

Four Positions on the Recognition of States in and after the Soviet Union, with Special Reference to Abkhazia

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Abstract

This essay looks at why, how and with what degree of success the international community has applied its recognition policies in the post-Soviet space. The essay addresses the issue from a normative perspective by comparing these policies with alternative policies on recognition that have arisen in Soviet and post-Soviet debates. A basic distinction is made between four normative positions. The essay compares the kind of just cause these positions claim to defend, the motives of those supporting each of these positions, the likelihood of success in achieving the stated objective, and the consequences and drawbacks inherent in each of these positions for post-Soviet conflicts over sovereignty generally and more specifically for the Georgian–Abkhaz dispute.

THE SOVIET DEBATE ON THE REORGANISATION OF RELATIONS AMONG nations drove nationalist mobilisation from the early stages of *glasnost* up until the dissolution of the Soviet Union in 1991. Initially, the Soviet leadership viewed this wave of nationalist mobilisation as an expression of ‘national chauvinism and parochialism’ (Juviler 2009, p. 29); however, Gorbachev subsequently stated that the taboos surrounding erroneous Soviet national policies had to be lifted in order to address such conflicts (Lapidus 1992, p. 67). The ‘new thinking’ (*novoe myshlenie*) of the Soviet leadership gave rise to debates on historic themes such as the choices made by nations to join the Russian and Soviet empires and the deportations of ‘punished peoples’ (*nakazannye narody*) under Stalin (Lapidus 1992, p. 49). The question of how to redress injustices among nations soon haunted the domestic debate on the reform of the Soviet state structure.

The flood of declarations of sovereignty and independence by union republics and sub-units within these republics in subsequent years posed a challenge to the Soviet authorities, as well as to the international community. The proliferation of new states had to be constrained in

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order to preserve stability and predictability, and this required a choice be made among the basic principles of state recognition. Four positions can be distinguished in this debate. The position defended by the international community in 1991 held that only union republics—formally sovereign according to the Soviet Constitution—could be recognised as independent states, which excluded all other entities of the Soviet federal framework, such as autonomous republics and regions, from claiming a right to independence. The international community assumed that the recognition and establishment of diplomatic relations would create sufficient room for reforms in these states in favour of stability, democratisation and the protection of minority nations. This kind of recognition policy favours stability as the primary aim and is described here as the ‘continuity position’.¹

The second position argues for a reordering of the Soviet and post-Soviet political space according to justified historical claims, such as liberation from oppression. It defends a remedial right to secession, with the restoration of justice as its ultimate objective. The international community—including Russia—defended this position in 1991 with respect to the Baltic states, which the Soviet Union had annexed in 1940. It was also used by Russia to justify its recognition of Abkhazia and South Ossetia in 2008. This position is referred to as the ‘remedial position’.²

The third position—the ‘choice position’³—grants each nation and political entity within the Soviet framework the right to independent statehood. In the self-understanding of the Soviet authorities, Soviet federalism was based on the free choice of the union republics, and this position guarantees and extends this choice to all federated entities and nations.

A fourth position—the ‘effectivist position’⁴—emerged (or rather re-emerged, as this position was widely held before World War II) as a consequence of the non-resolution of conflicts involving contested states in the post-Soviet framework. This position holds that the recognition of states has to take into account the factual control of political authorities over a population and a territory. It also states that the interests of the recognising states in engaging more fully with these authorities and their population must be taken into consideration.

Each of these four positions has a specific relationship with historical time. The continuity position derives its norms for standard policies towards state recognition from the Soviet institutional order that was in force before the breakup of its federal structure, and more particularly from the constitutional articles referring to the sovereignty of the union republics. This stance strives to preserve the predominance of the union republics, which was a basic pattern in the Soviet state structure. The continuity position assumes that the dissolution of the Soviet Union did not negate the constitutional clauses on the sovereignty of its constituent

¹The present essay makes use of legal research, including for the description of the various positions on recognition. On the ‘continuity principle’ in regard to the Vienna Convention on Succession of States in Respect of Treaties, see Dellinger (1996). The analysis is limited to the post-Soviet political space, even if some parallels can be drawn with the Balkans. On the recognition policy of the international community in the Balkans, see Kaplan (2005).

²This denomination is broadly in line with the one found in international law (Kohen 2006) and literature on the ethics of secession (Buchanan 2004).

³This description is largely in line with the choice approach in literature on the ethics of secession (Wellman 2005, 2010). For a good overview of the main theories concerning the ethics of secession, see Pavkovic and Radan (2011). On choice theories of secession, see also Speetzen and Wellman (2011). The views of Andrei Sakharov and Galina Starovoitova (discussed later in this essay) are not referred to in the literature on the right to secession.

⁴This description makes use of Menon (1994), Peterson (1997), Turmanidze (2010).

parts, thereby creating continuity between past, present and future. In contrast, each of the three alternative positions are discontinuity-based and favour a radical reorganisation of the international order, focusing primarily on a specific period of time. The remedial position defends a reordering of the international space according to justified historical claims. This means that the need for a radical reorganisation of the relations among nations is drawn from the past. In contrast, the choice position defends the *a priori* right of each nation to make a free choice about future state institutions. The effectivist position justifies such a reordering on the basis of actual circumstances.

