A. Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA: MIT Press, 2005).

<sup>29</sup> A methodological weakness that should be acknowledged as a potential source of bias is that the majority of my sources were Chinese due to the poor availability of African and Arab fonts, at least in translation.



## The Case Studies

### *Sino-Arab Cooperation Forum*

**Institutional Features.** Launched in February 2004 with Hu Jintao's visit to the Secretariat of the League of Arab States (LAS), the Sino-Arab Cooperation Forum (SACF) has since evolved into a rather effective cooperation instrument, with a moderate degree of institutionalisation.

In little more than five years, the SACF has blossomed as an original framework for multilateral cooperation between China and the 22 Arab countries making up the LAS, which acts as the single Arab counterpart to China.

The Forum is coordinated at the Ministerial level, through a Ministerial Meeting held biannually, which provides impetus and direction, and approves an Action Plan for the two year period. Two have been held thus far: the first one in Cairo in 2004, and the second in Beijing in 2006. A third Ministerial Meeting took place in Bahrain in May 2008.

Ministerial decisions are then executed by the Meetings of Senior Officials, which serve to stir follow up to the Action Plans. To date, four such meetings have taken place on a yearly basis since 2004. The fourth meeting was held in Cairo in July 2007, and came up with the demand for improved coordination mechanisms, which can be expected to announce higher degrees of institutionalisation in the future.

The SACF has also established collateral cooperative frameworks like the China-Arab Friendship Association, or the Arab-Chinese Businessmen Forum, which was set up following the first Action Plan, and has held two editions: in Beijing in 2005 and in Amman in 2007. Moreover, there are plans to establish an oil forum.<sup>30</sup>

**Discursive Features.** This section will highlight the main elements characterising Chinese discourse regarding the SACF. Three such elements can be identified, suggesting China's important investment in the ideational/normative orientation of the Forum.

First, a great deal of emphasis is given to the values of the Five Principles of Peaceful Coexistence, which are presented as having actually always represented the common currency of Sino-Arab relations. The notion of a shared past is stressed to convey this message, as can be found in the Chinese foreign minister's proclamation that "Looking back, we can summarize the 50 years of Sino- Arab relations as mutual trust, mutual benefit and mutual assistance."<sup>31</sup>

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<sup>30</sup> "China and Arab states to hold 1<sup>st</sup> oil meeting", The Chinese Central Government's Official Web Portal, June 1, 2006, [http://www.gov.cn/misc/2006-06/01/content\\_298000.htm](http://www.gov.cn/misc/2006-06/01/content_298000.htm) (accessed August 15, 2007).

<sup>31</sup> *China Daily*, "China and Arab nations sign action plan", June 2, 2006, [http://www.chinadaily.com.cn/bizchina/2006-06/02/content\\_606862.htm](http://www.chinadaily.com.cn/bizchina/2006-06/02/content_606862.htm) (accessed August 15, 2007)

The clear content of such principles was more clearly expounded by Chinese State Councillor Tang Jiaxuan, in an address to the Second Ministerial Meeting, stressing the importance of *common development* as the basis of relations. Reviewing Sino-Arab relations, he noted that:

*“After fifty years of development, China-Arab relations have entered a period of maturity and stability and can boast a wealth of experience as follows: politically, mutual respect and equality; economically, mutual benefit and win-win cooperation; and culturally, mutual enrichment and complementarity.”*<sup>32</sup>

A second element of China’s strategic practice is the emphasis on the notion of unity and harmony of interests between the two sides. Ambassador Song Aiguo, who chaired the Fourth Meeting of Senior Officials in Cairo in July 2007, suggested that China and Arab countries “share wide consensus in many areas of international affairs, and complement one another in the fields of economic cooperation and trade.”<sup>33</sup> But this only echoed the line given by Chinese Foreign Minister Li Zhaoxing at the Second Ministerial Meeting, saying that “(...) common objectives and wide-ranging shared interests have enabled the two sides to strengthen cooperation.” And consider a previous statement by a further statement by Li according to which “No matter how the international situation changes, China has always been the sincere friend of the Arab world.”<sup>34</sup>

Third, the evocation of a common past, of shared interest and the parsing of distinctive values are instrumental to the establishment of what is being defined as a *new* type of partnership. As observed by Chinese Foreign Minister Li Zhaoxing at a joint news conference with two LAS leaders, “the meeting made it clear that ‘building a new partnership’ is the direction of future China-Arab relations.”<sup>35</sup>

The title of the address given by State Councillor Tang Jiaxuan, “*Deepening Friendship and Strengthening Cooperation to Build a New-type China-Arab Partnership*,” speaks precisely to this connotation of Sino Arab relations. Interestingly enough, the speech contains 10 repetitions of the word *new*, including the title. This word is used to denote “new problems and challenges” that both sides must confront, a “new historical point” in response to which “China will work with the Arab countries to open a new chapter for China-Arab friendship and cooperation.” This is supposed to represent a “new-type China-Arab partnership,” for a “new era [of cooperation],” in which “we can revitalize our two ancient civilizations in the new era and make new contribution to the global cultural progress.”<sup>36</sup>

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<sup>32</sup> “Deepening Friendship and Strengthening Cooperation To Build a New-type China-Arab Partnership”, Statement by Tang Jiaxuan, State Councillor of the People's Republic of China, at the Opening Ceremony of the 2nd Ministerial Meeting of China-Arab Cooperation Forum, May 31, 2006, <http://www.fmprc.gov.cn/eng/wjdt/zyjh/t256775.htm> (accessed August 15, 2007).

<sup>33</sup> *East Day*, “Senior Chinese diplomat says Sino-Arab relations heading towards new partnership,” July 6, 2007, <http://english.eastday.com/eastday/englishedition/nation/userobject1ai2954798.html> (accessed June 13, 2008).

<sup>34</sup> *Xinhua*, “Forum promotes co-op links with Arab nations,” Sep. 16, 2004, [http://news.xinhuanet.com/english/2004-09/16/content\\_1988163.htm](http://news.xinhuanet.com/english/2004-09/16/content_1988163.htm) (accessed July 15, 2008).

<sup>35</sup> Le Tian, “China, Arab nations sign action plan,” *China Daily*, June 2, 2006, [http://www.chinadaily.com.cn/bizchina/2006-06/02/content\\_606862.htm](http://www.chinadaily.com.cn/bizchina/2006-06/02/content_606862.htm) (accessed July 10, 2008).

<sup>36</sup> “Deepening Friendship and Strengthening Cooperation To Build a New-type China-Arab Partnership”, Statement by Tang Jiaxuan, State Councillor of the People's Republic of China, at the Opening Ceremony of the 2nd Ministerial

Seemingly, the novelty resides precisely in the commitment to step up the principles of mutual benefit, or win-win cooperation, and non interference as the language for relations between the two sides. These are meant to be the premises for a strong partnership, for which President Hu Jintao outlined a tentative agenda as follows:

*Maintaining mutual respect, equitable treatment and sincere cooperation on the political front. Promoting economic and trade ties through cooperation in investment, trade, contracted projects, labour service, energy, transportation, telecommunications, agriculture, environmental protection and information. Expanding cultural exchanges. Conducting personnel training.*<sup>37</sup>

### ***The Forum on China-Africa Cooperation***

**Institutional Features.** The Forum on China-Africa Cooperation (FOCAC) was launched in Beijing in 2000 under President Jiang Zemin.<sup>38</sup> The Forum brings together China and the 48 out of 50 African countries that have diplomatic relations with China, and has rapidly developed since inception, into an all round cooperation and dialogue mechanism. Leaders of China and African countries have pledged to make FOCAC a new platform for closer cooperation, with a certain degree of institutionalization, and it now has its own website and logo.

Political direction of the Forum is provided at the Ministerial level, thanks to triennial Ministerial Meetings held alternately in China and a selected African country, which, after approving a Program for China-Africa Cooperation in Economic and Social Development in 2000, are also responsible for adopting an Action Plan for the period in question. Three such meetings have been held so far in Beijing in 2000, in Addis Ababa in 2003, and once again in Beijing in 2006, while the fourth was held in Egypt in July 2009.<sup>39</sup>

At the coordination level FOCAC is supported by the Meetings of Senior Officials series, five of which have been held so far. These include a ministerial level conference held in 2001 in Lusaka, Zambia, a meeting in Addis Ababa, Ethiopia November 2002,<sup>40</sup> the fourth and the fifth were held in Beijing in August 2005 and November 2006 respectively, the latest one just ahead of the Third

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Meeting of China-Arab Cooperation Forum, May 31, 2006, <http://www.fmprc.gov.cn/eng/wjdt/zyjh/t256775.htm> (accessed July 14, 2008).

<sup>37</sup>“First Sino-Arab Cooperation Forum Ministerial Meeting Held,” Embassy of the People’s Republic of China to Canada, Sep. 15, 2004, <http://www.chinaembassycanada.org/eng/xwtd/t157646.htm> (accessed July 15, 2008)

<sup>38</sup> “Deputy President Jacob Zuma & Minister of Foreign Affairs, Dr Nkosazana Dlamini Zuma to Lead South African Delegation to the China-Africa Cooperation Forum, Addis Ababa, Ethiopia, on 14 -16 December 2003,” South African Government Information, <http://www.info.gov.za/speeches/2003/03121509461001.htm> (accessed 14. 07. 2008)

<sup>39</sup> “Third ministerial meeting of FOCAC opens in Beijing,” The Central Chinese Government’s Official Web Portal, Nov. 3, 2006, [http://www.gov.cn/misc/2006-11/03/content\\_431620.htm](http://www.gov.cn/misc/2006-11/03/content_431620.htm) (accessed July 15, 2008).

<sup>40</sup> *People’s Daily*, “China-Africa Cooperation Forum SOM opens in Addis Ababa,” November 25, 2002, [http://english.people.com.cn/200211/25/eng20021125\\_107430.shtml](http://english.people.com.cn/200211/25/eng20021125_107430.shtml) (accessed July 15, 2008).

Ministerial. The sixth Meeting was held in Cairo, Egypt on October 18-19, 2008 in preparation for the 2009 Summit.<sup>41</sup>

The FOCAC also includes a follow-up mechanism, based on an inter-ministerial committee between China and the African countries for implementing Forum Action Plans. Its establishment was stipulated in the 2000 “Programme for China-Africa Cooperation in Economic and Social Development”, and took effect in 2002<sup>42</sup> following the ministerial consultation in Lusaka.

Imitated by some African countries, Beijing also established her own FOCAC follow-up Secretariat soon after the First Ministerial in 2000,<sup>43</sup> which is headed at the level of Secretary-General, by Ms. Xu Jinghu,<sup>44</sup> and consults regularly with the African diplomatic corps in Beijing.<sup>45</sup> As for the SACF a periodic entrepreneur’s conference also exists.

**Discursive Features.** The rhetorical and discursive practices around which China is building a sense of solidarity are similar to the ones deployed in the SACF context. Likewise, they revolve around three interrelated tenets: the evocation and celebration of a time-honoured relationship as a cementing factor between the two sides, a shared outlook on international affairs presuming identity of interests, and the novelty of the approach to cooperation. A fourth peculiar element actually characterises the discourse under FOCAC: the accent on economic development and the centrality of South-South cooperation to overcome the inequalities of globalisation.

An idea of the first tenet is given by a phrase pronounced by Premier Wen Jiabao to commemorate 50 years of diplomatic relations with African countries: “China and Africa are geographically far apart. But despite the vast distance, our bond of friendship and cooperation has remained strong and vibrant. (...) And we have forged a profound friendship between us”. On the same occasion, Wen further elucidated the idea stating that:

*“China-Africa friendly relations, built on the Five Principles of Peaceful Coexistence, have stood the test of time and flourished. China and Africa remain good friends, good brothers and good partners, sharing both weal and woe and*

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<sup>41</sup> “The Sixth Senior Officials Meeting of the Forum on China-Africa Cooperation (FOCAC) Is Held in Cairo, Egypt,” Ministry of Foreign Affairs of the People’s Republic of China, Oct. 22, 2008, <http://www.fmprc.gov.cn/eng/zxxx/t518952.htm> (accessed October 25, 2009).

<sup>42</sup> “Establishment of Follow-up Mechanisms”, Forum on China-Africa Cooperation, Ministry of Foreign Affairs of the People’s Republic of China, <http://www.fmprc.gov.cn/zflt/eng/hxxd/hxjz/t157589.htm> (accessed November 2, 2008).

<sup>43</sup> Ibid.

<sup>44</sup> Report by Xu Jinghu, Secretary General of Chinese Follow-up Committee of Forum on China-Africa Cooperation (FOCAC), at the 4th Senior Officials’ Meeting of FOCAC, Forum on China-Africa Cooperation, Ministry of Foreign Affairs of the People’s Republic of China, August 22, 2005, <http://big5.fmprc.gov.cn/gate/big5/www.fmprc.gov.cn/zflt/eng/zt/focac4thsom/t207956.htm> (accessed June 25, 2008).

<sup>45</sup> Report by Li Zhaoxing, Minister of Foreign Affairs of China, to the Second Ministerial Conference of the China-Africa Cooperation Forum, Addis Ababa, China’s Official Gateway to News and Information, December 15, 2003, <http://www.china.org.cn/english/features/focac/184464.htm> (accessed June 25, 2008).

*profound friendship. I am firm in the conviction that no matter how our world may change, the friendly ties between the Chinese and Africans will last”*<sup>46</sup>

China’s 2006 Africa policy elaborated a similar concept, stating that “China-Africa friendship is embedded in the long history of interchange. Sharing similar historical experience, China and Africa have all along sympathized with and supported each other in the struggle for national liberation and forged a profound friendship”<sup>47</sup>. For these reasons, it is claimed, the “China-Africa relationship is truly a model of equality and friendship for the international community.”<sup>48</sup>

The second tenet is the shared interests which are said to originate from their common belonging to the group of developing countries, as can be observed in the tone of the 2000 Beijing declaration: “We also emphasise that both China and African countries are developing countries with common fundamental interests”. Which leads to the belief that “(...) in the new era, China and Africa have common development goals and converging interests, which offer a broad prospect for cooperation.”<sup>49</sup> But the former President Jiang Zemin even alluded to an outright common identity in his opening speech at the first FOCAC Meeting: “We have come to the conclusion after a review of the history of the past one hundred years that the Chinese people and the African people both treasure independence, love peace and long for development and that they are both important forces for world peace and common development.”<sup>50</sup>

Thirdly, and as in the case of the SACF, shared interests, historical friendship, and a consolidated relationship based on the ‘trademark’ Five Principles is indicated as the source of values and principles to promote a “new type of strategic partnership.”<sup>51</sup> This is reflected by State Councillor Tang Jiaxuan: “*China and Africa enjoy a profound traditional friendship. We have no conflict of fundamental interests. Rather, we share extensive common interests in safeguarding peace and promoting development. All this has made it possible and necessary to explore new ideas and put in place a new framework for the development of China-Africa relations in the new century.*”<sup>52</sup> Such novelty is supposed to reside in the spirit of “consultation on an equal footing, enhancing mutual understanding, expanding consensus, strengthening friendship and promoting

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<sup>46</sup> “Strengthen Traditional Friendship, Promote Common Development and Usher China-Africa Friendly Cooperation in A New Stage,” Embassy of the People’s Republic of China to the Republic of South Africa, June 22, 2006, <http://www.chinese-embassy.org.za/eng/zt/pd/t268440.htm> (accessed June 28, 2008).

<sup>47</sup> “People’s Republic of China. China’s African Policy,” Ministry of Foreign Affairs of the People’s Republic of China, January 12, 2006, <http://www.fmprc.gov.cn/eng/zxxx/t230615.htm> (accessed June 28, 2008).

<sup>48</sup> “Strengthen Traditional Friendship, Promote Common Development and Usher China-Africa Friendly Cooperation in A New Stage,” Embassy of the PRC to the Republic of South Africa, June 22, 2006, <http://www.chinese-embassy.org.za/eng/zt/pd/t268440.htm> (accessed June 27, 2008).

<sup>49</sup> “Beijing Declaration of the Forum on China-Africa Cooperation,” Forum on China-Africa Cooperation, 2000, <http://www.focac.org/eng/zyzl/hywj/t157833.htm> (accessed July 10, 2008).

<sup>50</sup> “China and Africa-Usher in the New Century Together,” Speech by President Jiang Zemin of the People’s Republic of China at the Opening Ceremony of the Forum on China-Africa Cooperation, Forum on China-Africa Cooperation, Oct. 12, 2000, <http://www.focac.org/eng/zyzl/zyjh/t157712.htm> (accessed July 10, 2008).

