

Russian influence on contemporary international law: frozen conflicts in Eastern Europe

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Abstract: The effects of the Cold War division of Europe had a powerful impact on diverse foreign policies vis à vis ethnic minority rights and conceptions of international law. European integration in the Western part of the continent has been providing an environment in which distinct kin-state policies emerged. No such practice existed behind the Iron Curtain. This paper suggests that realistic approach in international relations and international recognition of self-proclaimed entities could have an impact on the future prospects of international law.

Keywords: kin-state, host country, frozen conflicts, uti possidetis, international law

The so-called frozen conflicts are still-present legacies of Europe which had been divided during the Cold War.¹ After the dissolution of the Soviet Union – in a transformed international security situation – the former administrative entities of the empire partly became independent republics while the others hoped for reformed political status recognised by the international community which respects self-determination. Nevertheless the power vacuum in the peripheral regions of the former Soviet Union has opened the way to ethnic conflicts in Moldova, Georgia and Azerbaijan in the beginning of the 1990s which have not reached a standstill since then.

¹ “Frozen conflict” is the most commonly used term besides “post-Soviet conflict” in the academic literature.

This paper primarily aims at finding an answer whether the international community's attitude towards the separatist regions² in the aforementioned countries and the *de facto* independent states³ can initiate a tendency which later indicates changes in the international law as well. Another major focus of this paper is the adaptation of those *kin-state* and *host country* relations in the interstate relations in East Europe which have been developed over several decades in the western part of the continent. In this context, the paper analyses whether the application of these political solutions can bring any change regarding frozen conflicts.

Introduction

The division of Europe in the bipolar system brought dissonant political culture, legal, economic and social environment during the Cold War. These differences seemed to be balancing out after the disintegration of the Socialist Bloc and the spread of Western values, legal, economic and societal models in Eastern Europe twenty years following the political transitions. This process was, however, influenced by a few specificities which exclusively occur in this region. These factors are: the “lateness” in society development compared to the European “centre”, the slow dynamics of this process and the ways of formation of ethnic minority groups. In Eastern Europe and the Balkans new ethnic regions emerged due to the international legal customs regarding the status of new entities after the dissolution of empires. This principle is the *uti possidetis*, according to which the administrative boundaries of a former empire became the borders of newly established states. Those countries which situated on the western side of the Iron Curtain only faced this problem indirectly or during the decolonisation. Nevertheless, a political system was forming in the West, in which human rights, minority rights as well as the success of democratic and economic development extend to all citizens. Such political environment could not emerge in socialist countries because the right for self-determination and de-emphasise of the identity of diverse ethnic groups by the communist authorities meant discrimination and exclusion in practice. As a result, small ethnic groups which are supported by a *kin-state* having efficient *kin-state policy* and living in

² The term “separatist” follows the viewpoint of the states became independent in 1999. The term “entity” and synonymous expressions are referring to the *de facto* states which became independent from the former Soviet republics.

³ Their official names declared by the governments of the entities are: Republic of Abkhazia (*Aphsny Axwynthqarra*), Pridnestrovian Moldavian Republic (often referred as Transnistria, *Republica Moldovenească Nistreană*), Republic of South Ossetia (*Respublikæ Xussar Iryston*) and Nagorno-Karabakh Republic (*Lernayin Gharabaghi Hanrapetut'yun*).

the former Soviet Union had the aim of emigration rather than integration.⁴ (Wolff, 2009) Soon after new states emerged in an unstable security situation the larger and more organised ethnic groups became actors of clashes in which old conflicts were replaced by new realities.

Kin-state and host country policies

Most of the post-Soviet countries are multi-ethnic states having numerous ethnic regions due to their artificially created borders. These newly independent states broke with Soviet minority policy approaches soon after the transition and initiated long-time developed European liberal methods of minority protection. That change of philosophy also matched in the unifying process of international law in the field of minority protection. Kin-state policies in Europe had longer history regarding legislation and law enforcement and the neighbouring states could show more results in mutually recognising minority groups.

The international system based on the primacy of human rights and liberal principles is generally powered by those international organisations (UN, EU, OSCE, CoE) which unconditionally support post-communist countries in forming the legal frameworks of Western-style minority protection. According to the approaches of these organisations, the interstate conflicts are the results of unresolved intra-state conflicts. That is why it is necessary to make new regulations concerning the forms of autonomy because of the territorial changes in the 1990s, the change in the notion of nation state, the development of democracy and international law as well as the dichotomy of indivisibility of states and the principles of identity.