Each of these four positions gives a different answer to the question of to whom to grant the unilateral right to secede and to be recognised as constituting a sovereign state by the international community. In the case of the continuity position, this right is granted to the union republics; in the remedial position, this right belongs to the population of any given territory that has suffered from occupation, oppression or any other form of severe injustice; for the choice position, the right to secede belongs to a majority of the population of any given territory; and, finally, in the case of the effectivist position, the right belongs to any authority that is able to impose its will and ‘create facts on the ground’. The unilateral character of these rights creates very different social dynamics from negotiations in a multinational state between a government and representatives of a nation on its right to secede. As such mutually agreed forms of secession take place within internationally recognised states, they are not addressed in this essay.⁵

This essay instead examines the international community’s recognition policy from a normative and comparative perspective. Four different questions are addressed with the aim of answering the larger question of whether any alternative would have been or would be preferable to the continuity position.⁶ The first is about the kind of just cause principle that the four positions claim to defend: is the primary objective the preservation of international stability, the need to redress and prevent injustices among nations or defending the principle of national self-determination? Second, what are the exact motives of those who have supported or still support each of these positions in the Soviet and post-Soviet space? As a focus on the need to remedy injustices or to respect the free choice of nations does not necessarily mean that the realisation of such objectives is their main motivation, the essay consequently explores whether the motives that underlie the support of a particular position are in line with its just cause. This examination refers to the principle of ‘right intentions’ (Coppieters 2003, pp. 195–96; Coppieters & Kashnikov 2008, pp. 73–99). Third, what is the potential of each of the four positions to achieve its main objective? A high degree of consensus within the international community about a certain position on recognition is a necessary but not a sufficient condition for effectiveness, as recognition must also be accepted by all conflict parties in order to be fully effective. This in turn leads to the fourth question: what are the overall consequences of each position in terms of moral costs and benefits? This question refers to the normative principle of proportionality. All four questions are raised in assessing

⁵For instance, there were negotiations on the independence and sovereignty of Tatarstan in the first half of the 1990s and of Chechnya in 1996 after Russia’s military defeat at the hands of the Chechen independence movement. Such an option has never been negotiated between Georgia and Abkhazia.

⁶The following principles are part of the traditional set of *jus ad bellum* principles used to examine the extent to which the use of force may be justified as an exception to the rules prescribing peaceful behaviour among states. Such abstract principles may also be used to assess other types of exceptions, such as the recognition of new states (Coppieters 2003).

each of the four positions in respect of the whole post-Soviet space, but not necessarily in the same order.

The Georgian–Abkhaz conflict is one of the conflicts on sovereignty that could not be resolved by applying the continuity position. The conflict has been chosen as a case study to examine if, and to what extent, any of the alternative positions on recognition could have been more helpful in resolving this particular conflict. Can it reasonably be expected that any of the three alternative positions would have yielded better results than the continuity position in terms of the correction of historic injustices and the prevention of new ones, the realisation of the right to national self-determination and/or the preservation of regional and international stability? The principles of just cause, right intentions, likelihood of success and proportionality are contextualised for this purpose. The comparison concludes by answering the question of whether or not the international community should view the present lack of a solution for Abkhazia as the requisite price for maintaining a principled stance on the continuity position.

The distinction between various positions on recognition is made for analytical purposes. Three preliminary remarks can be made in this context. First, such a classification runs contrary to the declared policies of states, which generally claim that they do not defend any doctrine on recognition based on fixed principles (Carley 1996, p. vii). This is because a principled position is contrary to the need for a flexible political instrument able to defend a state's interests. For the same reason, a state's recognition policy usually reflects different, and even contradictory, objectives and principles. The present analysis takes this self-understanding of states and their diplomatic practices into account but does not consider it as invalidating the feasibility of a more systematic understanding of the basic principles underlying recognition policies. Even in complex cases, it is still useful to determine the primary objectives and guiding principles of particular recognition policies with the help of the classification of positions described above.⁷

Second, the above ideal-type description of the basic characteristics of each of these four positions is based on Soviet and post-Soviet debates on recognition policies and does not necessarily have the same relevance for recognition policies elsewhere. Moreover, the definition of the 'remedial position' provided above does not entirely fit with standard definitions to be found in the juridical literature. The same is true of the characterisation of the 'choice position', as compared with its description in the literature on the ethics of secession.⁸

Third, the comparative normative analysis to be found in this essay has certain affinities with the tradition of 'counterfactual history'. Both approaches question the inevitability of particular choices and explore possible alternatives, taking the 'what if?' approach to history.⁹ Both types of analysis are, furthermore, particularly interested in the effectiveness and consequences of particular choices. For that purpose, a normative analysis of recognition policies applies the principles of likelihood of success and proportionality. The present

⁷The present essay focuses on 'positions' rather than 'approaches' or 'doctrines'. These four positions are all based on a distinct set of normative principles. Political positions express a clear political will, in contrast to approaches. They are also more flexible than doctrines.

⁸Moreover, there is a great variety of definitions to be found in the juridical and ethical literature on secession. Authors give a variety of names to the positions they consider relevant, according to their specific preferences. What have been described here as the continuity position and the remedial position could, for instance, both be considered as two different expressions of a 'statist position' (Wellman 2010).

⁹See Black (2015).

normative analysis assumes, however, that the choices on recognition are still open to revision, which is not necessarily the case for counterfactual history. Russia's position on Abkhazia and South Ossetia, for instance, changed fundamentally between 1991—when it supported Georgia's territorial integrity—and 2008 when it recognised Abkhazia and South Ossetia as independent states. Similarly, the recognition of Kosovo in 2008 by major Western powers on the basis of the remedial position has raised strong fears in Georgia that it may very well be used as a precedent for other cases (Lobjakas 2006), and the ongoing debate over the effectiveness and consequences of the non-recognition of contested states presumes that states may indeed still change their views.