<sup>51</sup> “Beijing Summit adopts declaration, highlighting China-Africa strategic partnership,” Forum on China-Africa Cooperation, November 6, 2006, <http://www.fmprc.gov.cn/zflt/eng/zxxx/t279813.htm> (accessed July 10, 2008).

<sup>52</sup> Speech by Foreign Minister Tang Jiaxuan at Forum on China-Africa Cooperation, Ministry of Foreign Affairs of the People’s Republic of China, Oct. 10, 2000, <http://www.mfa.gov.cn/eng/wjdt/zyjh/t24968.htm> (accessed July 11, 2008).



cooperation.”<sup>53</sup> The extent of the novelty is further clarified in the Joint Declaration announcing that “We hold that the establishment of a new type of strategic partnership is both the shared desire and independent choice of China and Africa, serves our common interests, and will help enhance solidarity, mutual support and assistance and unity of the developing countries and contribute to durable peace and harmonious development in the world.”<sup>54</sup>

As anticipated, a fourth element emerges in China’s discourse: economic development. China esteems that economic globalization presents “Asian and African countries with rare opportunities as well as severe challenges,”<sup>55</sup> proposing that “we must proceed from our national conditions while mapping out plans for development.”<sup>56</sup> This means is that “developing countries [must] give full play to their advantages in natural and human resources, tap to the full their respective productive and technological potential, take advantage of the others’ strengths to make up for their own weaknesses, and achieve common improvement.”<sup>57</sup> In China’s discourse South-South co-operation has an important part to play, the strengthening of which “serves the immediate and long-term interests of both China and African countries.”<sup>58</sup> As suggested by Premier Wen Jiabao at the 2006 Beijing Summit, South-South cooperation is based on win-win economic cooperation, the scope of which is further articulated as the endeavour:

*“(...) to carry out steps designed to assist African countries and other developing countries, such as offering zero-tariff treatment to some of their exports, increasing aid and debt relief. We encourage more Chinese companies to invest in Africa, participate in infrastructure building and agricultural development, transfer technologies and help Africa fully release the strength of its resources, enhance its competitiveness and strengthen its economy. We will expand trade with Africa and increase import from Africa. We take the concerns of some African countries on trade deficit and textiles seriously and are working to address these issues.”*<sup>59</sup>

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<sup>53</sup> “The Second Ministerial Meeting of Forum on China-Africa Cooperation Will Be Held,” Embassy of the People’s Republic of China in the Republic of Estonia, Nov. 28, 2003, <http://www.fmprc.gov.cn/ce/ceee/eng/dtxw/t111971.htm> (accessed October 25, 2009).

<sup>54</sup> “Declaration of the Beijing Summit of the Forum on China-Africa Cooperation,” Forum on China-Africa Cooperation, Beijing, 2006, <http://www.focac.org/eng/zyzl/hywj/t280370.htm> (accessed July 15, 2008).

<sup>55</sup> “Seize the Opportunity for All-round Cooperation and Common Development,” Speech by President Hu Jintao of China at the Official Dinner Reception of the Asian-African Business Summit 2005 in Jakarta on April 21, 2005, Forum on China-Africa Cooperation, September 21, 2006, [http://english.focacsummit.org/2006-09/21/content\\_933.htm](http://english.focacsummit.org/2006-09/21/content_933.htm) (accessed July 15, 2008).

<sup>56</sup> Full Text of Hu Jintao's Speech at Asian-African Business Summit Reception, April 22, 2005, China’s Official Gateway to News and Information, <http://www.china.org.cn/english/features/focac/184793.htm> (accessed July 15, 2008).

<sup>57</sup> “China and Africa-Usher in the New Century Together”, Speech by President Jiang Zemin of the People's Republic of China at the Opening Ceremony of the Forum on China-Africa Cooperation, <http://www.fmprc.gov.cn/zflt/eng/zyzl/zyjh/t157712.htm> (accessed July 14, 2008).

<sup>58</sup> “Beijing Declaration of the Forum on China-Africa Cooperation”, Forum on China-Africa Cooperation, Beijing, 2000, <http://www.fmprc.gov.cn/zflt/eng/zyzl/hywj/t157833.htm> (accessed July 14, 2008).

<sup>59</sup> “Strengthen Traditional Friendship, Promote Common Development and Usher China-Africa Friendly Cooperation in A New Stage,” Address by Chinese Premier Wen Jiabao at the Opening Session of the China-South Africa Business Cooperation Forum, Embassy of the People’s Republic of China to the Republic of South Africa, June 22, 2006, <http://www.chinese-embassy.org.za/eng/zt/pd/t268440.htm> (accessed July 14, 2008).

But more crucially, the point is made that China's partners should trust that "China never attaches any political string to its assistance to Africa or seeks any political privilege in doing so,"<sup>60</sup> because "We do not seek to export our own values and development models to Africa". Quite to the contrary, China pledges to "continue to speak out for the interests of Africa at international forums and support African countries (...)." <sup>61</sup>

## Assessment of the Two Frameworks

The scope of the SACF and FOCAC is evaluated below on the basis of the three functions that the adopted theoretical definition ascribes to international institutions: 1) the facilitation of a learning process among members; 2) the mobilisation of trust enabling the achievement of interdependent goals; and 3) the promotion of norms. Consistently, the two institutional frameworks will be evaluated in three different sections according to these three criteria.

### *Learning Process*

I start from a broad understanding of social learning as implying both some degree of socialisation by an *entrepreneur* into the norms and principles it wishes to affirm, and a process of mutual accommodation and endorsement of respective preferences. To reflect this approach, the notion of learning has been broken down in two components: A) the extent to which Chinese discourse and norms, the essence of which was explored in the preceding section for each of the two frameworks, are becoming endorsed by partner countries. B), the extent to which the respective preferences of each side are endorsed by the other, and are thereby transformed into institutional positions.

#### **A) The emergence of a shared identity**

This portion will assess the impact of the Chinese discourse on African and Arab counterparts by considering the extent to which language, expressions and "policy images" are transferred to and internalised by the recipients of the discursive practices. This is done by reviewing speeches of African and Arab leaders or opinion-makers on the SACF and FOCAC respectively, or mutual cooperation in general. The review that follows, while partial, suggests a significant degree of internalization by actors.

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<sup>60</sup>"Strengthen Solidarity, Enhance Cooperation and Pursue Common Development", by Zhu Rongji, Premier of the State Council of China, 12 October 2000, China's Official Gateway to News and Information, <http://www.china.org.cn/english/features/focac/184410.htm> (accessed July 13, 2008).

<sup>61</sup>"Strengthen Traditional Friendship, Promote Common Development and Usher China-Africa Friendly Cooperation in A New Stage," Address by Chinese Premier Wen Jiabao at the Opening Session of the China-South Africa Business Cooperation Forum, June 22, 2006, Embassy of the People's Republic of China to the Republic of South Africa, <http://www.chinese-embassy.org.za/eng/zt/pd/t268440.htm> (accessed July 13, 2008).



### *Sino-Arab Cooperation Forum*

The presence of elements of Chinese discourse in the speeches and declarations of Arab leaders signals that they have internalised such elements as the innovative type of partnership, mutual benefit, and mutual understanding and agreement.

As to the element of an innovative partnership, LAS Secretary-General Amr Moussa hailed the idea of a new type of partnership, saying Hu's proposal was "a recipe for a successful relationship between nations." Moreover, he was reported to comment that "the potential is huge and we have great ambitions for these relations."<sup>62</sup> Similarly, an article in the *China Daily* reported that "the two sides believed the SACF would be a new instrument for enhancing multilateral dialogue and co-operation between China and the Arab countries,"<sup>63</sup> the development of which, Moussa believes, the Forum will advance in the decades to come, not only on the political front, but also on economic and cultural ones.

On the element of mutual benefit, Morocco's Minister of Foreign Affairs and Cooperation Mohamed Benaissa declared, on the sidelines of the 2006 Ministerial Meeting, that he sees China as the best partner for developing South-South relations.<sup>64</sup> Moreover, a presentation of SACF appearing on the website of the Council of Arab Ambassadors in China states that cooperation under the institution is based on equality and mutual benefit.<sup>65</sup>

Lastly, Amr Moussa has stressed the centrality of mutual understanding and agreement, rather than conflict and groundless accusations to the relations between the Arab world and 'highly-valued Chinese civilization,' and the value of the Forum in facilitating civilization dialogues between the two sides, which are very important given the 'clash of civilizations' argument and its repercussions in the Arab world.<sup>66</sup>

### *Forum on China-Africa Cooperation*

Some remarks by African members of FOCAC show a certain degree of internalisation of the themes of the historical and principled nature of the ties, and for the prospects of common development, through mutually beneficial South-South cooperation.

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<sup>62</sup> "Arab League chief highly values China-Africa Co-operation Forum," Official website of the Beijing Summit and Third Ministerial Conference of the Forum on China-Africa Cooperation, Oct. 19, 2006, [http://english.focacsummit.org/2006-10/19/content\\_3258.htm](http://english.focacsummit.org/2006-10/19/content_3258.htm) (accessed July 15, 2008).

<sup>63</sup> *China Daily*, "Forum promotes co-op links with Arab nations," September 15, 2004, [http://www.chinadaily.cn/english/doc/2004-09/15/content\\_374798.htm](http://www.chinadaily.cn/english/doc/2004-09/15/content_374798.htm) (accessed July 15, 2008).

<sup>64</sup> "La chine, meilleur interlocuteur et acteur pour développer les relations sud-sud," Ministère des Affaires Etrangères et de la Coopération du Royaume du Maroc, June 2, 2006, <http://www.maec.gov.ma/en/f-com.asp?num=3297&typ=dr> (accessed July 15, 2008).

<sup>65</sup> Arab Ambassadors Council in China, <http://www.arabembcn.org> (accessed July 15, 2008).

<sup>66</sup> *Xinhua*, "Interview: AL chief hails Arab-Sino relations," May 27, 2006, [http://news.xinhuanet.com/english/2006-05/27/content\\_4609940.htm](http://news.xinhuanet.com/english/2006-05/27/content_4609940.htm) (accessed July 09, 2008).

As to the principles, Ghana's then-President John Kufuor appeared to wholeheartedly endorse the FOCAC spirit when he said "*we will talk openly and frankly to each other, with a view to explore better chances of getting benefits both on the African side and on the Chinese side*", he said: "*China should buy from Africa and Africa should buy from China (...) I'm talking about the win-win.*"<sup>67</sup>

The historical roots were stressed by Professor Claudius Mararike of the University of Zimbabwe in an interview for Xinhua news agency:

*"The relations between China and Africa must be understood in a historical context. China is not all of a sudden jumping onto Africa. It has cultivated these relations over a long time - before and after Africa's independence."*

On that occasion, Professor Mararike even protested that "criticisms and accusations are merely an envy of the mutually beneficial ties China is building in Africa, especially in the economic sphere, which western countries were unable to match because of their control-based approach and mentality."<sup>68</sup> South African foreign minister Dlamini Zuma speech at the FOCAC maiden conference emphasised the principled and innovative characteristics of the Forum:

*"If ever there was practical embodiment of the spirit and principles of Sino-African solidarity and co-operation, it would be found at this Conference. We are grateful for the opportunity this platform presents us to affirm the long-standing and close relations between Africa and China, and more importantly perhaps, for the opportunity to establish a New Partnership for China-Africa co-operation from the 21st Century."*<sup>69</sup>

With regards to mutual benefit, Algerian President Abdelaziz Bouteflika said that "the Forum on China-Africa Cooperation (FOCAC) should become an effective platform for enhancing mutual understanding among the developing countries and further strengthening South-South cooperation."<sup>70</sup> Similarly, Ethiopia's Prime Minister Meles Zenawi, remembering China's historical support to Africans during decolonisation, emphasised the forum's role in promoting common development: "*Our main challenge now is not to fight colonialism, but fighting poverty and backwardness and achieving economic independence*", and that *Africa needs the support of its friends to overcome this challenge.*"<sup>71</sup>

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<sup>67</sup> "Ghanaian President Wishes Win-win China-Africa Cooperation," China's Official Gateway to News and Information, Oct. 12, 2006, <http://www.china.org.cn/english/international/183706.htm> (accessed July 09, 2008).

<sup>68</sup> "China's Ties with Africa Root in Historical Friendship," China's Official Gateway to News and Information, Oct. 9, 2006, <http://www.china.org.cn/english/international/183194.htm> (accessed July 08, 2008).

<sup>69</sup> "Address by Minister Dlamini Zuma to the Forum on China-Africa Cooperation," Ministerial Conference 2000, Oct. 10-12, 2000, Beijing, <http://www.dfa.gov.za/docs/speeches/2000/dzum1010.htm> (accessed July 08, 2008).

<sup>70</sup> "FOCAC to Become Platform for Enhancing South-South Cooperation," The Chinese Central Government's Official Web Portal, Oct. 14, 2006, <http://www.china.org.cn/english/international/183934.htm> (accessed June 05, 2008).

<sup>71</sup> "Meles : China-Africa Cooperation Enhances Trade," Newsletter of the Ministry of Foreign Affairs of Ethiopia, No. 19, Nov. 2006, [http://www.mfa.gov.et/Press\\_Section/Newsletter19/News19.pdf](http://www.mfa.gov.et/Press_Section/Newsletter19/News19.pdf) (accessed June 5, 2008).

## B) The Convergence of Policy Preferences

This section reviews the mutual endorsement of respective preferences and interests by members of the two frameworks. Indicators of this trend will be represented by the policy attitudes and behaviours manifested by states. Based on the issues actually discussed under the two respective frameworks, I highlight below the instances where this dynamic can be pinned down: in the case of China this is represented by the question of Taiwan, while for Arab Countries these are regional security issues including the Israeli-Palestinian conflict, and the situation in Iraq, and for African countries, these are essentially the situation in Sudan.

### *Sino-Arab Cooperation Forum*

**Endorsement of the One-China Policy by Arab Countries.** A distinct pattern of LAS involvement can be detected. During the skirmishes which arose between mainland China and Taiwan between 2005 and 2006, the LAS has solidly affirmed the One-China principle.

Following China's adoption and promulgation of the anti-secession law in March 2005,<sup>72</sup> Said Kamal, Assistant Secretary General of the LAS reaffirmed the organisation's support to the law, stating that the League opposed any attempt of separation from China by Taiwan. Secretary-General Amr Moussa even praised the law as an instrument aiming towards the pacific reunification of China.<sup>73</sup> When, later on, Taiwan's then-president Chen Shui-bian announced in February 2006 that the National Unification Council (NUC) would "*cease to function*," the LAS strongly condemned the decision on the grounds that it would compromise peace, stability and security in the Taiwan Strait, and the whole Asia-Pacific region. Ahmed ben Heli, LAS Under-Secretary General for Political Affairs, indicated the positive value of the NUC and the National Unification Directives.<sup>74</sup> In September 2007, a LAS foreign ministers meeting adopted a resolution reiterating the organization's adherence to the One-China policy.<sup>75</sup>

**Support of Middle East Regional Security Issues by China: Iraq, the Peace Process and Terrorism.** China has repeatedly signified its unconditional support for the Arab countries' "legitimate rights and national interests" in their region,<sup>76</sup> also expressing support for a nuclear-free Middle East, as conveyed by the joint communiqué of the 2006 Ministerial Meeting.<sup>77</sup> On the issue of Iraq, China has supported Arab countries by exhorting the Security Council to address

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<sup>72</sup> *China Daily*, "Anti-Secession Law adopted by NPC adopted at the Third Session of the Tenth National People's Congress of the People's Republic of China on March 14, 200x," March 14, 2005, [http://www.chinadaily.com.cn/english/doc/2005-03/14/content\\_424643.htm](http://www.chinadaily.com.cn/english/doc/2005-03/14/content_424643.htm) (accessed June 5, 2008).

<sup>73</sup> "La Ligue arabe réitère son soutien à la loi chinoise anti-sécession," China's Official Gateway to News and Information, April 6, 2005, [http://french.china.org.cn/foreign/txt/2005-04/06/content\\_2167222.htm](http://french.china.org.cn/foreign/txt/2005-04/06/content_2167222.htm) (accessed June 5, 2008).

<sup>74</sup> *Xinhua*, "Ligue arabe et de nombreux pays condamnent l'acte sécessionniste du dirigeant de Taiwan," March 4, 2006, [http://www.french.xinhuanet.com/french/2006-03/04/content\\_224352.htm](http://www.french.xinhuanet.com/french/2006-03/04/content_224352.htm) (accessed June 4, 2008).

<sup>75</sup> *China Daily*, "Arab League Resolution Reiterates One-China Policy," September 13, 2007, [http://www.chinadaily.com.cn/china/2007-09/13/content\\_6103963.htm](http://www.chinadaily.com.cn/china/2007-09/13/content_6103963.htm) (accessed June 6, 2008).