Those kin-state policies which are in accordance with the aims of minorities living abroad generally have three levels. Firstly, the policies made by the international organisations and mechanisms are realised through multilateral actions.⁵ Secondly, another segment of cross-border minority protection is the bilateral actions.⁶ The third level is the domestic regulations concerning kin minorities living abroad.⁷ (Kardos, 2006) All the relevant international documents and agreements emphasise the limits of extraterritorial law enforcement, the

⁴ Such ethnic groups were the Germans and Jews. It was also an official foreign policy priority of Germany to facilitate the return of Germans from the former Soviet Union to their homeland. (WOLFF, 2009)

⁵ In multilateral actions kin-states allow the international organisation system to enforce human rights. In some cases these states can achieve some foreign policy aims through the above mentioned actions. It proves to be an efficient tool because international organisations react and to channel problems at the same time.

⁶ These are co-operations with host countries and foreign policy actions.

⁷ These unilateral actions can be realised through constitutional actions (generally initiated by the government) or political manifestations (with the backing of a wider parliamentary support).

primacy of the host country's role, sovereignty and the prohibition of violating territorial integrity. Thus, they overall indicate new solutions which can be acceptable for all member states. Therefore a bigger political space can be formed based on a mutually recognised system of standards.

Realist foreign policies

Those countries which do not or just partially included in the activities of the above mentioned international organisations have realist approaches towards ethnic and national minorities, therefore they apply such policies which resembles to the relations of strong and weak countries in international political affairs. Russia can be described as such country for which *realpolitik* can overwrite the margins of its international commitments because of its role in world politics⁸ and the foreign policy which reflects to the role that Russia plays globally. At this point a question arises as in what extent Russia could realise the above mentioned policies which have also been applied by its western neighbours. Furthermore, in this context, what factors determine the relations of the traditional Russian foreign policy and Moscow's kin-state policy? The answer is given by the political practice which perpetuates the tsarist imperial and Soviet foreign policy traditions as well as the Concept of the Foreign Policy of the Russian Federation created in 2008.⁹ The latter document contained three principles regarding the frameworks of Russian diaspora policy and foreign policy strategy. These prevail within the framework of international law: good faith (*bona fide*) based on the primacy of international law, mutual and balanced cooperation¹⁰, and protection of interests.¹¹ The aims of the Concept have dual purpose regarding "Russian communities and countries where Russian compatriots reside": preserving the identity and traditions of the Russian people on the one hand, and ensuring close relations with Russia in the field of culture, education, communication and other humanitarian areas. The definition of Russian

⁸ Politically stable and strong economic powers usually influencing international relations by taking account of the norms of international law while so-called failed states generally positions themselves outside of this system.

⁹ Concept of the Foreign Policy of the Russian Federation. 11 July 2008. [online] Available at: <<http://www.mid.ru/bdcomp/ns-osndoc.nsf/osndd%21OpenView&Start=1&Count=30&Expand=2#2>> (in Russian, English, French and German).

¹⁰ Establishment of good neighbour relations and cooperation with other states and international organisations.

¹¹ Protecting the rights of the Russian citizens permanently living abroad and supporting the rights (in the fields of culture, language, education and communication) of Russian-speaking communities living in foreign states.

compatriots was clarified¹² in 2011; consequently nowadays those people can be included in this category, which live outside Russia and declare their emotional and cultural ties with Russia freely. This determination has replaced the previous broader concept.¹³ Therefore, the declarations of the 1990s lost their meanings and the belonging to Russian compatriots is now based on self-identification instead of the adherence to the principles of state-centred political geography. Those who want to be or remain Russian nowadays have to make commitment of being related to Russia. (Gémesi, 2011)

The principle of cooperation which appears in the foreign policy Concept is manifested in the subsidies for promoting linguistic and cultural identity as well as in the “reciprocity”: the active support from the diaspora communities towards the kin-state. Russia is “protecting rights and legitimate interests of compatriots living abroad on the basis of international law and treaties concluded by the Russian Federation.” (Concept, 2008) According to these Moscow declared to choose cooperative policies rather than conflicts in the practice of minority rights enforcement. However it does not mean that Russia would give up the representation of the interests of Russians living abroad. As Russian Foreign Minister Sergei Lavrov stated¹⁴ “no violation of law will be overlooked by Moscow” and his government will assist Russians living abroad to protect their rights using wide range of diplomatic tools.

This implies that codification regarding kin-state policy – in theoretical sphere – follows the European trends presented here. The foreign policy Concept and diaspora policies are, however, linked. The reason of that in particular is the mass passport issue which had played a major role in three out of four frozen conflicts. (Roudik, 2008) As a result, 90% of the population of Abkhazia and South Ossetia owns Russian passport, that is, the most basic guarantee of the link with Russia and the Russian culture. (Popescu, 2006) In Transnistria 30% of the population has this type of document. (BakuToday, 2011)

¹² Executive order of the President of the Russian Federation on establishing a foundation for supporting and protecting the rights of compatriots living abroad (25 May 2011) and Federal Target Programme “Russian Language” in 2011–2015 (published on 20 June 2011).