The continuity position

Western governments supported the reform of Soviet state structures with the aim of preserving the Soviet Union's unity, even after their recognition (discussed here below) of the restoration of the Baltic states' independence between July and September 1991. However, the deepening crisis of the Soviet Union forced the international community to take a decision on state recognition of the remaining union republics. The international community was then confronted with the decision of the leaders of the Russian, Ukrainian and Belarussian union republics to create a Commonwealth of Independent States (CIS). An agreement among the three republics, signed on 8 December 1991, stated that the 'talks on the drafting of a new union treaty have reached an impasse and that the objective process of the secession of republics from the USSR and the formation of independent states has become a real fact' (Walker 2003, p. 158).¹⁰ The dissolution of Soviet federal structures and the creation of the CIS was reaffirmed by 11 union republics on 21 December 1991 at a meeting in Almaty.¹¹ Following this meeting, the international community had to determine how much sovereignty and independence the former Soviet Union could swallow, taking into account the worrying question of how the disintegration of the Soviet Union might affect issues related to the proliferation of nuclear weapons and the security commitments subscribed to by its authorities. The union republics shared these concerns and took a guiding role within the international community regarding recognition policies. At their meeting in Almaty, the participants recognised each other's territorial integrity and the inviolability of the existing borders (Cot 1999, p. 23; Beaudouin 2011, p. 506; Carrère d'Encausse 2015, p. 273).

Gorbachev's resignation as Soviet president four days later meant that the international community was no longer able to deal with Soviet authorities. Even the Soviet embassies were at that time already under the jurisdiction of the Russian Federation (Walker 2003, p. 163). As a result, the United States and the European Community (EC) and its member states decided to follow a proactive policy on recognition, which would not simply acknowledge the dissolution of the Soviet Union into its constitutive units but try to influence the state-building process in favour of stability (Rich 1993, p. 42). The aim of this policy was to resolve present sources of conflict and prevent new ones emerging. The EC members made their

¹⁰The term used in this declaration for secession is *vykhod*, which literally means 'exit'.

¹¹The Baltic states did not participate in the meeting at Almaty, while Georgia could not be represented due to internal turmoil.

recognition¹² conditional on the new states' acceptance of a number of requirements relating to democratisation, respect of human rights and the introduction of guarantees on the rights of ethnic and national groups and minorities, in accordance with the commitments subscribed to by the Soviet Union.¹³ These states had to consider their borders with their neighbours as inviolable and—as stated by the European Union (EU) guidelines on recognition—only changeable 'by peaceful means and by common agreement'. The United States also followed a policy of conditionality but with a different approach. Washington first recognised the constituent parts of the Soviet Union as independent states. It did not make such recognition subject to any requirements being met, but then made the establishment of diplomatic relations with six of them—Moldova, Georgia, Turkmenistan, Azerbaijan, Tajikistan and Uzbekistan—conditional upon the acceptance of firm commitments on their part in relation to security policies and democratisation (Rich 1993, p. 46).

The concept of an 'international community' is often considered an ideological construct, given the deep divisions that characterise this so-called community (Buzan & Gonzalez-Pelaez 2005). However, there was no divergence on which political units resulting from the dissolution of the Soviet Union were to be recognised as sovereign and independent states.¹⁴ The entire international community of states agreed on the non-recognition of entities that broke away from former union republics. Afghanistan's recognition of Chechnya in January 2000, during the Taliban's rule, was the only exception to this unanimous position (Grant 2000). That the leadership of all union republics—after their differences over the reconfiguration of the Soviet federal system during the preceding years—likewise supported the continuity position is an additional argument in favour of using the concept of an international community in this particular context and at that moment in time. The Almaty declaration stated that the new states were 'seeking to build democratic law-governed states' and would develop their relations on the basis of 'a peaceful settlement of disputes, respect for human rights and freedoms, including the rights of national minorities'.¹⁵

The 1977 Soviet Constitution contained clear provisions on the hierarchical order among nations. It defined different degrees of statehood for union republics, autonomous republics and autonomous regions. Both the union and autonomous republics had some of the formal characteristics of statehood, albeit to different degrees. Some nations were made titular nations of union republics and others of autonomous republics or even autonomous regions, according

¹²The EC did not use the term 'recognition' in respect of Russia as it was not considered a new state but rather as the successor state to the USSR (Rich 1993, pp. 45–6).

¹³Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union" (16 December 1991), cited in Türk (1993), p. 72.

¹⁴There was agreement on the continuity position, and concerning the respect of the principle of territorial integrity, but there was no consensus on the legal basis of the delineation of borders. There has been broad discussion among governments about the applicability of the legal principle of *uti possidetis* as a general principle for the delineation of borders in processes of secession or state dissolution generally (see the various contributions to Corten *et al.* (1999)). Russia, for instance, does not consider the *uti possidetis* principle to be generally valid. This means, in the context of the former Soviet Union, that Russia does not consider that the former administrative borders among Union republics had necessarily to be maintained after independence. However, such divergences on the delineation of territories are not of primary relevance to the research question in this essay, which deals with how recognition policies identify the 'self' in applying the principle of self-determination to the post-Soviet space, not with territorial rights.

¹⁵The full text of the accord setting up the Commonwealth of Independent States (CIS) can be found in 'The End of the Soviet Union; Text of Accords by Former Soviet Republics Setting Up a Commonwealth', *The New York Times*, 23 December 1991, available at: <http://www.nytimes.com/1991/12/23/world/end-soviet-union-text-accords-former-soviet-republics-setting-up-commonwealth.html?pagewanted=all>, accessed 6 December 2015.

to their political leverage within the Communist Party of the Soviet Union (CPSU) and a set of 'objective' criteria—such as the need to be located on the external borders of the Soviet Union to become a union republic (Sakwa 1998, p. 241). The size of the population of an entity did not necessarily play a role in this. Only union republics were constitutionally sovereign and had a formal right to secession.