<sup>76</sup> *China Daily*, "Forum promotes co-op links with Arab nations," September 15, 2004, [http://www.chinadaily.cn/english/doc/2004-09/15/content\\_374798.htm](http://www.chinadaily.cn/english/doc/2004-09/15/content_374798.htm) (accessed June 7, 2008).

<sup>77</sup> "China, Arab states to step up anti-terror co-op: communiqué," The Chinese Central Government's Official Web Portal, June 1, 2006, [http://www.gov.cn/misc/2006-06/01/content\\_297969.htm](http://www.gov.cn/misc/2006-06/01/content_297969.htm) (accessed June 4, 2008).

their concerns and interests when considering resolutions on Iraq. China further stated that all nations' legitimate rights in Iraq should be taken into account, and that self-government should return to the Iraqi people.<sup>78</sup> In 2004, the PRC reopened her embassy in Iraq, and in May 2007, she participated to the International Compact for Iraq conference.

China has also lent her active support to the Arab peace proposal for the Israeli-Palestinian conflict.<sup>79</sup> The 2006 Ministerial Meeting was attended by Palestinian Foreign Minister Mahmud al Zahar, who stated on that occasion the Palestinian Government's engagement in studying the Arab peace initiative with a "serious and positive attitude."<sup>80</sup> In August 2006, China's Middle East Envoy called for new approaches to the solution of the Israeli Palestinian conflict,<sup>81</sup> and in July 2007, the SACF Fourth Meeting of Senior Officials ended with a document highlighting the importance of restoring the "legitimate rights of Arab countries, with a focus on the Palestinian cause", stressing their support for all efforts aiming at establishing fair and comprehensive peace in the Middle East.<sup>82</sup>

In response, Amr Moussa declared that Arab nations highly value the Chinese role in the region, and emphasized that the Arab world is willing to listen to China's views and positions on various international issues, "particularly at a time when various opinions are confusing the international community."<sup>83</sup>

### *Forum on China-Africa Cooperation*

**Endorsement of the One-China Policy by African Countries.** Back in 2000, Congo's President Sassau congratulated China's President for resuming sovereignty over Hong Kong and Macao, emphasizing that his Government has always held the One-China principle, and believed "China will solve the question of Taiwan at an early date and complete the reunification cause of the motherland."<sup>84</sup> More recently, President Al-Bashir reiterated that Sudan has always adhered to the

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<sup>78</sup> "UN Urged to Address Arabic Concerns on Iraq," Embassy of the People's Republic of China in the Arab Republic of Egypt, May 26, 2004, <http://eg.china-embassy.org/eng/zagx/yamgx/t119245.htm> (accessed June 4, 2008); "UN Urged to Address Arabic Concerns," China's Official Gateway to News and Information, May 26, 2004, <http://www.china.org.cn/english/international/96430.htm> (accessed June 4, 2008).

<sup>79</sup> The view was expressed in: "Deepening Friendship and Strengthening Cooperation to Build a New-type China-Arab Partnership", Address by Chinese State Councilor Tang Jiaxuan to the Second Ministerial Meeting of the SACF in Beijing, <http://www.fmprc.gov.cn/eng/wjdt/zyjh/t256775.htm> (accessed June 4, 2008). The same support can also be found in the *Joint Communiqué* of the Second Ministerial Meeting, [http://www.gov.cn/misc/2006-06/01/content\\_297969.htm](http://www.gov.cn/misc/2006-06/01/content_297969.htm) (accessed June 5, 2008).

<sup>80</sup> "Palestine to study Arab peace initiative positively," Chinese Central Government's Official Web Portal, June 1, 2006, [http://www.gov.cn/misc/2006-06/01/content\\_297179.htm](http://www.gov.cn/misc/2006-06/01/content_297179.htm) (accessed June 6, 2008).

<sup>81</sup> *Xinhua*, "China calls for new approaches to resume Middle East peace process," August 22, 2006, [http://news.xinhuanet.com/english/2006-08/22/content\\_4994342.htm](http://news.xinhuanet.com/english/2006-08/22/content_4994342.htm) (accessed June 6, 2008).

<sup>82</sup> *Xinhua*, "Meeting of Sino-Arab forum ends with final document," July 5, 2007, [http://www.sinothaiyouth.com/spotlight/200707/t20070706\\_558221.htm](http://www.sinothaiyouth.com/spotlight/200707/t20070706_558221.htm) (accessed June 7, 2008)

<sup>83</sup> *China View*, "Interview: AL chief hails Arab-Sino relations," May 27, 2006, [http://news.xinhuanet.com/english/2006-05/27/content\\_4609940.htm](http://news.xinhuanet.com/english/2006-05/27/content_4609940.htm) (accessed June 24, 2008).

<sup>84</sup> President Jiang Zemin held talks with the President of the Republic of Congo, *Ministry of Foreign Affairs of the People's Republic of China*, November 17, 2000, <http://www.chineseembassy.org/eng/topics/3713/3714/t19049.htm> (accessed June 24, 2008).

one-China policy and opposed any attempt to separate Taiwan from China.<sup>85</sup> Responses to the 2006 cross-strait spat demonstrated the extent of African support for the “one-China policy”. When in February 2006 the Taiwan authorities announced the decision to suppress the National Unification Council and cease the application of the “National Unification Guidelines”, the forty-seven African states that have diplomatic ties with China sided with the PRC, condemning the move. The condemnation was open and made its way to official FOCAC documents.<sup>86</sup>

**Support of African Regional Security Issues by China: the Situation in Darfur.** The Darfur question shows that China has adopted a position that is fundamentally supportive of the Sudanese Government, namely to have an African force under African Union command and supported logistically and financially by the United Nations.<sup>87</sup> In general, China believes that “wisdom and creativity [are] needed to achieve peace”, and that the United Nations and the African Union both ha[ve] constructive roles to play.”<sup>88</sup> As President Hu declared during his 2007 tour of Africa, China’s position is developed along “four principles”, namely

*“to respect Sudan’s sovereignty and territorial integrity; to solve the issue by peaceful means and by sticking to dialogue and coordination based on equality; that the African Union and the United Nations should play constructive roles in a peacekeeping mission in Darfur; and to improve the situation in Darfur and living conditions of local people.”*<sup>89</sup>

China’s actions have tended to reflect this position, and for example in 2004, the PRC worked to defuse a UN Security Council Resolution that would impose sanctions on Sudan’s petroleum sector, should the country have failed to restrain Arab militias from looting African villagers in Darfur<sup>90</sup>. China ended up abstaining on that vote because support for it was too large, rallying 11 Security Council members, but the PRC Permanent Representative energetically declared he would veto any further sanction: “that’s the message.”<sup>91</sup>

### ***Trust Building and Achievement of Interdependent Goals***

This section investigates the capacity of the two frameworks to effectively deliver on substantive areas of cooperation. This is seen as an indicator of their ability to build on the principled

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<sup>85</sup> *China Daily*, “Chinese President wraps up Africa tour,” February 11, 2007, [http://www.chinadaily.com.cn/china/2007-02/11/content\\_806503.htm](http://www.chinadaily.com.cn/china/2007-02/11/content_806503.htm) (accessed June 24, 2008).

<sup>86</sup> “Follow-Up Actions of the Forum on China-Africa Cooperation (FOCAC),” Remarks by Mr. He Yafei, Assistant Minister of Foreign Affairs, Embassy of the People’s Republic of China to the Republic of Botswana, <http://bw.china-embassy.org/eng/xwdt/t257860.htm> (accessed June 25, 2008).

<sup>87</sup> *People’s Daily*, “Sudan’s government reiterates position on int’l force in Darfur,” May 20, 2007, [http://english.people.com.cn/200704/20/eng20070420\\_368163.html](http://english.people.com.cn/200704/20/eng20070420_368163.html) (accessed June 25, 2008).

<sup>88</sup> *BBC*, “Chinese leader boosts Sudan ties,” February 2, 2007, <http://news.bbc.co.uk/2/hi/africa/6323017.stm> (accessed June 25, 2008).

<sup>89</sup> *China Daily*, “Chinese President wraps up Africa tour,” February 2, 2007, [http://www.chinadaily.com.cn/china/2007-02/11/content\\_806503.htm](http://www.chinadaily.com.cn/china/2007-02/11/content_806503.htm) (accessed June 25, 2008).

<sup>90</sup> *China Daily*, “China seeks helpful resolution to Darfur crisis,” September 17, 2004, [http://www.chinadaily.com.cn/english/doc/2004-09/17/content\\_375534.htm](http://www.chinadaily.com.cn/english/doc/2004-09/17/content_375534.htm) (accessed June 16, 2008).

<sup>91</sup> *China Daily*, “UN adopts resolution on Sudan’s Darfur,” September 19, 2004, [http://www.chinadaily.com.cn/english/doc/2004-09/19/content\\_375722.htm](http://www.chinadaily.com.cn/english/doc/2004-09/19/content_375722.htm) (accessed June 17, 2008).



meanings that are said to underpin cooperation, highlighting mutual benefit to reach necessary levels of trust among the parties involved.

### *Sino-Arab Cooperation Forum*

There are three main areas where the results delivered by SACF are particularly salient: anti-terrorism, energy and trade. Significantly, such outcomes are presented in official discourse as the result of a distinct logic of cooperation. The following paragraphs will try to reflect this qualitative aspect of cooperation under the Forum.

In the field of anti-terrorism, the two sides have intensified relations and exchanges. An agreement to this effect was signed during the Second Ministerial Meeting, committing both sides to stepping up anti-terrorism cooperation at the bilateral, regional and multilateral levels.<sup>92</sup> Moreover, the 2006 Joint Communiqué, while condemning terrorism of any form, also opposes “linking terrorism with any specific nationality or religion,” going all the way to support the Saudi proposal on establishing an international anti-terror center.<sup>93</sup>

The SACF is also acquiring an expanding role in the field of energy. Though there is a clear interest on the part of China, which is highly dependent on oil imports, and for which the Middle East has become the major single source of crude, an interest in energy cooperation is said to be mutual. News reports illustrate that if oil imports benefit China, Arab exporting countries see in China a trading partner that does not try to meddle or attach political strings as conditions for exchanges.<sup>94</sup> Moreover, such cooperation offers Arab countries direct access to the Chinese oil sector. Consequently, the 2006 SACF Ministerial meeting placed considerable focus on the question, hosting the first Sino-Arab Petrochemical Cooperation Seminar.<sup>95</sup> This proposed the establishment of a China-Arab energy forum, under the framework of the Saudi-based International Energy Forum (IEF) to discuss dialogue and cooperation on oil markets, supply security, oil price, trade and investment, “all for a better understanding and coordination of each other’s policies and interests.”<sup>96</sup> As a result, the 2006- 2008 Action Plan has vowed to establish such a dialogue mechanism, committing the sides to hold the first energy cooperation conference between China and Arab countries within the biennium.<sup>97</sup> In September 2007, a LAS foreign

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<sup>92</sup> *China Daily*, “China, Arab nations sign action plan” June 6, 2006, [http://www.chinadaily.com.cn/bizchina/2006-06/02/content\\_606862.htm](http://www.chinadaily.com.cn/bizchina/2006-06/02/content_606862.htm) (accessed June 16, 2008).

<sup>93</sup> “China, Arab states to step up anti-terror co-op: communiqué,” The Chinese Central Government Official Web Portal, June 1, 2006, [http://www.gov.cn/misc/2006-06/01/content\\_297969.htm](http://www.gov.cn/misc/2006-06/01/content_297969.htm) (accessed June 16, 2008).

<sup>94</sup> Jia Hepeng, “FTA to help diversify China’s energy sources,” *China Daily*, July 15, 2004, [http://www.chinadaily.com.cn/english/doc/2004-07/15/content\\_348779.htm](http://www.chinadaily.com.cn/english/doc/2004-07/15/content_348779.htm) (accessed June 16, 2008).

<sup>95</sup> Mr. Chen Jian Attending and Addressing the Sino-Arab Cooperation Forum, 2006 Sino-Arab Petrochemical Cooperation Seminar, Ministry of Commerce of the People’s Republic of China, Sep.14, 2006, <http://chenjian2.mofcom.gov.cn/aarticle/activity/200609/20060903151500.html> (accessed June 16, 2008).

<sup>96</sup> The proposal was delivered by Wu Lei, Professor of International Relations and Director of the Center for Energy Security and Strategy at Yunnan University, Kunming, China. His paper was published as an article referenced as: Wu Lei, “China-Arab Energy Cooperation: The Strategic Importance of Institutionalization,” *Middle East Economic Survey*, vol. 49: 3 (2006).

<sup>97</sup> China and Arab Nations Sign Action Plan, June 3, 2006, Embassy of the People’s Republic of China in India, <http://big5.fmprc.gov.cn/gate/big5/www.chinaembassy.org.in/eng/zgbd/t256178.htm> (accessed June 20, 2008);

ministers resolution endorsed plans for China to host the first such conference, and for the second one to be held in Sudan.<sup>98</sup> The two sides agreed to set up a cooperation mechanism for energy affairs in June 2009.<sup>99</sup>

In the field of trade and investment, the two sides intend to boost the level of exchanges. Two business meetings have taken place to this effect, one in 2005 and another in 2007, in line with the 2006- 2008 Action Plan. The latter meeting was carried out under the theme “*Deepening Cooperation - Partnership in Prosperity*”, and included private sessions between Arab and Chinese businessmen to discuss ways of bolstering trade relations and enhancing bilateral cooperation in fields as energy, housing, tourism, finance, and communications.<sup>100</sup> A trade facilitation seminar was held in Wuzhong City in August 2009.<sup>101</sup> The two sides have great expectations, and commercial exchanges between the two sides have already incremented significantly. After decades of very slow progress, commerce between China and Arab countries has skyrocketed since 2001, reaching \$66 billion in 2005, up 42 per cent from the previous year at \$46.5 billion.<sup>102</sup> China and the LAS have pledged to expand their annual trade to \$100 billion by 2010,<sup>103</sup> earmarking the sectors of investment, electricity, oil, culture, mass media and human resources in particular.<sup>104</sup> However, recent reports suggest that the 2010 target had already been passed in 2008, with trade volumes tallying \$ 132.8 billion.<sup>105</sup>

### ***Forum on China-Africa Cooperation***

The three main areas of cooperation involve the fields of political affairs, trade and natural resources. The patterns of cooperation show the effectiveness of the institution in building the necessary trust to allow both sides to achieve their respective preferences.

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CCTV, “Sino-Arab Communiqué Signed,” June 2, 2006, <http://www.cctv.com/english/20060602/101131.shtml> (accessed July 16, 2009).

<sup>98</sup> *China Daily*, “Arab League Resolution Reiterates One-China Policy,” September 13, 2007, [http://www.chinadaily.com.cn/china/2007-09/13/content\\_6103963.htm](http://www.chinadaily.com.cn/china/2007-09/13/content_6103963.htm) (accessed July 20, 2008).

<sup>99</sup> “Sino-Arab energy co-op mechanism to be built,” China Trade in Services, June 25, 2009, <http://tradeinservices.mofcom.gov.cn/en/local/2009-06-25/74970.shtml> (accessed Oct. 27, 2009).

<sup>100</sup> The conference was organized by the LAS, the General Federation of Arab Chambers of Commerce, Industry and Agriculture, the Arab Businessmen Federation and Jordan’s Ministry of Economy and Trade in cooperation with the Chinese Council for the Promotion of International Trade (*Syria Times*, “Arab-Chinese businessmen conference in Amman. \$US 65 bln. trade exchange in 2006,” June 20, 2007, <http://syriatimes.tishreen.info/economy.asp?FileName=100218954220070620102619> (accessed June 20, 2008).

<sup>101</sup> “Sino-Arab Trade Cooperation Seminar held in Wuzhong City,” *Ningxiaexpo.com*, Aug. 21, 2009, [http://ningxiaexpo.com/english/NewsCenter/200908/t20090821\\_624597.htm](http://ningxiaexpo.com/english/NewsCenter/200908/t20090821_624597.htm) (accessed Oct. 27, 2009).

<sup>102</sup> International Monetary Fund, “Division of Trade Statistics Yearbook 2006” (Washington, D.C., 2006).

<sup>103</sup> *Xinhua*, “Trade with Arab League to grow,” June 2, 2006, [http://news.xinhuanet.com/english/2006-06/02/content\\_4636386.htm](http://news.xinhuanet.com/english/2006-06/02/content_4636386.htm) (accessed June 20, 2008).