¹³ The Russian Federal Assembly adopted the Act on the state policy on compatriots abroad in 1999. The Act was amended in 9 July 2010 by the State Duma. It was confirmed by the Federation Council on 14 July 2010 and proclaimed by the President on 23 July.

¹⁴ Interview with Russian Foreign Minister Sergei Lavrov in *Rossiyskaya Gazeta* in the issue of 30 October 2008.

Besides the actions applied in international practice (e.g. dual citizenship)¹⁵ Russia has taken many foreign policy steps which undermined the authority of the *ius cogens* rules of the international law. First it manifested through the financial, political and diplomatic assistance for the separatist regions resulting Russia became the most influential supporter of these entities. Subsequently an institutional outsourcing began in the quasi-states, primarily integrating the management of defence and security sector into Russian governmental bodies. Beyond this point the government of the Russian Federation was not able to recognise the territorial integrity of its neighbours, thus it could not comply the customs universally accepted by the international community. As a result Russia – at the same time – became an actor and a shaper of a one-way process, which have necessarily stretched the framework of the existing system. In this sense the Russian recognition of the separatist entities was only a reasonable step during the process.¹⁶ However accepting the legitimacy of this practice will question the general viewpoint according to which Russia's interest is to maintain the *status quo* regarding the frozen conflicts in the Black Sea region. In summary, the recognition by Russia promoted a series of events which is likely to result unconventional legal resolution of the conflicts on the long term.

Political pressure by Soviet successor countries and cooperation of quasi-states

The migration of Russian nationals to Russia from most of the former Soviet republics has basically ended in the 2000s resulting more homogeneous ethnic composition in the successor states. (Simon, 2011) Parallel to the depletion of diaspora migration, Russian influence has decreased within the Community of Independent States. Moscow also could less and less rely on Russian identity through the interventions in post-Soviet conflicts. The looser ties between Moscow's government and the successor states as well as the creation of democratic institutional systems would enable to adapt Western-style minority protection policies by peaceful means. The main obstacle was that the entities – which declared their independence unilaterally – made impossible any cooperation based on autonomous partnership because of

¹⁵ Russia accepts dual citizenship only in the case of those countries which formerly Moscow agreed with beforehand. The simplified Russian citizenship act in 2002 and the legislation of the separatist republics made mass passport issues possible without the consent of the host countries.

¹⁶ Russia recognised the Republic of Abkhazia and the Republic of South Ossetia as sovereign states on 26 August 2008.

creating sovereign institutions.¹⁷ Parallel to this, international cooperation based on economic ties gained more ground in the successor states' foreign policies than traditional geopolitical concepts based on bilateral agreements. (Kagan, 2008) As a result of these, democratic solutions of minority protection have failed in the new states. Furthermore, the political concept described above is not in line with Russian foreign policy pursuits which only recognise government involvement.

As the Russian political and financial support to the seceding entities was considerable while Western type of democratic institutions were not efficient enough and the dynamics of international integration has slowed down, the kin-states recognised that they cannot assert their interests solely. That is why those countries saw the alternative of strategic liberalism in some form of international cooperation. They established an international organisation for this purpose under the name of Organization for Democracy and Economic Development,¹⁸ (Russian: *Организация за демократию и экономическое развитие, GUAM*) however it could not display any outcome except for the manifestation of shared interests. A proposal by Ukraine – also backed by Georgia, Moldova and Azerbaijan – for resolving the frozen conflicts was refused by Russia in 2006. This step by Moscow and its allies promoted the institutionalisation of existing international peacekeeping practices as well as negotiation terms and conditions regarding secessionist regions. (Socor, 2006) The seceding entities are influenced by Moscow; therefore the international cooperation initiated by the successor states cannot reach its goal if the intentions of Russia and the quasi-states prevail. The Russian pursuit is effective: a Russian supported international organisation came into view that has opposite aims to GUAM. The secessionist regions of the Black Sea region – similarly to the states they seceded from – have also established their own international organisation. The foundation of a new organisation does not mean that less significant subjects of international relations can influence and formulate international law. However, despite the fact of being quasi-states, their cooperation, the support of a regional power and the inability of any other states to face the phenomenon indicates that they be also determinants in international relations. The Community for Democracy and Rights of Nations (Russian:

¹⁷ The intention of the Moldovan government was indicated by the autonomy granted to Gagauz people. Although South Ossetia, Abkhazia and Karabakh still could have opted for the former level of autonomy if they had made their secession null and void.