The question of whether this hierarchical order among nations could be considered just was not addressed when the Soviet constitutional provisions were taken up as the basic criteria for international recognition. The continuity position did not, for instance, question the Soviet Union's policies for determining the constitutional status of its constituent republics and regions—which, in some cases, included mass deportations and the transfer of territories of one union republic to another—in terms of fairness or otherwise. Western conditionality policies prescribed the prevention of new conflicts through the implementation of democratic representation and minority rights, but these reforms did not include a right to secession for national minorities or sub-state entities in the union republics. It was assumed that all conflicts among nations could, and should, be solved domestically, within the new state boundaries (Cot 1999, pp. 23, 32; Beaudouin 2011). The United States clearly considered the risk of nuclear proliferation as the main threat that needed to be resolved, particularly in an area that could be destabilised by nationalist movements. Thus it would appear that the entire international community was selective about the historic injustices that needed to be addressed. Its main intention was to prevent new injustices by preserving stability, including through democratic reform.

The continuity position had a reasonable chance of achieving stability. That this position was commonly accepted by the Union Republics—the strongest units of the Soviet federation—at their meeting at Almaty in December 1991 created firm constraints against unilateral moves by particular actors. It allowed for a 'civilised divorce' (Wolczuk 2003, pp. 52, 56, 169, 172), particularly through the mechanisms created by the CIS. However, the continuity position was far less effective in terms of intrastate reforms. While the EC insisted in its 1991 guidelines on the recognition of new states in the former Soviet Union that they had to constitute themselves on a democratic basis, declare that they accepted international obligations and commit themselves to peaceful negotiations with their neighbours, this conditionality policy remained declaratory. A postponement of recognition or of the establishment of diplomatic relations due to the non-fulfilment of conditions was not a real option, as Western governments had to engage with these states as soon as possible—for instance, in the field of arms control (Chayes *et al.* 1997, p. 497). A policy of conditionality required economic and political incentives for reform, and the provision of such incentives necessitated diplomatic means. Recognition and diplomatic relations were thus themselves effective conditions and not a means of exercising pressure.

Similarly, the consequences of the continuity position for interstate relations have to be distinguished from those for intrastate relations among nations. The breakup of the Soviet Union was relatively peaceful when compared with the dissolution of the colonial empires, and the continuity position preserved interstate stability—the conflict between Azerbaijan and Armenia on Nagorno-Karabakh being the only major exception in this regard. This was largely because the principles of sovereign equality and territorial integrity became the basis of legal relations among the newly independent states. However, no strong guarantees for the prevention of conflicts among nations were reproduced at the intrastate level. The

continuity position perpetuated the traditional asymmetric Soviet pattern of relations between nations within new states—a pattern considered incompatible with the understanding of the principle of national self-determination by a large number of nationalist movements representing national minorities.

The continuity position was particularly unsuccessful in addressing secessionist and irredentist conflicts that had already escalated beyond a certain level; that is, had led to the breaking of common constitutional bounds. This was the case in the conflicts over the status of Chechnya, Transnistria, Nagorno-Karabakh and South Ossetia, as well as for the Georgia–Abkhazia dispute. None of these conflicts could be resolved through peaceful negotiations. Only the destruction of *de facto* independent statehood led to reintegration—as in the case of Chechnya in 2000.

An application of the principles of the likelihood of success and proportionality to the dispute over Abkhazia allows for a better evaluation of the strengths and weaknesses of the continuity position. Interethnic strife in Georgia was in the mind of President George H. W. Bush when he warned in a speech in Kiev on 1 August 1991 that the United States ‘will not aid those who promote a suicidal nationalism based on ethnic hatred’.¹⁶ The establishment of diplomatic relations with Tbilisi by the United States, Germany, the United Kingdom and other major countries¹⁷ had to be postponed for several months after the dissolution of the Soviet Union because of internal turmoil in Georgia. After the ousting of the Georgian President Zviad Gamsakhurdia in a coup in the winter of 1991–1992, Eduard Shevardnadze returned from Moscow to his home country where he took the chairmanship of the State Council. Georgia became a member of the United Nations on 31 July 1992. At that time, Georgia was already deeply involved in a political dispute with the Abkhaz authorities. A confrontation took place between Georgia and Abkhazia on the status of the Abkhaz republic, but also within Abkhazia, where the leaders of the Georgian and Abkhaz communities disputed control over local state institutions. Georgia intervened militarily in Abkhazia on 14 August 1992, with the aim of re-establishing its authority over this disputed territory; the Abkhaz military and their allies gained the upper hand and repelled the Georgian forces in the autumn of 1993 (Ozhiganov 1997).

The UN Observer Mission in Georgia (UNOMIG) was deployed in Abkhazia in August 1993, a few weeks before the end of the armed hostilities. Georgian troops had to flee Abkhazia, together with a major proportion of the Georgian population.¹⁸ The UN’s mediation efforts were based on a principled position on state recognition. The various UN Security Council resolutions¹⁹ on Abkhazia stated that a settlement of its status had to be based on respect for Georgia’s territorial integrity. The Abkhaz side resisted all proposals for its reintegration

¹⁶After the Summit: Excerpts from Bush’s Ukraine Speech; Working “For the Good of Both of Us”, *The New York Times*, 2 August 1991, available at: <http://www.nytimes.com/1991/08/02/world/after-summit-excerpts-bush-s-ukraine-speech-working-for-good-both-us.html?pagewanted=all>, accessed 12 October 2016. For the reference to Gamsakhurdia, see Haran (1995).

¹⁷Germany was the first country to open an embassy in Tbilisi in 1992. A timetable with the dates when Georgia established diplomatic relations with other countries is available on the website of the Ministry of Foreign Affairs of Georgia, available at: <http://www.mfa.gov.ge/MainNav/ForeignPolicy/BilateralRelations.aspx>, accessed 1 June 2018.

¹⁸According to the 1989 census, the Georgian population of Abkhazia constituted a relative majority of 239,872 out of a total population of 525,061 (Müller 1999, p. 237). There are no precise figures on the number of Georgians that fled Abkhazia at the end of the 1992–1993 war.