<sup>104</sup> *China Daily*, “Forum promotes co-op links with Arab nations,” September 15, 2004, [http://www.chinadaily.cn/english/doc/2004-09/15/content\\_374798.htm](http://www.chinadaily.cn/english/doc/2004-09/15/content_374798.htm) (accessed June 20, 2008).

<sup>105</sup> “Arab League Chief: Sino-Arab Relations Are very much Valued,” Hunan.gov.cn, May 30, 2009, [http://www.english.people.com.cn/Government/govNews/200906/t20090604\\_160598.htm](http://www.english.people.com.cn/Government/govNews/200906/t20090604_160598.htm); *People’s Daily*, “Sino-Arab trade ties to go beyond energy, resources,” April 24, 2009, <http://english.people.com.cn/90001/90776/90883/6643826.html> (accessed Oct. 26, 2009).



In political affairs, FOCAC has facilitated China's support to African continental security initiatives in light of her commitment to seeing regional multilateral organizations take a wider role in all stages of the conflict management cycle.<sup>106</sup> In April 2003 this resulted in the PRC deployment of a peacekeeping force under United Nations leadership to the Democratic Republic of the Congo. Moreover, China has since then sent 3975 peacekeeping personnel to UN missions in Liberia and especially Sudan,<sup>107</sup> where 435 Chinese peacekeepers are in service, including 275 military engineers, 100 transportation staff and 60 doctors, and dispatch of another 275-strong engineering unit is planned.<sup>108</sup> China has further deployed a fifth team of 375 engineers from the Jinan Military Command Area in February 2009.<sup>109</sup> But China's support is particularly strong with regards to regional initiatives for peace and security, informed by the belief that the "relevant organizations and countries [must be supported] in their efforts to independently resolve conflicts in the region."<sup>110</sup> In this line, the PRC has donated \$600,000 to the African Union (AU), half of which was earmarked for supporting the AU peacekeeping mission in Somalia.<sup>111</sup> Support to the AU also comprises \$400,000 to aid its operations in Darfur,<sup>112</sup> and \$150 million to fund the extension of the African Union headquarters in Addis Ababa, covering for the construction of a Convention Centre, new office space, and residences for senior officials.<sup>113</sup> Moreover, China has offered peacekeeping assistance to the Economic Community of West African States (ECOWAS),<sup>114</sup> and responded to demands for expanded cooperation by the Southern African Development Community (SADC).<sup>115</sup> Moreover, China has pledged support for the African Union counter-terrorism convention, and establishment of a research centre on terrorism in Algiers.<sup>116</sup>

<sup>106</sup> Forum on China-Africa Cooperation, *Addis Ababa Action Plan 2004-2006*, Addis Ababa, 2003.

<sup>107</sup> "China plays active role in safeguarding peace, stability in Africa," Forum on China-Africa Cooperation, Oct. 11, 2006, [http://english.focacsummit.org/2006-10/11/content\\_3012.htm](http://english.focacsummit.org/2006-10/11/content_3012.htm) (accessed May 13, 2008).

<sup>108</sup> Su Qiang and Le Tian, "Peacekeeping - A Rising Role for China's PLA," *China Daily*, July 24, 2007, [http://www.chinadaily.com.cn/china/2007-07/24/content\\_5442172.htm](http://www.chinadaily.com.cn/china/2007-07/24/content_5442172.htm) (accessed May 23, 2008).

<sup>109</sup> *China Daily*, "China organizes fifth peacekeeping team for Sudan," Jan. 19, 2009, [http://www.chinadaily.com.cn/china/2009-01/19/content\\_7410770.htm](http://www.chinadaily.com.cn/china/2009-01/19/content_7410770.htm) (accessed Oct. 26, 2009).

<sup>110</sup> *People's Daily*, "Chinese Official Lauds UN Peacekeeping Efforts in Africa," May 9, 2001, [http://english.people.com.cn/english/200105/09/eng20010509\\_69482.html](http://english.people.com.cn/english/200105/09/eng20010509_69482.html) (accessed May 13, 2008).

<sup>111</sup> *China Daily*, "China to donate 600,000 dollars to AU," July 2, 2007, [http://www.chinadaily.com.cn/china/2007-07/02/content\\_907379.htm](http://www.chinadaily.com.cn/china/2007-07/02/content_907379.htm) (accessed May 12, 2008).

<sup>112</sup> "Foreign Minister Li Zhaoxing Sends a Letter to the African Union Commission on the Darfur Issue," Ministry of Foreign Affairs of the People's Republic of China, June 1, 2005, <http://new.fmprc.gov.cn/eng/zxxx/t179151.htm> (accessed May 12, 2008).

<sup>113</sup> "African Union Headquarters to Grow After \$150 Million Deal With China," Government of South Africa Information Services, May 21, 2007; "Speech at the African Day Celebration and the Laying of the Foundation Stone for the African Union Convention Center," May 25, 2007, [http://www.africa-union.org/root/AU/Conferences/2007/May/25/speeches/China\\_final.doc](http://www.africa-union.org/root/AU/Conferences/2007/May/25/speeches/China_final.doc) (accessed May 13, 2008).

<sup>114</sup> "China Offers Peacekeeping Assistance to ECOWAS," Embassy of the People's Republic of China in Nigeria, Sep. 17, 2004, <http://ng.china-embassy.org/eng/xw/t158027.htm> (accessed May 13, 2008).

<sup>115</sup> *People's Daily*, "SADC to seek more cooperation with China," August 20, 2005, [http://english.people.com.cn/200508/20/eng20050820\\_203539.html](http://english.people.com.cn/200508/20/eng20050820_203539.html) (accessed May 18, 2008); *People's Daily*, "SADC to further boost relations with China, India," August 16, 2004, [http://english.people.com.cn/200408/16/eng20040816\\_153290.html](http://english.people.com.cn/200408/16/eng20040816_153290.html) (accessed May 18, 2008).

"Assistant Minister of Commerce Yi Xiaozhun's Meeting with Executive Secretary of Southern African Development Community (SADC)," Ministry of Commerce of the People's Republic of China, Dec. 28, 2004, <http://yixiaozhun2.mofcom.gov.cn/aarticle/activity/200412/20041200012023.html> (accessed May 11, 2008).

<sup>116</sup> Forum on China-Africa Cooperation, "Addis Ababa Action Plan 2004-2006".

FOCAC has also committed China to support priority sectors identified under the New Partnership for Africa's Development (NEPAD),<sup>117</sup> such as the US\$ 500'000 grant given to fund a post-graduate training program for nurses and midwives.<sup>118</sup>

In the area of trade the FOCAC approach is consistent with the cooperation principles established, and is part of a comprehensive package including trade promotion, the reduction of tariffs, debt relief, and development assistance to ensure win-win.

The conclusion of agreements on Bilateral Facilitation and Protection of Investment, and on Avoidance of Double Taxation,<sup>119</sup> were matched by China's concession of tariff-free treatment to goods coming from 28 African 'Least Developed Countries', based on a list of 187 tax items that to be elevated to 440 over the 2007-2009 biennium.<sup>120</sup> To address the problem of trade imbalance, China encouraged African promotional fairs and expositions in China aimed at facilitating their exports. As a result African exports to China have substantially increased, as shown by a diminishing trade deficit.<sup>121</sup> Investment is accelerating too, thanks to bilateral investment protection agreements with 29 African countries and the establishment of *China Trade and Investment Promotion Centres* in 11 countries. This has allowed the creation of 490 joint-ventures in 49 African countries, in various fields, but also African countries to increase investments into China.<sup>122</sup> As of 2008, 800 thousand Chinese businessmen and 800 Chinese companies were active throughout Africa.<sup>123</sup>

The *China-Africa Business Conference* is a further initiative that witnesses the magnitude of the exchanges. The 2006 edition has resulted in the conclusion of 21 cooperation agreements for a value of US\$ 1 billion. Importantly, of the 400 participating entrepreneurs, not more than 150 were Chinese.<sup>124</sup> In May 2007, the African Development Bank held its Board of Governors 2 day meeting in Shanghai signalling China's intention to act as a catalyst in forging closer ties between Africa and Asia. As a result, trade between China and African countries reached a record \$106.8

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<sup>117</sup> Ibid.

<sup>118</sup> "The Chinese Government Grants \$500,000 to Support NEPAD Nurses and Midwives Post-Graduate Training Program" (by Chinese Embassy in South Africa), Ministry of Foreign Affairs of the People's Republic of China, July 27, 2006, <http://www.mfa.gov.cn/eng/wjb/zwjg/zwbdt265182.htm> (accessed June 13, 2008).

<sup>119</sup> Forum on China-Africa Cooperation, "Beijing Action Plan 2007- 2009," Beijing, 2006.

<sup>120</sup> Ibid.

<sup>121</sup> "Talking Points for Consultation between Director-General Xu Jinghu and African Diplomatic Envoys in China," Forum on China-Africa Cooperation, Dec. 23, 2004, <http://www.fmprc.gov.cn/zflt/eng/zxxx/t176324.htm> (accessed June 14, 2008).

<sup>122</sup> "Talking Points for Consultation between Director-General Xu Jinghu and African Diplomatic Envoys in China"; Li Ruogu, "Promoting China-Africa Cooperation for Mutual Benefits, Exploring New Development Road for Mankind," (Presentation made at the "Experience-Sharing Program on Development between China and Africa" organized by the Chinese Government with support from the World Bank, May 20- 29, 2008, Beijing, China), <http://info.worldbank.org/etools/ChinaAfricaKS/docs/ppts/S5a-Li%20Ruogu-Promting%20China-Africa%20Cooperation.pdf> (accessed Oct. 27, 2009).

<sup>123</sup> Op. cit. Li Ruogu, "Promoting China-Africa Cooperation for Mutual Benefits, Exploring New Development Road for Mankind".

<sup>124</sup> "Talking Points for Consultation between Director-General Xu Jinghu and African Diplomatic Envoys in China," Forum on China-Africa Cooperation, Dec. 23, 2004, <http://www.fmprc.gov.cn/zflt/eng/zxxx/t176324.htm> (accessed June 14, 2008).

billion in 2008, with an annual average growth rate of 30 percent in eight straight years.<sup>125</sup> This followed the previous increase to \$36 billion in 2005, up from \$27 billion in 2004.<sup>126</sup>

By June 2002, moreover, China had cancelled 156 African debts totalling approximately \$1.4 billion, and signed debt exemption protocols with 31 of them. In addition, she has committed to support African countries in the implementation of the Heavily Indebted Poor Countries (HIPC) initiative. On the development assistance side, China has signed 245 agreements on economic assistance, targeting infrastructure, education, and welfare projects.<sup>127</sup>

The field of oil and natural resources constitutes a, if not *the*, major issue of cooperation. In 2005, China became the second largest importer of African oil, overtaking Japan. Major operations are concentrated in Sudan, valued at \$3-4 billion (out of a \$10 billion commitment), where China is now technically the main producer, exporter and importer of oil;<sup>128</sup> and Angola, where they are valued at \$2 billion, or the equivalent of the PRC credit line offered through the Import-Export Bank of China (Exim Bank),<sup>129</sup> making the country one of China's top two suppliers with Saudi Arabia.<sup>130</sup> But in 2006, China National Offshore Oil Corp. (CNOOC) bought a 45 per cent stake in the Nigerian Oil Mining License (OML) 130 oil field near the Niger Delta, for a rough US \$ 2.3 billion.<sup>131</sup> In 2008, China National Petroleum Corp (CNPC) won a \$5 billion bid to develop oil reserves in eastern Niger, where proven reserves amount to 324 million barrels.<sup>132</sup> In October 2009, a Chinese firm secured a major mineral and oil deal in Guinea to the amount of \$ 7 billion,<sup>133</sup>

### *The Promotion of Norms*

There are two ways that the SACF and FOCAC serve to promote international norms. The first is through the explicit formulation of principled stances and positions on international issues by resort to two main instruments: the Joint Declarations and Action Plans that stem from their respective Ministerial Meetings.

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<sup>125</sup> Wang Le, "Sino-African trade has broader prospects," *China Daily*, Feb. 11, 2009.

<sup>126</sup> International Monetary Fund, "Division of Trade Statistics Yearbook 2006".

<sup>127</sup> "Report by H.E. Mr. Li Zhaoxing Minister of Foreign Affairs of the People's Republic of China to the Second Ministerial Conference of the China-Africa Cooperation Forum Addis Ababa," Forum on China-Africa Cooperation, Dec. 15, 2003, <http://www.focac.org/eng/zyzl/zyjh/t157709.htm> (accessed June 15, 2008).

<sup>128</sup> Ytzack Schichor, "Sudan: China's Outpost in Africa," *China Brief*, vol. 5:21 (2005).

<sup>129</sup> *Irinnews*, "Angola: Oil-backed loan will finance recovery projects," February 21, 2005, <http://www.irinnews.org/report.aspx?reportid=53112> (accessed June 22, 2008).

<sup>130</sup> A.Izama, "Bringing China On Board," *The Monitor*, June 20, 2007, <http://www.uofaweb.ualberta.ca/chinainstitute/nav03.cfm?nav03=61789&nav02=57273&nav01=57272> (accessed June 22, 2008).

<sup>131</sup> Chris Hogg, "China oil firm buys into Nigeria," *BBC News*, January 9, 2006, <http://news.bbc.co.uk/2/hi/business/4594058.stm> (accessed June 22, 2008).

<sup>132</sup> "TIMELINE-Resource-hungry China invests in Africa," *Reuters*, Sep. 29, 2009, <http://www.reuters.com/article/mergersNews/idUSLT57126020090929>, (accessed June 22, 2008).

<sup>133</sup> "Guinea and China 'agree big deal,'" *BBC News*, Oct. 13, 2009, <http://news.bbc.co.uk/2/hi/8304418.stm> (accessed Oct. 27, 2009).

The second one is, so to speak, implicit, and is the effect of actual cooperation based on those very principles, as outlined in the two previous sections. As to the definition of norms adopted above, norms can emerge out of the practice and reiteration of behaviour. This means that really, it is the logic or principles that underpin that behaviour that comes to represent the essence of the norm. The interesting thing to observe in this regard is that such norms are coherent with the discourse China has successfully embedded in the two frameworks.

### *Sino-Arab Cooperation Forum*

In terms of explicit normative content, SACF is active in the promotion of norms on three main fronts: the indication of sources of principles of international conduct, the nature and dynamics of globalisation with an eye at promoting North-South dialogue, and the reshaping of the international system intended to affirm the recognition of cultural diversity.

As to the first element, even if the phrasing of the Joint Declaration restricts their application to cooperation between China and Arab countries, a distinct set of principles are indicated as the source of behavioural guidance:

*“Cooperation between Arab countries and China is based on the following principles: the respect of the Charter of the United Nations, the Charter of the League of Arab States, the Five Principles of Peaceful coexistence, and other recognised principles of international relations.”<sup>134</sup>*

It should further be noted that the 2004 Cairo Joint Declaration stipulated that SACF members will coordinate for the promotion of new international principles within global institutions,<sup>135</sup> a provision that is likely to enhance the reach of norm promotion.

With respect to globalisation and the economic system, SACF encourages the:

*“international community to deploy enormous efforts to reinforce North-South dialogue and reduce the gap between these two poles, in order to strengthen the process of globalisation, to reinforce cooperation and solidarity among states and to confront the challenges of globalisation in a positive and effective manner.”<sup>136</sup>*

Thirdly, at the level of the shape of the international system, it emphasises a vision for cooperation aimed at promoting the democratisation of international relations, the respect for the principles of state sovereignty and non-interference in the internal affairs of other states. This is aimed at ensuring that *“each state has a right to participate in international affairs on an equal*

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<sup>134</sup> Sino-Arab Cooperation Forum, Arab Ambassadors Council in China, Sep. 14, 2004, <http://www.arabembcn.org/arabic/relations/forum.htm> (accessed June 25, 2008).

<sup>135</sup> Joint Declaration of the Sino Arab cooperation Forum 2004.

<sup>136</sup> Joint Declaration of the Sino Arab cooperation Forum 2004.

*footing, recalling the right of each people to obtain its liberty, independence, sovereignty over their territory.”*<sup>137</sup>

In this regard, particular weight is laid on aspects pertaining cultural diversity, where the two sides commit to:

*“Respect the cultural and civil specificities of the peoples and work to protect the diversity of human civilizations, and encourage the dialogue and the connections between civilizations to create a stable environment conducive to interstate cooperation.”*<sup>138</sup>

Adding substance to words, a 2007 resolution of the LAS foreign ministers mandated its Secretariat to coordinate Arab and Chinese contributions in preparation for a seminar on Arab-China civilizations slated for December 2007 in Saudi Arabia, and supported that the second such seminar be held in Tunis in 2008.<sup>139</sup>

In terms of implicit concepts, on the basis of the cooperation areas reviewed, normative principles that are being promoted include the increased role of regional actors to deal with and find autonomous solutions to their regional problems, which can be inferred from the support given by SACF to empower and endorse the Arab initiative on the solution of the Israeli-Palestinian conflict.