¹⁸ Georgia, Ukraine, Azerbaijan and Moldova made a joint statement declaring their willingness to establish a union based on shared interests. The member states aimed at making active and independent foreign policy; following Western/Atlanticist orientations and values as well as expressing their opinion together in order to contribute to preserve European stability and security. (Simó, 2009)

Сообщество за демократию и права народов) was established in 2001.¹⁹ It aims at expressing the interests of unrecognised states, resolving of conflicts by peaceful means and gaining international guarantees for final political resolution of the conflict.

The political constellation could emerge because of the common ground of the four entities' cooperation. The most important among these criteria is that all regions declared their independence during a war after the dissolution of the Soviet Union. These quasi-states all share the Soviet political legacy and bear the regional influence of Moscow (or Armenia in the case of Karabakh). However the indirectly supported separatist movements are found in the intersection of various regional and international interests. (Morar, 2010) In addition, the apparent ethnic diversity fosters such actions which indicate political thought based on nationalist rhetoric and civilizational sense of mission. Due to these characteristics the foremost common aim of the four *de facto* states was to reach some level of international recognition. Thus, in order to become recognised entities of international relations in any form, they agreed on – with the exception of Karabakh – the abolition of the visa regime among the members of their alliance in 2009. Nonetheless in order to act as sovereign in the international political system it is necessary to have the capacity to freely engage in foreign relations, which is considered to be one of the criteria of statehood.²⁰ To achieve this, Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh mutually recognised each other's sovereignty on 17 November 2006. Factual and legally relevant recognition can be achieved, however, by having the consent of the member states of the United Nations. In the case of Abkhazia and South Ossetia the first such declaration was the executive order of the President of the Russian Federation on 26 August 2008. It was followed by a recognition by Nicaragua on 5 September. In the end of the year Venezuela and Nauru have also established official diplomatic relations with the governments of the two entities seceded from Georgia. During 2011 two further Pacific microstates – Vanuatu and Tuvalu – recognised them as

¹⁹ The members of the Community for Democracy and Rights of Nations are Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh. All of the member quasi-states have limited recognition from the international community.

²⁰ According to the Montevideo Convention on the Rights and Duties of States, (26 December 1933) – which is generally regarded as reflective of customary international law – four separate criteria have to be satisfied before the recognition of an entity as an independent sovereign state can be considered: (1) the entity must exercise effective and independent governmental control; (2) the entity must possess a defined territory over which it exercises such control; (3) the entity must have the capacity to freely engage in foreign relations, and (4) there must be effective and independent governmental control over a permanent population.

independent. Nagorno-Karabakh and Transnistria is only recognised *de facto* by Abkhazia and South Ossetia.

Those regions which opt for political secession will hope for wider international recognition in the future. Hence the secessionist regions and the states they seceded will communicate all opinion and point of views concerning state recognition – towards both domestic and international public – in a way that meets its own interests.

Conclusion

The Republic of Abkhazia declared its independence in August 1990 after Georgia annulled its laws and international treaties signed in the Soviet era. The Pridnestrovian Moldavian Republic also seceded from the Soviet Union in September 1990. The Republic of South Ossetia declared its independence in November 1991, while Nagorno-Karabakh Republic became sovereign in January 1992 seceding from Azerbaijan. The unilateral declarations and the reactions of the central governments led to long-lasting armed conflicts in each case, which Russia could not avoid to be part of due to its relation with Russian cross-border ethnic communities and its foreign policy traditions.

Moscow could enforce its policy in Russian spheres of influence by military presence. However, Russian influence is now challenged by new international actors within the so-called Russian near abroad.²¹ After the dissolution of the Soviet empire the legal successor Russia lost its military and economic power (*hard power*) significantly. While the country's cultural and ideological attraction (*soft power*) was not considerable for those non-Russian ethnic groups living in the frontiers even before the break-up of the Soviet Union. In such international environment the United States could become a dominant actor of world politics which was able to largely extend the impact of its political culture in the region alone or along with its European allies. Russia recognised that – parallel to a strengthening economy and international reputation – *hard power* can make its ideology or *soft power* successful and feasible, however Russia also need to reconsider its foreign policy concept. Besides that Russia experienced the changing nature of international reality, an internal transition and transformed perception about its role in international relations. These all resulted in a more dynamic and active engagement which ultimately affected the existing international legal system through international relations.

²¹ Russian: ближнее зарубежье, *blizhneye zarubezhye*.

Besides the effects of Russian engagement in international relations, the second important finding of this study is that the conflicts in the Black Sea region cannot be resolved by the previously used means in the future. Neither Western type of minority protection, nor the tools of international pressure were efficient. As a consequence, such conditions emerged in which new states will be capable to act as determinants of international relations. This phenomenon could have an effect on interstate relations, hence – indirectly – the changes in international law as well. As the politico-geographic changes in Eastern Europe made their affect through forming international political reality, an objective observation of the long-term changes of general principles can be done by taking into account the real dynamics of international relations.

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