¹⁹For a detailed analysis of the UN Security Resolutions see Coppieters (2015).

with Georgia, and then refused, after its declaration of independence in 1999, to engage in any further status negotiations. It claimed that negotiations specifically on status would be contrary to the will of the Abkhaz people.²⁰

The various plans for the reintegration of Abkhazia into Georgia through Georgia's federalisation were generous in respect of the constitutional distribution of competences between Georgia and Abkhazia, but they failed to address several core issues. They did not include a blueprint for security mechanisms that would effectively exclude the use of force against Abkhazia, for instance. They also remained silent on power-sharing mechanisms among the different communities in Abkhazia itself.

The recognition of Kosovo's 'supervised' independence in February 2008 led to the emergence of divisions in the international community on the continuity position in the Balkans. The United States and most EU member states defended a remedial position on Kosovo, stating that Serbia's human rights violations excluded a one-state solution.²¹ With the exception of the Baltic countries, none of the post-Soviet states accepted this shift of position in recognition policies. Kosovo's recognition was met with great concern in Georgia, as Russia could use it as a precedent to recognise Abkhazia and South Ossetia (Lobjakas 2006). Such uncertainty was one of the factors fuelling the Georgian policy of confrontation with South Ossetia, Abkhazia and Russia (Solovyev *et al.* 2006).²²

Western fears of military confrontation between Georgia and Russia, and the Abkhaz authorities' refusal to engage in status negotiations aimed at Abkhazia's reintegration with Georgia, led to a change in the position of the 'Group of Friends of the Secretary-General on Georgia'. This group had been created in 1993 by France, Germany, the United States, Russia and the United Kingdom to support the UN secretary-general's mediation efforts (Coppieters 2004, p. 203). In July 2008, Germany presented a draft proposal, formally supported by other members of the 'Group of Friends', on conflict settlement to the Georgian and Abkhaz authorities that was neutral on the question of status (Socor 2008). The draft proposal did not refer to the principle of territorial integrity. However, this did not mean that Berlin, Paris, Washington or London had abandoned the continuity position. Their main concern was to reengage Abkhazia (and Russia) in negotiations in order to de-escalate the conflict. These four governments clearly stated that they would give further political support to a final settlement that respected Georgia's territorial integrity.

This partial shift in their diplomatic approach was insufficient to restart negotiations among the conflict parties. Western governments were also unable to prevent Georgia's commencement of hostilities with South Ossetia in August 2008, which led to Russia's

²⁰The Abkhaz authorities refused for instance to start status negotiations on the basis of the so-called 'Boden document'—a proposal for a federal solution for Abkhazia that had been drafted by the UN Secretary General Special Representative for Georgia Dieter Boden in 2001. They argued that any negotiations on a federal solution would go contrary to the 1999 referendum and ensuing declaration of independence (Coppieters 2004, pp. 203–10). The Abkhaz authorities have not changed their view since then.

²¹The political discourse in favour of the recognition of Kosovo was dominated by the remedial position. However, some states that had recognised Kosovo reframed their position into a legal argumentation that did not make use of the remedial position in their pleadings in the Kosovo advisory proceedings before the International Court of Justice regarding the legality of Kosovo's secession. For an overview of the type of arguments used by the individual states, see Milanovic (2015).

²²In 2006, Georgia took control over the Kodori gorge, which is located in Abkhazia, to avoid exclusive control of the *de facto* authorities over the Abkhaz territory, which the Georgian authorities feared would facilitate international recognition of Abkhazia (Solovyev *et al.* 2006).

intervention and Georgia's military defeat. After the conclusion of a ceasefire agreement, Russia recognised Abkhazia and South Ossetia as independent countries (Medvedev 2008). Moscow justified its position on the basis of Russia's national security (the stability of its southern borders) and remedial arguments (the unjust treatment of Abkhaz and South Ossetians). However, this did not indicate a Russian shift on all conflicts over sovereignty in the post-Soviet space. For instance, Moscow did not recognise Transnistria as an independent state. However, its recognition of Abkhazia and South Ossetia meant that the international community had ceased its unanimous support of the continuity position in the South Caucasus.

At the end of 2009, after the Georgian–Russian War, the EU, the United States and Georgia reaffirmed the continuity position through a counter-secession policy of engagement with the populations of Abkhazia and South Ossetia.²³ Since that time, programmes in the fields of economics, education, infrastructure and healthcare have been implemented to build trust as part of a broader effort to create better conditions for negotiations (De Waal 2017). However, the growing tension between Russia, the United States and the EU does not favour a strong Western presence in Abkhazia or South Ossetia. Furthermore, the Georgian policy of counter-secession puts strict limits on practical forms of engagement, including by its Western allies. Overall, the Georgian and Western engagement policies were helpful in decreasing tensions, but they failed to substantially improve dialogue and other favourable conditions for negotiations.

Hence, the international community's policies on recognition preserved stability in the post-Soviet space but ultimately failed to resolve the Georgian–Abkhaz conflict and a number of other severe disputes over sovereignty. Considering the overall success of the continuity position, are the costs of the non-resolution of a limited number of conflicts, such as the one in Abkhazia, acceptable? Here, one has to take into consideration the fact that the failure to resolve the Georgian–Abkhaz conflict is more than just an irritant in the relations between Russia and the West. It is one of several territorial conflicts in their common neighbourhood that feed the geopolitical divide between the two parties. This conflict has wide-ranging consequences for a whole set of intertwined problems, particularly for the relationship between Russia, the EU and NATO. The moral costs to be taken into account in a proportionality calculation include the failure to resolve the question of the displacement of the majority of the Georgian population from Abkhazia. These costs might appear to be relatively minor, or an acceptable price to pay for the stability the international community has achieved in the post-Soviet space; however, such a conclusion cannot be drawn before examining alternative positions. It is entirely possible that those alternatives would have achieved better results with respect to the post-Soviet space overall and the Georgian–Abkhaz conflict in particular. This requires closer examination.