Another important principle is the support for an expanded notion of sovereignty that emerges from the way counterpart actors are rewarded and respected in reciprocal relations. This comes in support of the explicit defence of sovereignty promoted in official documents.

### ***Forum on China-Africa Cooperation***

In terms of explicit normative content, we can identify the following four elements.

First, FOCAC is promoting alternative sources of principles to regulate and inform international conduct to complement the UN Charter and other universally recognized norms. The 2000 Beijing declaration of the Forum on China-Africa Cooperation states that:

*“The purposes and principles of the UN Charter and the Charter of the Organisation of African Unity (OAU), the Five Principles of Peaceful Coexistence and other universally recognized principles governing relations among states must be respected.”*<sup>140</sup>

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<sup>137</sup> Joint Declaration of the Sino Arab cooperation Forum 2004.

<sup>138</sup> Joint Declaration of the Sino Arab cooperation Forum 2004.

<sup>139</sup> *China Daily*, “Arab League Resolution Reiterates One-China Policy,” September 13, 2007, [http://www.chinadaily.com.cn/china/2007-09/13/content\\_6103963.htm](http://www.chinadaily.com.cn/china/2007-09/13/content_6103963.htm) (accessed June 24, 2008).

<sup>140</sup> Forum on China-Africa Cooperation, “Beijing Declaration of the Forum on China-Africa Cooperation,” Beijing, 2000.

The 2003 Addis Ababa Action Plan, and the 2006 Beijing Action Plan further reinforce this point both in form and content, and to some extent, also the 2000 Programme for China-Africa Cooperation in Economic and Social Development, which lists a number of principles considerably overlapping with the said ones, though without naming them.

Second, FOCAC is promoting a fundamental reinterpretation of the concept and notion of human rights, by giving prominence to the right to development. This is based on the belief that human rights must be historically, culturally, and religiously sensitive, and on the joint commitment to affirming this model in the relevant international bodies. The 2006 Beijing Action Plan states in this respect that:

*“The two sides welcomed the establishment of the Human Rights Council by the United Nations and resolved to enhance cooperation in the Council and make concerted efforts to ensure that the Council respects historical, cultural and religious background of all countries and regions and is committed to advancing dialogue among different civilizations, cultures and religions. The Council should place equal emphasis on both civil and political rights and economic, social and cultural rights, with priority given to the right to development.”<sup>141</sup>*

This echoes the approach introduced with the 2000 Beijing Declaration that stressed the recognition of diversity as well as respect for human rights, arguing that “Each country has the right to choose, in its course of development, its own social system, development model and way of life in light of its national conditions.”<sup>142</sup>

Third, FOCAC is also addressing the rules governing the global economic system, with particular emphasis on the trade and development regimes.

The 2007 Action Plan “called on the international community to work actively to build an international environment conducive to poverty alleviation and common development”. This includes establishing a system of Official Development Assistance (ODA) free of political or economic conditionalities, and enhancing debt cancellation, based on the same criteria. With respect to the trading system, it called for the resumption of the Doha rounds, noting the need for:

*“full consideration to be given to the development level and capacity of developing members. The special and differential treatment promised to developing members should be delivered to enable them to fully participate in the multilateral trade regime and truly benefit from it.”*

FOCAC principles to address this point recommend the granting of preferential treatment to developing countries, and other solutions based on “South-South Cooperation and North-South Dialogue” to promote a “balanced and significant package of outcomes.”

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<sup>141</sup> Forum on China-Africa Cooperation, “Beijing Action Plan 2007-2009”.

<sup>142</sup> Forum on China-Africa Cooperation, “Beijing Declaration of the Forum on China-Africa Cooperation,” Beijing, 2000.



Fourth, FOCAC, more generally, aims to restructure the international system as a whole, since it is currently deemed “unjust and inequitable.” The 2006 Beijing Declaration states that:

*“We urge that diversity of the world should be respected and upheld, that all countries in the world, big or small, rich or poor, strong or weak, should respect each other, treat each other as equals and live in peace and amity with each other, and that different civilizations and modes of development should draw on each other’s experience, promote each other and coexist in harmony.”<sup>143</sup>*

To address this state of affairs, FOCAC members strive to facilitate establishment of “a new world order which will reflect their needs and interests,”<sup>144</sup> through the innovation of the patterns of interstate cooperation, and the renovation of international institutions. To this end it calls for international institutions to “fully reflect the democratic principle governing international relations,”<sup>145</sup> envisaging, for example, a UN Security Council open to African membership, and reformed international financial institutions. The “democratization of international relations” needs creating “regimes and formulating relevant rules with a view to increasing the collective bargaining capacity of developing countries.”<sup>146</sup>

In terms of implicit concepts that can be drawn from the patterns of cooperation, and the policy practices towards one another of the FOCAC members, there is first and foremost a strong, expanded, notion of sovereignty, as signalled by the mutual endorsement over the respective positions and attitudes on Taiwan or Darfur. A concern for sovereignty is confirmed by positions contained in the 2000 and 2006 joint declarations, and is complemented by the corollary notions of non-interference, and mutual respect for territorial integrity.

This is also coherent with the belief in an expanded role for regional actors in the maintenance of peace and security in their respective regions, independently of foreign interference. This can be seen in the remarkable degree of voice given to African regional institutions in various fields as development, economy, and security under the FOCAC framework.

Cooperation in the area of trade and economic development, on the other hand, is strongly premised on the principle of mutual benefit. The notion of win-win cooperation is now entrenched in state practice, defining the language of South-South cooperation, and likely to influence the future relations between FOCAC members and western powers.

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<sup>143</sup> Forum on China-Africa Cooperation, “Beijing Declaration of the Forum on China-Africa Cooperation,” Beijing, 2000.

<sup>144</sup> Forum on China-Africa Cooperation, “Programme on China-Africa Cooperation in Economic and Social Development,” Beijing, 2000; Also, see Forum on China-Africa Cooperation, “Beijing Declaration of the Forum on China-Africa Cooperation,” Beijing, 2000.

<sup>145</sup> Forum on China-Africa Cooperation, “Beijing Declaration of the Forum on China-Africa Cooperation,” Beijing, 2000.

<sup>146</sup> Forum on China-Africa Cooperation, “Programme on China-Africa Cooperation in Economic and Social Development,” Beijing, 2000.

## Conclusions

Having become the main conduit of Beijing's policy towards the Arab world and Africa respectively, the two *fora* have taken a unique role in the promotion of an innovative political discourse intended to outline a set of distinctive guiding principles – or principled meanings - for common relations. A couple of conclusions can be drawn about this multilateralist turn in China's policy towards the Arab world and Africa, and the scope of the so-called “new type strategic partnership” that China has spearheaded in those regions. A first remark to be made concerns the striking similarity between the two institutions in terms of governance, underlying principled meanings, and patterns and areas of cooperation. Their quasi-serial nature also suggests that the two institutions examined represent a *model* of foreign policy innovation serving a coherent design, and possibly a *grand strategy*.

Secondly, my case studies have shown that by performing the compound functions ascribed to multilateral institutions, the two *fora* can be considered as the focal points for the emergence of international norms. While such norms would in fact largely set out patterns for South-South relations, they may also be seen as aiming to establish standards that will eventually end up challenging norms and customs prevailing in the international system at the global level.

Significantly, the norms-promoting function of the two institutions explored in the previous section, targets the very normative foundations of the system in such non-trivial areas as the constitutive principles of the international system (sovereignty and equality), the rules of the international trading system (mutual benefit and win-win), and human rights (primacy of the right of development). Remarkably, this is reinforced by the commitment by co-members to coordinate policies and actions within global institutions and regimes. These are of course, the projection of Chinese interests –as a matter of fact, the promotion of norms is, in Chinese foreign policy no less of a strategic factor than the pursuit of material interests. However, the normative discourses supplied by China do seem to give rise to a certain degree of coordination among the different members, identifying this as an issue area of interstate cooperation in its own right. As such, the promotion of alternative norms should be seen as the production of a collective good, becoming identified with the interests of all parties concerned.

This proves that China has evolved into a sophisticated player, who is capable of using complex resources to mobilise other actors towards the pursuit of her grand strategy centred on the transformation of the international system towards multipolarism, a distribution of power more adequate to accommodate her emerging global role.

In turn it reflects Beijing's ability to shape the emergence of a growing consensus among the members of the two institutions, articulating a collective “developing world” vision for the international system and its desired normative underpinning. This so-called *Beijing Consensus*<sup>147</sup> is largely brokered by China's ability to promote a conflation between her own interests and those

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<sup>147</sup> This notion refers at once to a recipe for economic development, and to ideas “about politics, quality of life, and the global balance of power”, (Joshua C. Ramo, *The Beijing Consensus* (London: The Foreign Policy Centre, 2004); See also D. Thompson, “China's Soft Power in Africa: From the “Beijing Consensus” to Health Diplomacy,” *China Brief*, vol. 5: 21 (2005): 1.



of the developing countries she has associated with. The SACF and the FOCAC, by embedding the principles of the *Beijing Consensus*, are contributing to its institutionalisation, offering a set of policy and cooperation guidelines for economic development and political self-determination directly relevant to the real interests of developing countries. Such a *Beijing Consensus* is thus increasingly being framed as a viable alternative to the present shape of the international system that is increasingly perceived *and* labelled as representing the interests and culture of *others*. As conveyed by Chinese Premier Wen Jiabao in his address to the Second FOCAC Ministerial Meeting (2003): “hegemonism is raising its ugly head.”<sup>148</sup>

Taking a step further, we can seek to estimate the theoretical and real-world significance of this emerging trend. Constructivist theory postulates that because the structure of the international system is associated with given cultural values that are internalized by state actors, any change in the collective identity of the subjects identifying with that culture, and therefore of the culture itself, will lead to a transformation of the very structure, by causing the breakdown of an old identity and the emergence of a new one. This implies that the day the majority of state actors will cease to identify with the existing normative foundations of the international system (rooted in specific cultural values), and replace them with new ones, the system itself will inevitably shift towards a new form.<sup>149</sup>

It is too early to tell if the SACF and the FOCAC by themselves have the transformative potential to fulfill this constructivist predictive hypothesis: the two institutions are too young, and more empirical research will have to be done. In addition, at least three factors of uncertainty remain: whether the emerging shared identity is indeed sustainable, that is, whether China will live up to her Five Principles of Peaceful Coexistence that are the basis of the two institutions and of the emerging shared identity over the long run. This brings in the element of China’s credibility as the guarantor of the mini-lateral systems she designed: as a matter of fact, as Ruggie observed, multilateralism is a *demanding organisational form* that will require China to leave behind the historical legacy of a *minimax* approach to multilateralism.<sup>150</sup> Another is the challenge of *generalising* not only the principles, but also the actual relationships, from bidirectional to multidirectional and diffused among all the members involved. A last factor is to see how deeply China’s co-member states have internalised the norms embedded in the two institutions, and how far they will go in reproducing them.

Yet, what does appear quite visibly is that the whole enterprise falls within a coherent Chinese design of *strategic social construction*. This is defined as the effort of one player to persuade the other player to alter its utility function in ways that reflect the normative commitments of the norms entrepreneur.<sup>151</sup> Through this mechanism agents can effect political change. In

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<sup>148</sup> “Let us build on Our Past Achievements and Promote China-Africa Friendly Cooperation on All Fronts – Address,” by H.E. Premier Wen Jiabao at Opening Ceremony of the Second Ministerial Conference of the China-Africa Cooperation Forum, Addis Ababa, December 15, 2003.

<sup>149</sup> Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), 338.

<sup>150</sup> Samuel S. Kim, “International Organisations in Chinese Foreign Policy,” *The ANNALS of the American Academy of Political and Social Science*, Vol. 519:1 (1992): 140-157.

<sup>151</sup> Martha Finnemore & Catherine Sikkink, “International Norms and Political Change,” 270.

constructivist theory, political change is the result of the achievement of tipping points, following which threshold cascades are generated.<sup>152</sup>

The soft balancing literature defines it as “non offensive coalition building to neutralize a (...) potentially threatening power.”<sup>153</sup> That literature has postulated that soft balancing essentially operates through the mechanisms of territorial denial, entangling diplomacy, economic strengthening, and signalling of resolve to participate in a balancing coalition.<sup>154</sup> However there is nothing inherently soft in such measures. But more significantly, T.V. Paul has indicated that, short of posing a direct military challenge, soft balancing is an instrument through which second-tier major powers are able to challenge superpower at the level of the legitimacy of its policies.<sup>155</sup> In addition, the soft-balancing literature seems to imply that the measure it describes applies to punctual situations, rather than describing system-wide processes.

However, mindful of the English School postulate, according to which international society is based on a set of rules and norms associated with a given balance of power,<sup>156</sup> I propose to sharpen and to broaden the scope of the soft-balancing thesis. To sharpen it in order to relate it to the specific meaning of balancing at the level of norms; and to broaden it to relate it to more general dynamics affecting the interests of an actor involved. So redefined, soft-balancing becomes equivalent to a dialectic between opposing efforts at strategic social construction. On another level, it can be linked to the mechanism of norm contestation through which actors aim at undermining or displacing an accepted intersubjective meaning or norms, through the formulation of competing discursive interventions that challenge the meaning of norms embodying *conflictive interpretations of values*.<sup>157</sup>

In this vein, the normative relevance of the three functions performed by multilateralism as an organising form, and its ability to offer a social infrastructure that can give permanence to embedded principles and values, and potentially the achievement of threshold cascades, can explain its choice as a balancing tool.

I suggest that the two institutions that formed my case studies, as part of a broader pattern of multilateral engagement that China is leading across various regions of the world, underpinned by the same type of normative principles, can be explained in light of this framework.

As a concluding thought I wish to briefly relate my understanding of soft balancing to the broader issue of soft-power theory, which formalises a model of state influence based on the tools of persuasion and cooptation, which can be simplified as the ability of “getting others to want the

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<sup>152</sup> Ibid., 271.

<sup>153</sup> T.V. Paul, “Introduction: The Enduring Axioms of Balance of Power Theory and Their Contemporary Relevance,” in *Balance of Power. Theory and Practice in the 21<sup>st</sup> Century*, ed. T.V. Paul et al. (Stanford, CA: Stanford University Press, 2004), 14.

<sup>154</sup> Robert A. Pape, “Soft Balancing Against the United States,” *International Security*, vol. 30:1 (2005): 36.

<sup>155</sup> T.V. Paul, “Soft Balancing in the Age of U.S. Primacy,” *International Security*, vol. 30:1 (2005): 59.

<sup>156</sup> Hedley Bull, *The Anarchical Society*; E.H. Carr, *The Twenty Years Crisis 1919-1939. An Introduction to the Study of International Relations* (London: Macmillan, 1981).

<sup>157</sup> Antje Wiener, “Contested Compliance: Interventions on the Normative Structure of World Politics,” *European Journal of International Relations*, Vol. 10:2 (2004): 190.

outcomes that you want.”<sup>158</sup> It appears that such a form of power operates through a mechanism very similar to that of strategic social construction, namely through the alteration of the utility functions of the targeted actors. In this sense, soft power is key to soft balancing as it expresses the means through which an actor can seek to advance its significant normative interests, in the presence of a prevailing or rival normative (and cultural) configuration.

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<sup>158</sup> Joseph Nye, *Soft Power: The Means to Success in World Politics* (New York, NY: Public Affairs, 2005), 5.

# BETWEEN NATO & RUSSIA: UKRAINE'S FOREIGN POLICY CROSSROADS REVISITED

COMMENT BY

**Mykola Kapitonenko\***

## Abstract

*A strategic choice between NATO membership and closer cooperation with Russia is at the heart of Ukrainian foreign policy. Locked within this dilemma, Ukraine often misses out other important foreign policy variables. Most importantly, the framework for strategic choice is shifting, with potential risks and benefits changing significantly. Moreover, Ukrainian decision-makers often believe that the right choice between East and West will be enough to settle Ukrainian security. This article puts forward the hypothesis that the context of this choice is more important, namely, that structural factors and additional regional arrangements are crucial to both national and regional security.*

**Keywords:** *Ukrainian foreign policy, NATO, geopolitical choice, regional security, Russian regional influence*

## Introduction

Few dilemmas in Ukrainian foreign policy attract more attention and public debate than a strategic choice between NATO and Russia as a key security partner.