The remedial position

The remedial position is based on the idea that the recognition of a unilateral declaration of independence can be justified if independence is the only way for a nation to correct or prevent severe historic injustices among nations. This answers the first question raised above: to what

²³See the cable of Ambassador John F. Tefft, 'Georgia: Re-engaging with Abkhazia', ID: 09TBILISI1669_a, 8 September 2009, *Wikileaks Public Library of US Diplomacy*, available at: https://wikileaks.org/plusd/cables/09TBILISI1669_a.html, accessed 16 October 2016.

extent do recognition policies take into account the need to redress and prevent injustices? An examination of the genuine motives of those who support a remedial position is necessary. Finally, the effectiveness and consequences of this position have to be examined.

The remedial position has been applied to the Baltic states, which were internationally recognised upon becoming independent after World War I, including by Soviet Russia in 1920. Western governments viewed their annexation by the Soviet Union in 1940 as contrary to international law. Russia agreed with this view when it recognised them as independent states in July and August 1991 followed by Western governments in September 1991, paving the way for their membership of the United Nations, on the recommendation of the UN Security Council (Carrère d'Encausse 2015, p. 274). In this particular case, the remedial approach required a minimal reorganisation of relations among union republics in the post-Soviet space. It respected the existing borders, aimed at stability and was fully consistent with the continuity position applied to the remaining union republics.

In the case of these three Baltic republics, the international community consensually agreed that their forcible incorporation into the Soviet Union under Stalin was contrary to international law (Rich 1993, pp. 37–8). However, the defence of the remedial position by Western governments in relation to the Baltic states did not mean that the correction of historical injustices was now the main priority in the West's security agenda. Western governments did not actively support the mobilisation for independence. In June 1989, Jack Matlock, US ambassador in Moscow, declared that his government was not ready to recognise the restoration of the independence of the Baltic states, despite the United States sympathising with their struggle (Walker 2003, p. 66). Such a step would breach international treaties. The principle of the inviolability of current frontiers (boundaries of territorial control, as they emerged from World War II) was enshrined in the 1975 Helsinki Accords, and this did not exclude the Baltic states. The US administration and other Western governments also feared that the unilateral restoration of the independence of the Baltic states between March and May 1990 would derail the Soviet reform process. It was only after the failure of the August 1991 coup against Mikhail Gorbachev and Russia's recognition of Lithuania on 29 July and of Latvia and Estonia on 24 August 1991 that Western governments recognised the restoration of their independence—the EC on 27 August and the United States on 2 September 1991, just a few days before the Soviet Union (on 6 September).

Before its annexation by Soviet Russia in 1921, Georgia had also been recognised as an independent state by Germany and other European countries (Hille 2010, pp. 91–2). The Supreme Soviet of the Georgian Union Republic denounced the Soviet intervention as an occupation on 10 March 1990 (Harzl 2016, p. 56). Nevertheless, the international community did not apply the remedial view to Georgia, contrary to its policies towards the Baltic states. In the case of Western governments, this is partly due to a formal difference: they had recognised the Soviet Union after its incorporation of Georgia in 1921, whereas the annexation of the Baltic states took place at a later date. However, the continuity position of the international community regarding Georgia still contrasts with the remedial position taken by Georgia itself in respect to its own right to independence. The remedial position was likewise prominent in Abkhazia's attempt to gain independence from Georgia.

The conflict parties thus shared a remedial position on secession—Abkhazia from Georgia and Georgia from the Soviet Union. This position implied confrontation through the mobilisation of historical knowledge (Kaiser 1994, pp. 362–64). The Georgian–Abkhaz dispute

on oppression and injustice largely revolved around the control of resources by the elites. As in other parts of the Soviet Union, this depended directly on the status of the respective nations within the federal hierarchy. Georgian scholars criticised the privileged position that Abkhaz elites had acquired within the administration of the autonomous republic due to their closeness to the Soviet authorities. They stressed the fact that the Abkhaz constituted a far smaller part of the local population than the Georgians (Lordkipanidze 1994, pp. 204–9; Zhorzholiani *et al.* 1995, p. 28). Georgian scholars further dealt with the origins of the Abkhaz nation. Some Georgian historians, such as Mariam Lordkipanidze, challenged the status of the Abkhaz as a titular nation of this autonomous republic by claiming that they originated from the North Caucasus (Lordkipanidze 1994, pp 196–97; Coppieters 2002, p. 94). The Abkhaz community's privileged political and social status was further questioned as being contrary to their minority position within the republic's overall population. In response, Abkhaz historians referred to the rights they had over their ancestral lands, to the centuries of independent Abkhaz statehood and to the weakening of their demographic and economic position as a result of Georgian colonisation (Hewitt 1999). Whereas Georgian nationalists strove for the subordination of Abkhazia under Georgia's sovereign rule, the Abkhaz community demanded sovereign equality between Abkhazia and Georgia.

The key arguments that were exchanged in the Georgian–Abkhaz conflict on sovereignty did not differ much from those found in nationalist disputes in other parts of the Soviet Union. Duration and historic continuity were the main elements in the creation of normative standards in support of the remedial position. South Ossetians claimed, for instance, that they were descended from the Scythians; Moldovan nationalists claimed historical rights over lands that they had held from the time of Roman colonisation; Gagauz stressed their 200-year historical links with their region; and Transnistrian intellectuals described their land as 'age-old Russian, Slavic land' (Kaiser 1994, pp. 364–65).

A remedial stance was adopted by Russia in justifying its diplomatic recognition of Abkhazia and South Ossetia in 2008. Russian President Dmitri Medvedev claimed that Georgia had 'opted for genocide' when attacking South Ossetia and that Russia's recognition of Abkhazian and South Ossetian independence would secure their safety. According to Medvedev, this option was a choice of last resort, as Georgia was unable to correct or prevent injustices against the Abkhaz and South Ossetians and provide stability on Russia's borders. In his view, Georgia's unconstructive attitude in the negotiations with the South Ossetian and Abkhaz parties in the preceding decades meant it was pointless to engage in further negotiations over the restoration of Georgia's territorial integrity (Medvedev 2008).

These arguments demonstrated that Russia's definition of its security interests diverged widely from the vast majority of other states in the international community. Russia was well aware of its isolated stance and did not expect that the conflict on the status of Abkhazia and South Ossetia would be resolved on the basis of the remedial position. However, it considered, pragmatically, that the continuity position—which prescribes respect for Georgia's territorial integrity and the principle of non-intervention—would be more inimical to its geopolitical interests than the remedial position. Moreover, for the Russian leadership, the remedial position had the advantage of mobilising domestic political support for its security policies.

In this particular case, a remedial position seemed to be more beneficial to Russia in terms of efficiency and proportional in terms of a cost–benefit calculation than the continuity position. Could a remedial position, as advocated with regard to the Baltic states, be considered

a better choice for the international community concerning the post-Soviet space overall? Would this position be more likely to solve sovereignty disputes than the continuity position and, consequently, be more in line with the proportionality principle? This is doubtful. The remedial position encounters a severe problem with coordination. The recognition of states is decentralised. In order to come to coordinated responses, individual states would have to agree on the degree of injustice affecting particular nations. They would also have to concur on its possible remedies, including international recognition. It is unlikely that such conditions could be fulfilled in the post-Soviet space.

The recognition of the Baltic states was an exception in this respect. It was facilitated by the fact that it did not challenge the main principle of the continuity position: the exclusive right of union republics to be recognised. But this common remedial position was not sustainable in the long run. The 1991 consensus on the illegal nature of the Soviet annexation only lasted for a brief period of time. Russia had already moved away from that position by the mid-1990s; by 2015, the Russian authorities under President Vladimir Putin saw the incorporation of the Baltic states into the Soviet Union as liberation from fascism, thus based on a just cause and fully legitimate (Grigas 2015). This shift of position did not undo the act of recognition itself but created a new basis for Russian policies towards its northern neighbours.

Western governments had great difficulty in finding common moral ground with Russia on Georgia, Abkhazia and South Ossetia. They all condemned Gamsakhurdia's nationality policies (Haran 1995; Coppieters 1998, p. 59). After the 1992–1993 Georgian–Abkhaz War, they jointly supported the UN Security Council resolutions stressing the right of the Georgians who had been driven away from Abkhazia to return to their homeland (Coppieters 2015). However, these governments had very different approaches in interpreting past events. Moreover, it was practically impossible to establish an international criminal tribunal in a contested state such as Abkhazia—independently from the negative fallout such an endeavour may have had on conflict resolution. The divergences between Western governments and Russia came fully into the open in 2008, when Western governments criticised Russia's recognition of Abkhazia and strongly emphasised the importance of respecting Georgia's territorial integrity (Allison 2013).

What would happen if the international community supported the remedial position on the recognition of Abkhazia? It would surely change the terms in which the conflict is being discussed. The Abkhaz position would be strengthened, as it would then be fully acceptable to depart from the rule that only union republics had a right to recognition. However, it would not end the dispute between Georgians and Abkhaz over the injustices each of the communities has suffered or the historical rights they claim over the territory of Abkhazia. This includes the Georgian demand for the return of all persons displaced from Abkhazia as a consequence of the war and the Abkhaz refusal to allow such a return. From the Georgian perspective, the Georgian community has lived in Abkhazia since time immemorial, whereas the Abkhaz authorities consider the Georgian population mainly as 'settlers' whose return would pose a potential threat to the region's Abkhaz identity. The remedial position would also be unhelpful in the search for a settlement because it would lead to external parties becoming more actively involved in these historical debates in support of one or the other conflict party, which would make the negotiations even more intractable.

Thus the remedial position was commonly shared by the Georgian and Abkhaz movements for independence at the time of the dissolution of the Soviet Union, as was also the case for

other nationalist movements. At that time, the international community agreed on a remedial position regarding the Baltic states, yet since 2008 it has been divided over the possibility of extending that kind of support to other cases for independence in the post-Soviet space. A remedial position refers to the necessity to correct historical injustices but, as far as the external actors are concerned, it is not necessarily motivated by this concern. Here, stability trumps the correction of injustices as the main motive, and, on that point, the remedial position does not differ from the continuity position. There is nothing to indicate that a remedial position would have a reasonable chance of ending the disputes within the international community over the international status of breakaway territories, as it has proved highly divisive in the case of Kosovo. There is also no evidence that it would be successful or more proportional in terms of costs and benefits with respect to the post-Soviet space overall or to the Georgian–Abkhaz conflict specifically.

The choice position

The question of how the Soviet legacy of creating inequalities between national communities could be overcome was at the forefront of Soviet ‘new thinking’. The choice position was part of this debate. This position considers the idea of national self-determination as being entirely based on democratic principles. It grants each group that considers itself a nation the right to secede, independently from criteria such as cultural distinctiveness from other groups or having been a victim of severe injustices. The democratically expressed will of the nation is the main condition for establishing a primary right to independent statehood (Speetzen & Wellman 2011).