Once labeled by Samuel Huntington a “deeply divided state,”<sup>1</sup> Ukraine is paying a constantly increasing price for strategic uncertainty. Curiously, opposite to Huntington’s predictions, division lines are not following civilizational differences. Instead, they have recently become frontlines between public opinion and foreign policy decision-makers, on the one hand, and among various political parties on the other. As a result, Ukraine’s former advantageous status of being one of the most strategically important post-socialist states is turning into a source of structural weakness and security threats.

This has serious implications for both internal and external political outcomes. Internally, the dilemma is being turned into a tool for radicalizing Ukrainian society and propaganda.

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<sup>1</sup> Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996), 165-68.

Externally, Ukraine's continued hesitation results in severe damage to national security, the multiplication of risks, and the deterioration of the regional security system as a whole.

Ukraine in NATO would mean that security in Central and Eastern Europe as well as in the Black Sea region would continue to be rooted in democratic and liberal principles, and follows collective decision-making procedures and power-sharing techniques. Ukraine outside NATO would result in a more "balance of power" prone version of regional stability and recurrence of the spheres of influence in one way or the other.

A consensus among European states was reached at the end of the Cold War: to prevent the resurrection of the old ways of thinking about European security. Europe, the main arena of the Cold War rivalry, suffered a lot from division lines and spheres of influence. Thus, Europeans' commitment to innovative ways of providing regional security was the key driving force behind several waves of NATO and EU enlargements. To a large extent, this commitment also provided strong incentives for Eastern and Central European nations to join both Western institutions.

It may seem that during 2004-08 Ukraine lost its best chance to gain NATO membership and integrate into a Euro-Atlantic security system. These years were marked by a unique conjunction of a pro-Western President in Ukraine and a pro-Ukrainian President in the US. With Victor Yushchenko's influence declining and his chances for re-election vanishing, pro-Western foreign policy in Ukraine is no longer politically relevant. On the other hand, Barack Obama's foreign policy rather seems to take into account Russia's concerns and, in this context, it is somewhat less pro-Ukrainian. In other words, the United States is unlikely to insist on Ukrainian NATO membership anymore; while Ukraine is unlikely to actively seek it.

Today's resurrection of the dilemma on the eve of presidential elections in Ukraine is marked by two important factors, none of which seems to be fully realized by the parties in the debate. First, the NATO, Ukraine was long attempting to join, no longer exists. And second, Ukraine, as a key guarantor of regional security, is absent. The combination of these creates a totally different framework for strategic choice, compared to the one Ukrainians were used to for almost twenty years.

This article assesses two hypotheses: first, that Ukrainian security is best assured when a multipolar regional system is installed and international regimes and organizations are effective; and second, that Ukraine's choice between East and West is not enough to secure either national or regional security. The historical record of Ukrainian foreign policy will be reviewed, with special emphasis upon recurring strategic dilemmas.

### **Theoretical Background of Ukrainian Foreign Policy Dilemmas**

Ukraine is a powerful regional state, but at the same time it is weak when compared to larger neighbors and organizations (Russia, the EU, and NATO). This combination creates serious implications for national and regional security and determines Ukrainian foreign policy.

For Ukraine, being powerful means possessing considerable military capabilities, huge military production, in particular in highly technological sectors, and having a large

population. All these are elements of “hard” power.<sup>2</sup> Around fifty years ago, this could serve a reliable guarantee of the country’s security. However, today’s realities are different. The continent is interlinked through transnational relations of various kinds. The societies and states are highly interdependent. This makes military capabilities obsolete for resolving most of the foreign policy issues. Instead, an access to decision-making, normative, and “soft” power<sup>3</sup> are becoming more effective. Herein lies the first strategic disadvantage of Ukraine: its foreign policy efforts were mostly dedicated to resolving numerous security dilemmas by applying a realistic approach – that is, by building up its military and searching for allies.

Ukraine’s second strategic setback is that no matter how powerful it is, the surrounding neighbors – Russia, the EU and NATO – are far more powerful. As a result, Ukraine is constantly involved into asymmetric relations. Thus, a key to Ukrainian security lies in a critical reassessment of the realistic foundations of her foreign policy and adhering to a more neoliberal approach. Special emphasis should be placed on the concepts of interdependence, international regimes and asymmetric relations.

Interdependence is the most general of them. According to Nye and Keohane, transnational relations and interdependencies among states and societies are increasing, while the usefulness of military force and balance of power politics is decreasing.<sup>4</sup> For Ukraine that would mean that managing complex interdependence is a priority higher than that of building up military alliances. However, successful management of interdependence is unlikely to be achieved either with NATO or through closer relations with Russia. The EU looks more promising in this regard, although remains a much more distant perspective for Ukraine.

The European integration process generally follows neofunctionalist explanations, with its special emphasis on spillover effects.<sup>5</sup> It implies that integration is a slow step-by-step process, for which the participants must have a high degree of interdependence. Ukraine and the EU are not interdependent enough. Ukraine’s inability to introduce European standards of legislation, a lack of development of civil society, and insufficient economic ties with the EU decrease its chances of becoming an EU member in a mid-term perspective.

Interdependencies are effectively managed through international regimes. Regimes help ameliorate incentives to break long-term cooperation for the sake of short-term individual gains. They take various forms, most commonly those of international organizations and multilateral agreements. Regimes are effective since they imply Pareto optimality solution<sup>6</sup> for all parties involved. The logic of international regimes, and not that of

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<sup>2</sup> See Kurt Campbell, Michael O’Hanlon, *Hard Power: The New Politics of National Security* (Cambridge: Basic Books, 2006).

<sup>3</sup> See Joseph Nye, *Soft Power. The Means to Success in World Politics* (New York: Public Affairs, 2004).

<sup>4</sup> On interdependence theory, see Joseph Nye and Robert Keohane, *Power and Interdependence: World Politics in Transition* (Boston: Little Brown, 1977).

<sup>5</sup> For a guide on European integration theories, see Ben Rosamond, *Theories of European Integration* (Hampshire: Palgrave Macmillan, 2000).

<sup>6</sup> Pareto optimality is a general measure of efficiency in strategic interactions. It implies that there is no other outcome to the situation that makes every player at least as well off and at least one player strictly better off. For more details, see Avinash Dixit and Susan Skeath, *Games of Strategy* (New York: W.W. Norton & Company, 2004), Chapter 12.

anarchic competition, reigns in relations of interdependence.<sup>7</sup> Ukraine lacks normative and institutional power and continues to excessively rely on hard power capabilities. This is especially dangerous under conditions of asymmetry.

The most vital external relations of Ukraine are asymmetric. And in each pair, Ukraine is a weak partner, be it with Russia, the EU or NATO. Effective management of asymmetric relations by a weak partner requires its active involvement in various forms of multilateral international cooperation (better if a stronger partner takes part as well) and avoidance of linkages among issues in various fields. None of this is effectively applied by Ukraine in its relations with either Russia or the EU and NATO.

As a result, Ukrainian foreign policy lacks conceptual support. Even the meanings attributed to security, strategy and power are somewhat narrow and out of date. A realistic approach, which is the result of this, is unable to address the numerous challenges to security. Thus, approaching the dilemma of East–West choice, one should keep in mind key neoliberal assumptions: growing interdependence, the importance of non-state actors, and the absence of a hierarchy of issues in world politics.

## Transformations of NATO

When Ukraine first encountered a strategic choice between East and West, NATO was at the height of its triumph. The Cold War was overwhelmingly won, and the Warsaw Pact dissolved. The former adversaries lined up to join the winners. All this was achieved with no direct military casualties.

The other side of the medal was Russia's weakness. The former superpower was quickly deteriorating. The sphere of influence, agreed upon in Yalta, was gone. Economic collapse and social unrest threatened territorial integrity of the state.

In the 1990s, Europe entered into an era of liberal optimism. A weakened Russia adopted a pro–Western foreign policy, which, along with internal developments, allowed more NATO-centered approach to the regional security concerns. A developing common European identity and institutions for foreign policy seemed to be rather complimenting than competing with NATO. The alliance's response to a growing security demand in “new” Europe resulted in the Partnership for Peace (PfP) program in 1994.

Ukraine was the first former Soviet republic to join the PfP.<sup>8</sup> Driven by the need for more security after abandoning its nuclear weapons, Ukraine was searching for a reliable framework with which to pursue its newly formulated national interests. At that time, NATO seemed the only long-term option, although public opinion was split on the issue ever since. In 1997, when the Charter on a Distinctive Partnership was signed to lay down a long-term framework for Ukrainian-NATO relations, thirty-seven percent of Ukrainians supported joining NATO, with twenty-eight percent opposing and thirty-four percent undecided.<sup>9</sup> The only realistic alternative to NATO membership in the 1990s was neutrality.

<sup>7</sup> On international regimes, see Stephen D. Krasner (ed.), *International Regimes* (Ithaca: Cornell University Press, 1983).

<sup>8</sup> For a short version of the history of Ukraine-NATO relations, see <http://www.mil.gov.ua/index.php?lang=en&part=cooperation&sub=history> (accessed September 20, 2009).

<sup>9</sup> Gerald B. H. Solomon, *The NATO enlargement debate, 1990-1997*, (Westport: Praeger, 1998), 121

In a way, this was a reformulation of the East–West choice. However, choosing “East” was equal to keeping a neutral status. Weakened and pro–Western Russia was unable to project its influence in such a way as to construct a sphere of influence. A Russian “veto” for NATO enlargement was the highest possible form of “Eastern” pressure. That was a weak “veto,” since, while opposing to NATO enlargement, Russia did not offer any viable alternative of a regional security framework. As a result, most countries in the region opted to join NATO. Strategic, political and technological benefits were obvious, while risks seemed vague and distant. Ukraine had the same matrix of payoffs at hand. The Charter of 1997 indicated that the strategy of joining NATO was approved. The only way Russia was able to influence these developments was by influencing certain groups within the Ukrainian political elite.

Four years of non-decision on this issue (1994-97), however, turned out to be decisive. Already in 1998 both Russian foreign policy strategy and NATO’s role in Europe started to change rapidly. Key points of these changes included the conflict over Kosovo, the 9/11 attacks and the subsequent campaign in Afghanistan. These events marked a sharp change of both NATO’s functions in providing regional and global security and the perception of the alliance in the world, including that of public opinion.

The campaign in the former Yugoslavia was crucial for launching a new Alliance’s Strategic concept in 1999.<sup>10</sup> This document put forward a “broad approach to security,” enhancing it both in non-military spheres and outside territories of the member-states. Much emphasis was placed on preventive measures and new types of threats. NATO was no longer committed to its 1991 Strategic concept and for numerous reasons could be regarded as a different security provider than before.

These developments shuffled the payoffs matrix for both Ukraine and NATO member-states. Suddenly, the latter were confronting not a militarily weak Russia but a wide range of challenges, partly asymmetrical, and they had to get ready for a wide range of missions outside their homelands. For potential members it meant reassessment of their strategic commitments and readiness to contribute more to enhancing global security. Introduction of international terrorism as an agenda-setting threat reinforced this trend after 2001. Ukraine, on the other hand, had to be ready to cooperate more closely with the alliance in its broadened sphere of responsibility. It is worth mentioning that Ukraine did its best, being the only non-member to take part in all NATO peacekeeping missions.

Another correction to strategic calculations for Ukraine was introduced with a changed Russian stance on NATO in particular and her relations with the West as a whole. This shift had numerous reasons, which are far outside the focus of this paper. Begun in 1998-99 as a reaction to NATO’s campaign in Kosovo, it was quickly institutionalized after Vladimir Putin rose to power in Russia. A new foreign policy approach was much more aggressive, resolute and no longer pro-Western. That had far-reaching consequences for Russia’s neighbors, especially those remaining outside NATO.

Ukraine was one of them. Suddenly it faced a much more complicated choice than before, having to bear more risks when pursuing a pro-NATO strategy. The Eastern “veto” carried more weight, and soon Russia also institutionalized an alternative for NATO – the

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<sup>10</sup> The Alliance’s Strategic Concept, 1999, official text at [http://www.nato.int/cps/en/natolive/official\\_texts\\_27433.htm](http://www.nato.int/cps/en/natolive/official_texts_27433.htm) (accessed September 20, 2009).



Collective Security Treaty Organization (CSTO). Thereafter, the “Eastern” option for Ukraine meant joining an emerging Russian sphere of influence instead of remaining neutral. At the same time, the whole framework of European politics was becoming more competitive, zero-sum and crisis-prone.

Strategic choice for Ukraine was getting more complicated as the world saw the 9/11 attacks and a subsequent war in Afghanistan. NATO had to address both challenges, and those had transformed its role even further. By declaring a war on international terrorism, NATO was putting additional pressure on both member-states and partners. The war in Afghanistan was far from what recent newcomers to NATO expected. “Common defense” of such a broad meaning was a challenge to NATO’s integrity and a shared system of values. It also sharpened internal debates in many states, and in Ukraine, it resulted in a decrease in public support for joining NATO.<sup>11</sup> As a result, NATO membership costs increased dramatically due to a higher probability of distant risky military operations, a decrease in popular support and the growing opposition of Moscow.

Finally, NATO underwent two other major transformations, both of which are linked to a revived Russian expansionism: first and foremost, was NATO’s reaction to the war in Georgia of 2008. The second is about “resetting” American-Russian relations and is currently underway. As a result, NATO has lost its clear security and geopolitical positioning, as well as parts of its collective identity. The crisis of the Russian-Georgian war turned out to be more severe for NATO than even that of the war in Iraq, partly because this time American foreign policy appeared to be lacking initiative. A “reset” of American-Russian relations could be seen as Obama’s conceptual response to this crisis. This response could demand a high price of a total reconsideration of the alliance’s role in a new framework of “resetting” relations with Russia and a total reconstruction of the security system in Europe toward the balance of power and spheres of influence model; the key elements of which include the principle of self-help in providing state security, limited sovereignty for the majority of small states, zero-sum competition in regional affairs between powerful states, and foreign policy aimed at maintaining a balance of power.

## **Ukraine in Regional Security Arrangements**

For quite a while it has been common wisdom among Ukrainian and foreign scholars that the country’s geographical location is a political advantage, which makes Ukraine a geopolitical key to European security.<sup>12</sup> This followed from a Cold War-style geopolitical analysis, according to which Ukraine was an indispensable part of the Russian empire. Control over Ukraine would be the only possible way for Russia to restore her influence over European affairs and, vice versa; placing Ukraine into a community of Western democracies would be the only way to prevent another Cold War in Europe.<sup>13</sup> This style of reasoning was enhanced by Ukraine’s unilateral decision to abandon its nuclear weapons, the third largest stock in the world. In addition, Ukraine was one of the few post-Soviet states that managed to prevent violent internal conflicts. All this contributed to Ukraine’s

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<sup>11</sup> See Razumkov Centre’s polls for 2002-09 at [http://razumkov.org.ua/eng/poll.php?poll\\_id=46](http://razumkov.org.ua/eng/poll.php?poll_id=46) (accessed September 21, 2009).

<sup>12</sup> See Jennifer D. P. Moroney et al. (eds.), *Ukrainian Foreign and Security Policy. Theoretical and Comparative Perspectives* (New York: Praeger Publications, 2002).

<sup>13</sup> Zbigniew Brzezinski, *The Grand Chessboard: American Primacy and Its Geostrategic Imperatives* (New York: Basic Books, 1997).

image as a possible security-supplying country for the whole turbulent region of Eastern and Central Europe.

This was the primary source of Ukraine's attractiveness to the West. Integrating Ukraine into Western political institutions was equal to spreading liberal values and democratic norms. That is why so much attention was paid to internal political reforms in post-Soviet states. It was believed that "democratic peace" theory could be a conceptual basis for resolving numerous conflicts within the former post-Socialist bloc.<sup>14</sup> Ukraine was incorporated into the basic institutional structures and programs for transition, sharing a similar experience to that of countries like Poland, Hungary or the Czech Republic, and hoping to follow their path.

Arguably, this scenario was most probable in 1994-99. On the one hand, this was the period of the most intensive dialogue with the Western institutions. Ukraine joined the PfP and the Central European Initiative (CEI) in 1994 and entered the Council of Europe in 1995. The Partnership and Cooperation Agreement between the EU and Ukraine was signed in 1994 to lay the framework for developing further relations. Gradually, Ukraine was incorporated into key regional and subregional regimes and structures. The process was eased along by a general climate of global cooperation on security issues.

On the other hand, Ukraine and Western democracies needed each other. Ukraine was pursuing internal reforms, aiming toward democratic values and economic development.<sup>15</sup> The support from the Western countries was an important impetus driving the process. Ukraine was opening markets, adopting trade regulations, inviting investments and, on the whole, integrating into the global economy.

The intense dialogue on a number of issues enhanced Ukraine's role in providing regional security. The country's democratization was seen as a prerequisite for peace implementation in Eastern Europe. Growing economic interdependence also contributed to stability. Regional organizations, in which Ukraine was an active member, were integrating into a system of international regimes and seemed to be an effective solution to a problem of asymmetric dependency from Russia.

But in 1998-99 things changed. The primary sources of changes were twofold: strategic shifts in Russian foreign policy and an authoritarian trend in Ukrainian internal affairs. The combination of this was enough to put an end to Ukrainian aspirations of a quick integration into Western institutions. On the one hand, Russia effectively increased the political costs of pursuing pro-Western policy for Ukrainian elites. On the other hand, Ukraine cast serious doubts about its democratic developments due to the policy of re-elected President Leonid Kuchma. In 2000, Kuchma was accused by parliamentary opposition of being involved in the murder of Georgiy Gongadze, a well-known journalist. That produced enormous and unbearable costs for the whole Western dimension of Ukrainian foreign policy.

Other developments were also important for changing Ukraine's geostrategic environment. Continued NATO and EU enlargement had a strong impact on regional

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<sup>14</sup> See Barnett Rubin & Jack Snyder (eds.), *Post-Soviet Political Order* (New York: Routledge, 1998).

<sup>15</sup> See, for instance, The Joint Summit Statement by President of the USA Clinton and President of Ukraine Kuchma, dated November 22, 1994, at <http://www.fas.org/spp/starwars/offdocs/j941122.htm> (accessed September 21, 2009).

security. First and foremost, it filled a “vacuum of power”<sup>16</sup> in Central and Eastern Europe and provoked a more hostile Russian reaction. The conflict in Kosovo also opened up a period of political instability in the region. Special emphasis in this regard should be placed on the so-called “frozen conflicts” in the former Soviet republics, since all of them involved an issue of separatism. Mechanisms for supporting post-bipolar regional stability were becoming non-efficient. As a result, a much more competitive environment was created, while the regional system acquired some distinct features of bipolarity. This was not a very good signal for Ukraine. Under bipolarity of any type, Ukrainian input into a collective security agreement of any kind was doomed to be minimized. Windows of opportunity, opened up when regional integration was flourishing, were closing. The security agenda in Europe was increasingly managed by great powers’ consensus or rivalry.

However, there was a short period of optimism. It followed the so-called “Orange revolution” in Ukraine. President Yushchenko, a winner of the contest due to the mass protests against the fraudulent vote, claimed a pro-Western foreign policy and initially gained considerable support from Western democracies.<sup>17</sup> Ukraine got a chance to play a more active role in regional security. First of all, the “Orange revolution” created preconditions for enhancing various international organizations and regimes in the region, which aimed to support the democratization process and deal with the frozen conflicts. Second, it put additional pressure on European decision-makers to provide more openness toward Ukraine, particularly in trans-border movement, immigration, and political cooperation. The revolution also attracted US attention, since it provided an opportunity for popularizing and exploiting the pacifying impacts of democratization.

As a result, a number of regional projects emerged and were activated. However, most of these opportunities for broader power alignments in Europe were lost due to the ineffectiveness of regional organizations<sup>18</sup> and a quick restoration of Russia’s regional influence. The former was the result of low levels of interdependence among the countries of the region, lack of a shared identity and differences in assessing strategic risks and ways of dealing with them. The latter was primarily the consequence of Russia’s ability to derive maximum opportunities from (i) its own economic power due to high prices for oil and natural gas; (ii) the ineffectiveness of regional organizations in dealing with frozen conflicts, which became a tool for Russia to apply its power on a regional scale; and (iii) a continuing crisis of American foreign policy that created a vacuum of power in what is considered by Russians to be their historical sphere of interest. As a result, by 2008, Central and Eastern Europe and the Black Sea region were back to bipolarity and zero-sum games.

That significantly reduced Ukraine’s structural force and enabled a general destabilization, in which the Russian-Georgian war of 2008 played a role. This war undermined regional stability patterns based on cooperation among smaller states, put an end to multilateral diplomacy aimed at resolving “frozen conflicts,” and weakened Ukraine’s ally. Under new

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<sup>16</sup> For power vacuum and other power considerations, see Hans Morgenthau, *Politics Among Nations* (New York: Alfred Knopf, 1973).

<sup>17</sup> See, for instance, Yushchenko’s address to US Senate at <http://www.america.gov/st/washfile-english/2005/April/200504061638281CJsamohT0.3202631.html> (accessed September 22, 2009)

<sup>18</sup> For more details see Mykola Kapitonenko “Resolving Post-Soviet “Frozen Conflicts”: Is Regional Integration Helpful”, *Caucasian Review of International Affairs*, Vol. 3:1 (2009): 37-44.

circumstances, Ukraine was no longer able to provide security for the region. Instead, it turned into security consumer, and a potentially risky one.

Russia's possible attempts to take advantage of ethnic diversity in Ukraine are believed to impose certain risks. Predominantly Russian-speaking eastern regions could be a starting point for Russia's pressure. Moreover, the Crimean autonomous republic in Ukraine has long been a region of special attention and a special status. The Russian Black Sea Fleet, based in Sevastopol, is a powerful instrument in bilateral relations and the overall regional constellation of forces.

However, these risks seem to be exaggerated. Ukraine is truly vulnerable to ethnic pressure, but its vulnerability lies more in the fields of internal security, social and cultural integrity, and efficiency of a power-sharing model. Unlike cases of Kosovo in the former Yugoslavia or South Ossetia and Abkhazia in Georgia, Ukrainian regions have never demonstrated signs of separatism. Consequently, no ethnic group in Ukraine suffered any form of discrimination. This makes the most dangerous forms of current internal conflicts capable of quick escalation improbable in Ukraine.

At the same time, growing tensions in relations with Russia turn ethnic and linguistic factors into possible areas of conflict. Having this in mind, Ukraine can balance its vulnerability by improving an existing model of power-sharing, further protecting minority rights (and requiring the same steps from its neighbors) and integrating deeper into international regimes. Unless there is a sharp growth of separatism within Ukraine, these measures will help minimize risks from any external pressure.

Due to Ukraine's turning into a security-consuming state, the strategic situation changed dramatically. Instead of operating under multipolarity and within active regional regimes, Ukraine finds itself in recurrent bipolar rivalries. This not only undermines Ukraine's abilities to effectively manage interdependence and asymmetry, but also reshapes regional security arrangements. As a result, an old dilemma of choosing between East and West is taking on new dimensions today.

### **Conclusion: Current Strategic Choices and Pre-Election Hesitation**

With the upcoming presidential campaigns, Ukraine is facing serious security challenges. Its most important interests – regional security, effective resolution of the frozen conflicts, Black Sea regional cooperation development – are under threat. The former priorities, such as regional initiatives, NATO membership aspirations and European energy security, are put into question. Foreign policy strategy aimed at enhancing regional international regimes to counter stronger neighbors has failed. As a result, Ukraine will experience growing difficulties in pursuing the “multivectoral”<sup>19</sup> strategy and faces the increasing risks of a growing asymmetry in relations with key partners.

Restoration of bipolarity turns out to be the worst possible scenario. It limits the options for counterbalancing the great powers' egoistic aspirations and leaves insufficient tools for Ukraine to pursue her security interests. Unfortunately, there is little Ukraine can do about

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<sup>19</sup> Ukrainian foreign policy since President Kuchma (1994-2005) was labelled as multivectoral insofar as Ukraine was aiming to develop strategic cooperation simultaneously with Russia, the USA, and several major European states, counter-balancing the influence of each of them. For more details, see the Address of the President of Ukraine to the Verkhovna Rada, *Uryadovy Kuryer*, 23 February, 2000, p.5-12.

that. Emerging structures of regional politics are out of Ukrainian control, and its only attempt to prevent bipolarity by enhancing regional cooperation was not enough. As a result, Russia's growing power cannot be effectively sustained by a network of regional regimes. The only option left is counterbalancing and deterrence, and herein lies the key argument for Ukraine's NATO membership today.

This option is still believed by many to be a matter of civilizational choice. However, it has become a much more practical task in terms of security maximization. Even if NATO were a group of non-democratic states, Ukraine would want to join it for the sake of counterbalancing Russia. Ukraine is pushed toward seeking NATO membership by the very logic of bipolarity and the zero-sum game it offers. NATO membership in this context is the next best choice after enhancing regional multipolarity.

NATO's opponents in Ukraine mostly offer neutrality as an alternative.<sup>20</sup> However, this status does not stand up to expectations. First and foremost, the problem with neutrality is that it is an out-of-date concept. Neutral status could be a solution for Ukraine under conditions of strong regional cooperation, stable and operational international regimes, and Russia's participation in most important regional initiatives, such as the Energy Charter. When none of this is the case, neutrality then becomes a dangerous option. Neutral states under bipolarity require far more resources to provide their own security. Ukraine simply does not have them.

The strategic option of joining the Russian sphere of influence is open. On the eve of the elections, Ukrainian elites are much more sensitive to Russian than to any other influence, because Russia's presence in Ukrainian economy, NGO sector and media is overwhelmingly stronger than that of the Western countries. Moreover, Ukrainians are disappointed with the modest results of intensified cooperation with the US and European states. All this strengthens pro-Russian attitudes in the society and makes Ukrainian politicians assume a more pro-Russian approach as well. But that does not make a strategic difference. This option will put an end to the idea of a multipolar regional system and will dramatically diminish Ukraine's opportunities for providing both national and regional security.

We believe that joining NATO is still the best possible strategic option not only for Ukraine but for the region as well. It will not prevent bipolarity, but it will make it far less antagonistic. Ukraine in NATO will mean that even at the regional level there will be no power parity between key poles, which will enhance cooperative strategies and prevent risky foreign policies. Finally, NATO's normative dimension will help integrate Ukraine into a democratic system of values and institutions and thus enhance regional stability.

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<sup>20</sup> For analysis of this option in Ukrainian, see <http://cs.cirs.kiev.ua/uk/news/commentary/92-2009-09-17-08-59-47.html> (accessed on September 22, 2009).

## BOOK REVIEW

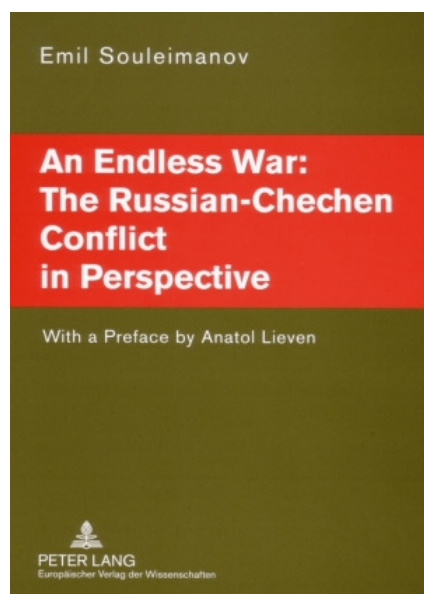
# *AN ENDLESS WAR: THE RUSSIAN-CHECHEN CONFLICT IN PERSPECTIVE.*

*WITH A PREFACE BY ANATOL LIEVEN*

BY EMIL SOULEIMANOV

(Frankfurt am Main et al.: Peter Lang Publishing Group, 2007, pp. 366, ISBN 978-3-631-56040-2, pb. € 39.20 / £ 29.40 / US-\$ 60.95)

*Review by Martin Malek\**



This volume sheds light on the background to the war in the small, autonomous republic of Chechnya – a war that has almost been forgotten by the world’s public but that is still, apart from a hiatus between 1996 and 1999, ongoing. Its roots go back almost two centuries, to when Tsarist Russia thought it necessary to bring “civilisation” to the North Caucasus with fire and sword.

Using numerous sources, Emil Souleimanov from Charles University in Prague illustrates this historical background, the characteristics of Chechen culture, as well as the surprisingly complex structure of its society; though he mainly focuses on events since 1994, when Russian president Boris Yeltsin believed he could discipline breakaway Chechnya with military might in no time at all.

The result, however, was a war with tens of thousands of dead and human rights violations on a massive scale, especially on the part of the Russians, which Souleimanov, who is of Caucasian descent, graphically describes in a separate chapter.

He also discusses the role of Islam and the radicalisation of parts of the armed Chechen resistance, as well as its actions outside Chechnya, which attracted European and North American attention (especially the taking of hostages in a Moscow theatre, and in a school in the North Ossetian town of Beslan in 2004); the ascent of Ramzan Kadyrov, who now,

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\* *Dr. Martin Malek* is a researcher and CIS area specialist at the Institute for Peace Support and Conflict Management of the National Defence Academy in Vienna, Austria

on behalf of the Kremlin, rules Chechnya with an iron fist; and the consequences of the war in Chechnya for Russian society.

This plausibly structured and objective report can be read as a counterbalance to the Kremlin's official description of the intervention as a "war against terrorism," a description which, following 9/11, met with increasing acceptance in the US and Western Europe.

Readers familiar with literature on Chechnya, however, may question the validity of the preface by Anatol Lieven, who has spared no effort to defend and justify Vladimir Putin's post-1999 war (see, for example, his articles "Nightmare in the Caucasus" from the year 2000, "Morality and Reality in Approaches to War crimes: The Case of Chechnya" from 2001 and "A Spreading Danger: Time for a New Policy Toward Chechnya", written together with Fiona Hill and Thomas de Waal in 2005). Apart from this reservation, this book can be highly recommended to readers outside academia as well.

**About the author:**

*Emil Souleimanov is assistant professor at Charles University in Prague, Institute of Political Studies and at the University of Public Administration and International Relations (Czech Republic). He holds his M.A. and Ph.D. in International Relations from Charles University and LL.M. from the St. Petersburg State Polytechnical University. He has published widely on the issues of security and nation as well as state-building with regional emphasis on Russia and the Caucasus. He has also provided numerous analyses to the Czech Ministry of Foreign Affairs, the Ministry of Defense, and the NATO.*



# “ARMENIA & GEORGIA: CORRUPTION, THE STATE, AND CHANGE”

## Interview with Dr. Christoph H. Stefes\*

*Conducted by Jesse Tatum, Interview Editor of CRIA*



**CRIA:** *With regard to your comparative study of corruption in Georgia and Armenia, can you explain its different levels – i.e. where it takes place and in what way – in society? Whom or what does it affect most? Why?*

**Stefes:** Let me first state that my research on corruption in Georgia focused primarily on the Shevardnadze era. I lived, worked, and researched in Georgia from February 1998 until June 1999. From what I could gather, under Georgia’s current president, Mikhail Saak’ashvili, the situation seems to have improved dramatically. Yet we have to keep in mind that Georgia started from an extremely low level of accountability. Under President Shevardnadze, corruption was the rule rather than the exception throughout the entire state apparatus, from the bottom to the top, from a rural police station to the Minister of Interior. State officials solicited and extorted bribes, misappropriated state funds, and protected corrupt colleagues from prosecution. It was truly a “system of corruption”, taking into account that corrupt activities were not only widespread but that these activities also followed numerous informal rules and norms that were embedded in myriads of networks connecting officials with each other as well as officials with citizens. It was generally understood that “lucrative” positions in the state administration – i.e. those positions that allowed officials to amass illegal income – were not given to the most qualified candidates but to relatives and individuals who paid for getting these jobs. Moreover, state officials colluded with each other. For instance, police, prosecutors, and judges shared bribes from citizens standing trial in return for an acquittal or a lower sentence. Citizens knew the rules of the game as well. Anyone who wanted to start a business, get a passport, avoid a ticket, or receive medical help in a brutal prison system knew how much (s)he had to bribe.

The situation in Armenia was very similar. I conducted field research in Armenia about six years ago. Yet I can state with some confidence that the situation has not changed much. Armenia continues to suffer from systemic corruption. The main difference between Armenia and Shevardnadze’s Georgia has been the level of government control over the informal networks of corruption, or what I call the “centralization” of corruption. In post-Soviet Armenia, corruption is widespread but the political leadership has succeeded in keeping corruption within limits. It has also

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made sure that these informal networks of corruption would support the government and not be used to form a powerful opposition to the government. It has prevented corruption from discouraging potential investors. Bribes still need to be paid, but they are predictable and officials who take the bribes usually live up to their end of the deal. Unlike Georgia whose state structures and political authority disintegrated in the wake of a turbulent post-Soviet transition, Armenia has seen a less disruptive transition from Soviet rule, which has allowed Armenia's post-Soviet leadership to keep the state structure intact and loyal, tightly controlling the formal institutions and informal networks. The weakness of the Georgian state and the country's decentralized system of corruption thereby formed a vicious cycle, which was only stopped and reversed in the wake of the country's Rose Revolution in 2003. In contrast, the Armenian government could always rely on a more coherent and loyal state apparatus.

Systemic corruption pits citizens who lack resources, such as money and personal contacts, against the state apparatus. As they encounter state officials, they will always get the short end of the stick. Citizens with resources, on the other hand, might do quite well under conditions of systemic corruption. In general, the informal institutions of corruption, such as collusion and clientelism, undermine the formal institutions of democracy and market economies, increasing the gap between those who are wealthy and/or powerful (in corrupt systems this often goes together) and those who have neither. A centralized system of corruption, like the Armenian one, might at least moderate the negative economic consequences of systemic corruption, providing a somewhat predictable business environment. On the other hand, the merger of political power and economic resources in a centralized system of corruption does not bode well for consolidating democratic rule. It can be a perfect tool for the government to revert to authoritarian rule. In Shevardnadze's Georgia, this merger did not take place, which provided the opposition with resources, guaranteeing some degree of political pluralism which eventually culminated in the demise of the Shevardnadze regime. Yet the Georgian economy suffered terribly from a system of corruption that ran out of control.

***CRIA: You have stated that Armenia suffers from “centralized” corruption, while Georgia has a more “decentralized” form of it. Can you briefly define how the respective national governments can tackle these two forms of corruption, and what progress (or lack thereof) has been made over the past two years, especially Saak'ashvili's campaign in Georgia?***

***Stefes:*** For Armenia, change could come from above – probably, only from above, taking into account the weakness of Armenia's civil society and political opposition. If the political leadership was ready to fight corruption, it would have the ability to do so. However, this system of corruption has in many ways empowered and enriched elected government officials and top-level bureaucrats. Without outside prodding, the Armenian leadership has few incentives to change anything radical in how the government conducts business. And where should that prodding come from? Most certainly not from Russia whose control over the Armenian economy has rapidly increased in recent years mainly through shady deals. The irony is that it was clearly in Shevardnadze's interest to fight corruption, and he certainly tried, but his leadership was so weak that he largely failed. Not so his successor Saak'ashvili. By

purging corrupt officials and radically reforming parts of the state structure (e.g. the police and tax administration), he dramatically reduced corruption and increased citizens' trust in the state. There are still state agencies that are heavily affected by corruption – notably the court system – but the Saak'ashvili government has certainly cleaned up quite a bit in a relatively short time. The Rose Revolution, which in large ways was motivated by Georgia's endemic corruption, provided Saak'ashvili with the opportunity to tackle corruption head on. In so doing, Saak'ashvili has not always followed the rule of law. Yet Georgians have not only tolerated but expected from their new government that it would attempt to eradicate systemic corruption no matter what.

***CRIA: How do the two forms of corruption affect centre-periphery relations, that is, how local-level and national-level governments work together?***

**Stefes:** In Georgia, President Shevardnadze experienced an utter fragmentation of the state apparatus. This fragmentation included the regional and local administration. He was forced to strike deals with powerful clans outside the capital. These deals provided the clans with a free reign as long as they did not openly oppose the central government and delivered the votes for the president and his party through various illicit practices such as vote buying and the intimidation of opposition candidates. Yet in terms of formulating and implementing coherent economic, fiscal, and social policies, the reach of the Shevardnadze government did not extend beyond Tbilisi. This situation has changed under President Saak'ashvili who has dramatically limited the power of peripheral clans, as Julie A. George elaborates in more detail in her forthcoming book. Concerning the situation in Armenia, the country's centralized system of corruption, which links regional clans to clans tied to the central government, has helped the political leadership to exert its authority over the local and regional administrations. It should also be mentioned that constitutional changes have increased the formal authority of the central government over regional and local administrations. In short, as my colleague Babken Babajanian convincingly shows in his studies, formal and informal institutions increase the centre's leverage over the periphery in Armenia.

***CRIA: Can you describe any recurrent strains of authoritarianism in these two countries, especially in light of the past two years in which both governments harshly repressed public protests (e.g. Nov. '07 in Georgia and March '08 in Armenia)?***

**Stefes:** I would argue that in both countries the turn towards and consolidation of democratic rule is an uphill battle. I thereby largely support Steven Fish's argument. Super-presidentialism, a weakly organized and fragmented opposition, and the adverse impact of authoritarian neighbors – especially, Russia – have been strong barriers to democratization in these two countries. Armenia's authoritarian leadership can furthermore benefit from a merger of political power and economic resources, as I mentioned earlier, and it can rely on a well-trained and loyal coercive apparatus that has turned out to be a steadfast supporter of the incumbent government in times of crisis (e.g. in 1996, 2004, and 2008). I believe that Georgia has a better chance to establish democratic rule. Western countries' strong criticism of the Georgian government's crackdown on peaceful demonstrators in March 2008 has certainly left

an impression on President Saak'ashvili. Facing a similar situation this year, he has skillfully let the opposition run out of steam, abstaining from using force. Unlike the Armenian leadership, which can rely on Russia for military, diplomatic, and economic support, Georgia can only turn towards the West for support. After last year's war with Russia, Georgia cannot find any other foreign allies but the US and European governments and at least the Europeans have at times been sharply critical of authoritarian tendencies under Saak'ashvili. Today, I would classify Saak'ashvili's regime as semi-democratic; whereas Armenia's current regime under President Sargsyan is at best semi-authoritarian or "competitive authoritarian", as my colleagues [Steve Levitsky and Lucan Way](#) would call it. I don't see that this might change anytime soon.

**CRIA:** *Finally, regarding your upcoming book, can you talk about the rhetorical battle between Russia and Georgia?*

**Stefes:** If we analyze the rhetorical battle that Russia and Georgia have fought before, during, and after the war in 2008, it becomes very clear that the war was not just fought over the future of Georgia's two breakaway regions, South Ossetia and Abkhazia. Surrounding the active war, a tremendous rhetorical battle has been fought on all sides. For instance, both Russian and Georgian government officials have written op-ed pieces for numerous newspapers (e.g. *International Herald Tribune* and *The Wall Street Journal*), appeared on TV talk shows (such as CNN), and employed professional PR and legal firms to spread their messages as widely and as convincingly as possible. Russian and Georgian governments have thereby tried to communicate with their own people, with each other, and with the outside world (especially with the governments in the United States and in Europe). Recurring references to international rules and norms are thereby meant to support specific storylines that legitimize the actions that each party took during the active war. Yet it is also about constructing particular narratives that outline specific understandings of the international system, the role of the adversaries in this system, and one's own role in this system.

Starting with Russia, the Kremlin has clearly intended to draw a line in the sand. The Russian government feels betrayed, as all promises that were given during the 1990s by the West about respecting Russia's national security interests have been subsequently ignored by the Bush administration. Russia has repeatedly expressed its worries that international treaties and laws would become meaningless in a unipolar world that is dominated by the United States. Of course, comparing Georgia and its president frequently to Nazi Germany and Adolf Hitler has not really helped to mend any fences. For Georgia, on the other hand, this war has had a deeper meaning, as it has been primarily fought over Georgia's sovereignty. This is not surprising, as Georgia has just emerged as an independent state from Russia's colonial empire – otherwise known as the Soviet Union. In the 1960s, we saw similar reactions from the government of newly independent states in Africa and Asia. And Georgia has had good reasons to be worried. For instance, Russia has repeatedly violated Georgia's airspace for the past ten years.

Now, what does this all mean for the international efforts to find peace, and not just a ceasefire, in the region? First, there seems to be a preoccupation with finding out

which side we should blame for the outbreak of this war. Who shot first? I don't think that this detective work does us any good. After all, which of the many shots fired counts as the first shot? There have been skirmishes along the borders for years. The recent report by the European Union blames both Russia and Georgia for escalating tensions to a point where there was almost no way back. It is probably wise to leave it with that. Instead, the more difficult work of creating a new security architecture in the region needs to start as soon as possible. This new security structure needs to account for Russia's legitimate political and economic interests in the region but also has to guarantee the sovereignty of the successor states of the Soviet Union. In addition to these countries, the new security structure needs to include the European Union and its member states as well as the United States. Frankly, I don't know if we can achieve this kind of structure anytime soon. I am particularly worried about the uncompromising leaderships in Tbilisi and Moscow. However, it is also clear that in this part of the world, we need a lot more cooperation and confidence-building measures. Otherwise, we will see a resumption of violent hostilities not only in South Ossetia and Abkhazia but also in Nagorno-Karabakh, which could essentially mean that the entire South Caucasus goes up in flames.

# “IF TURKISH-ARMENIAN BORDER REOPENS, GEORGIA WILL BECOME LESS IMPORTANT”

Interview with Dr. Hans Gutbrod\* and Koba Turmanidze\*\*  
Caucasus Research Resource Centers, Tbilisi, Georgia

Conducted by Jesse Tatum, Interview Editor of CRIA



Dr. Hans Gutbrod.  
Source: Russiatoday.ru

**CRIA:** *Over the last ten years that you have been living and working in Georgia, what are some changes that strike you the most?*

**Gutbrod:** I think it would be fair to say that when I came here in 1999, there was trouble in every single way. Georgia and its people were running up against massive and huge challenges. Now, one of the things that have changed, clearly, is that they have narrowed the challenges down. Of course, the country is still facing important, critical challenges, such as, in the view of its own citizens according to our surveys, challenges like territorial integrity, unemployment, poverty, and that even when people have jobs, they are not getting paid very well, and healthcare. But where they face these large challenges, now they have moved into a field of political feasibility. Many of those things can now be addressed. There is a “state,” and in 1999 we just were not sure whether Georgia constituted a state at all. And I do not think that is something people doubt now. So, huge progress, and, of course, many challenges remain, including that of completing democratization...



Koba Turmanidze.  
Source: Web.ceu.hu

**Turmanidze:** That is a good description, but to add to questioning whether Georgia was a state in 1999, especially as people were coming with ideas of what a state should look like, for those who lived through the 1990s, the end of the decade was much better than they could ever imagine... because the beginning of the decade was that bad—it was chaos. Sometimes we would joke that Shevardnadze was Tbilisi’s mayor, not president of the country, because his power did not extend beyond Tbilisi. But the important thing was that, although state

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\* **Dr. Hans Gutbrod**, Regional Director of the Caucasus Research Resource Centers (CRRC) in Tbilisi, holds a Ph.D. and a B.Sc. in International Relations from the London School of Economics. Prior to joining CRRC in 2006, Dr. Gutbrod worked in the Caucasus region for several years. He has taught at Tbilisi State University and trained lecturers and higher education staff on methods.

\*\* **Koba Turmanidze**, CRRC’s Georgia Country Director, earned an MPA from American University (Washington, DC), an M.A. in Political Science from Central European University (Budapest, Hungary) and a diploma in History from Tbilisi State University. Since 2005 he has held the position of Assistant Professor at Tbilisi State University. Prior to joining CRRC, Koba worked as a Senior Analyst for Transparency International – Georgia, Eurasia Foundation - Georgia, the Georgia Governance and Civil Society Project, and the Parliament of Georgia.

structures existed in physical form, they functioned like private institutions: people in state structures were acting like they were running private businesses, and, now, that is hardly possible to do. That is the biggest difference—that there is a differentiation between the state and private institutions. The state does what it does—whether just or not—and the private sector is totally different.

**CRIA:** *How important is the work the Caucasus Research Resource Centers does, in terms of allowing Georgians to speak for themselves on national issues? How do we get an angle from this that goes beyond what outside commentators purport?*

**Gutbrod:** I think this is really where we see the role of quality opinion research. And that is something that the CRRC is hoping to provide in that context: to give a voice to what people think, to bring “the main voice” into the debate, not just elite views or surface impressions that shape judgment. There is a narrow technical way of looking at survey work and opinion research, but I think there is also a broader role, one that has been articulated by Richard Rose that says “counting people makes them count.” It is a way of going beyond elections and giving a voice to what people would like to have, what they need, and what they would like to see. In many Western countries people do not really think about that. Because they are used to functioning institutions, which include opinion research and established statistical departments, they do not think of it as a really critical transmission mechanism. It is that type of mechanism that we want to contribute to, so that we have a much more informed conversation about what is going on.

**CRIA:** *Can you summarize Georgia’s desire for NATO membership, i.e. what Georgians see as the pros and cons in this situation?*

**Gutbrod:** I think, generally, for Georgians, NATO membership means one big thing: security—and sleeping soundly at night, so to speak, or not having to worry about an intrusion that could change everything. To give just one example, imagine what this means for business people who are figuring out whether to invest and thereby employ people. So the desire for security is very reasonable and something that is very understandable.

We looked into the question whether Georgians might be willing to make trade-offs, so to speak, reduce the drive towards integration with Euro-Atlantic structures—to put it broadly—in exchange for concessions granted by Russia. The overwhelming view that Georgians communicated was that no such concessions were on the table. So, to the extent that anybody in Russia would have any interest in contemplating that option, they would need to do a lot of work to convince that there is a feasible option on the table in the first place and, secondly, that it is an attractive option that would be worth considering. Right now that is not appearing in the discourse. So, as a discussion, it is relegated to a relatively small elite circle, and merely speculative.

**CRIA:** *So, what can Georgia do to increase its chances of membership? Or will most of the initiative have to be taken by external actors?*

**Turmanidze:** Unfortunately, it is not totally up to us. But what we can do is to cancel out the reasons that are given by those against Georgia’s membership. Of course, there are these reasons, and they are objective and go beyond the fact that Russia does

not want it: such reasons as our level of democracy, democratic elections, participation of different groups in power—things that are declared to be preconditions for NATO membership. The other thing is: how ready is the Georgian army, which performed miserably in August 2008. How ready is it to be part of something really powerful and has high standards? And, of course, in those areas we have a lot of problems...

**CRIA:** *In a recent CRRC survey, Georgians ranked relations with Russia as the third most important issue facing the country, with twice as many people choosing this option over the issue of EU membership. How can Georgia's drive toward the West be reconciled with this desire for better a better relationship with Russia?*

**Gutbrod:** Well, obviously, Georgians want good relationships in all directions, and the reason why that figures prominently in the surveys is because, of course, it is one of the things that is most in need of fixing. And it relates directly to people's livelihood; for example, Russia is a potentially big export market - from mineral water and wine to other agricultural products. In that way, people want complimentary relations. They do not want one thing to come at the expense of another. With regard to European institutions, it is obvious how these things can be complimentary. As for NATO, there is of course the remaining tension between choosing NATO versus a closer relationship with Russia. Conversely, it is also understandable that many Georgians would have the hope that they can maintain good relationships while making their own choices about their security arrangements, and still maintain a good relationship in terms of trade, cultural exchange, and many of the things that Georgians and Russians have shared over time.

**Turmanidze:** Yes, it is very interesting how these numbers confirm our observations and feelings. Although we really do have strong negative feelings about Russia as a state and neighbor, these feelings never transferred to Russian citizens. Even in 1992–93, when we knew that Russia was fighting against us in South Ossetia and Abkhazia - and then we had a bigger Russian population than we have now - I seriously thought that, because people were so nationalistic, they might attack ethnic Russians. But nothing like that happened. So it is not like the survey results are coincidental: it does confirm what goes on in everyday life between citizens, where cultural exchanges do not consider the animosity present in state relations.

**CRIA:** *Finally, how does an open Turkish–Armenian border affect the region as a whole? Do you see any especially important implications in this context?*

**Gutbrod:** If the border indeed opens, if those protocols are ratified, it will mark a sizeable change. From our point of view, we can talk about how this is going to affect a lot of people throughout the Caucasus. I think in some key ways, on many of the key geostrategic issues, there was a sense that the Caucasus did not just have frozen conflicts: all of it was “frozen,” and that it had gotten stuck. The word that is being used over and over again in Armenia in reference to what a border opening would mean is “oxygen.” And so I think, really, in a very literal way it would be a deep breath of fresh air and, hopefully, something that would lead to and precipitate other changes—that many things that would have seemed inconceivable in the last few years would become possible.



**Turmanidze:** Well, if the border opens, there is another thing that will happen for Georgia: we will become less important. I consider this in terms of a zero-sum game. And many citizens in each of these three countries in the South Caucasus can live, or have lived, for centuries without even knowing what is going on in their neighboring country. Someone wins and someone loses, and we will be losers if the border opens. I always joke that we cannot become a “state” because others, our neighbors like Iran and Russia, are not reliable partners. So I do not look at it as something exciting—although, of course, who would be against opening closed borders—but I care more about the citizens of this country. And for our citizens, wealth will decrease, importance will decrease; so, overall, we will be an even less important geopolitical player than we are now.