In November 1989, a few weeks before his death, the Soviet human rights activist and Nobel Peace Prize laureate Andrei Sakharov drafted a ‘Constitution of the Union of Europe and Asia’ in which he promoted a radical democratic vision of ethno-federalism. He said that every nation and republic should have the ‘basic and supreme’ right to self-determination. The constituent and fully autonomous parts of this ‘Union of Soviet Republics of Europe and Asia’ would be ‘the union and autonomous republics, the national autonomous regions, and the national districts of the former Union of Soviet Socialist Republics’ (Sakharov 1989). In the first stage, these entities would declare their independence, before deciding through a referendum to join the union or not. If they did join the union, their right to secession and full economic independence would be preserved.

Similarly, in an article written just before the dissolution of the Soviet Union, Soviet anthropologist and liberal reformer Galina Starovoitova favoured the reconstruction of the multinational framework of the Soviet Union along the lines of a confederation. She conceived a treaty on a ‘Community of Sovereign Republics’, which would replace the formal hierarchical division of major ethnic groups with an institutional set-up that would respect the rights of each subject of the federation. These subjects would freely determine which competences they wanted to delegate. In her view, each federal unit would preserve its right to secession (Starovoitova 1992, p. 120; Kaiser 1994, pp. 351–53). Moreover, Starovoitova opposed any arrangement where state interests would trump the interests of ethnic groups (Starovoitova 1992, p. 117).

These liberal reformers—who became members of the Inter-Regional Deputies’ Group within the Soviet Congress of People’s Deputies in 1989—defended the view that the principle

of national self-determination implied formal equality between nations.²⁴ Any hierarchy in a multinational state that was not freely accepted by each of its constituent nations had to be considered unjust. The question of the high numbers of claims to be satisfied did not seem to constitute an insurmountable obstacle. These reformers were convinced that the democratisation of the Soviet state structures would create an incentive to remain in the union and not to secede.²⁵ The principle of ‘*Bundestreue*’ or ‘federal allegiance’ would replace the subordination of smaller nationalities by the Soviet state and by the most privileged national communities—the titular nations of the union republics. The mutual respect of all rights of nations would uphold the unity of the multinational institutions. The full realisation of the right to national self-determination was thus expected to result in a kind of constitutional patriotism.

In the view of Sakharov and Starovoitova, federal units were ‘owned’ by a nation, and each nation had the right to ‘possess’ a republic. This view of the principle of national self-determination was in line with the ethno-federal conception that the national republics did not constitute ‘their’ nations on a territorial and political basis, but that ethno-culturally defined nations were given a particular territory and state institutions within a federal framework. This conception was dominant in the Soviet Union (Brubaker 1994, p. 65); however, these two liberal reformers went further than others by granting each nation the competences it wished for. Their proposals should be considered as idealised visions of an *a priori* right to self-determination as a basis for resolving historic injustices. Their variant of the choice position implied an inexhaustible capacity to redress the past through the creation of new institutions. The permanent rejuvenation of state structures was perceived as a way of preventing new national conflicts. The norms for the recognition policy here are derived from *a priori* rights, which implies that the domestic and international order should permanently be remoulded according to these rights.

But what would be the likelihood of success for such a union? It would have to be based on a consensual notion by which people should be recognised as constituting the ‘self’ in the principle of national self-determination. It would necessitate a shared notion of the common good, the capacity for reconciliation and solid confederal institutions able to mediate and arbitrate in case of disputes. This was not to be expected in severely divided post-Soviet societies. These two liberal reformers did not indicate how conflicting claims for statehood should be addressed. Hence, these proposals were never taken up. They cannot be considered as having any reasonable likelihood of success and, consequently, cannot be considered as being proportional in terms of costs and benefits.²⁶

The defence of the choice position in the debates over the future of the Soviet state as a multinational union was not necessarily based on strong concern for the free expression of the right to national self-determination, as it was also part of a conservative attempt to preserve the overarching Soviet state structures. The Soviet federation consisted of several

²⁴On the evolution of Sakharov’s views on nationalities, see Bilinsky (1983).

²⁵Sakharov clearly expressed such an opinion in 1971: ‘the number of republics tending towards secession is, to all appearances, very small, and these tendencies would doubtless become even weaker with time as a result of the future democratization of the USSR’ (quoted in Bilinsky 1977, p. 81).

²⁶Sakharov himself would not live long enough to assess post-Soviet realities—he died in December 1989, one month after completing his constitutional project. In 1991, Starovoitova would become a special adviser on interethnic relations for Russian President Boris Yel’tsin. She then defended an approach that was largely in line with the continuity position on the nationality question and thereafter continued to demonstrate great concern for the rights of minority nations (Starovoitova 1997).

political levels, and one level could be strengthened or weakened by the weakening or strengthening of another. The Soviet centre was confronted with strong demands for higher levels of competence, or even independence, from union republics, and the union republics were confronted with the same demands from the autonomous republics and regions. This situation created a common interest among the highest and lowest federal levels, despite their very different interpretation of the principle of national self-determination. The centre hoped that such an alliance would hinder the attempts of union republics to secede. The Law on Secession adopted by the Supreme Soviet on 3 April 1990 permitted autonomous republics and even 'compact national groups' to hold separate referendums on secession if the union republic to which they belonged chose independence (Walker 2003, pp. 73–4, 102–3, 166). It was claimed that the provision in favour of breakaway territories within union republics would regulate the constitutional right to secession of the union republics. Yet, in practice, the provision was clearly designed to constrain this right of union republics to the maximum extent possible (Lapidus 1992, p. 61), as they would only be able to leave the Soviet Union if they accepted the risk of losing a part of their territory.

As far as the normative criteria of likelihood of success and proportionality in respect of conflict resolution are concerned, this law aimed at the emancipation of minority nations and at constraining the ability of the titular nations of the union republics to achieve independence, even at the risk of open conflict. It opposed the traditional view on the sovereignty of the union republics and was therefore in contradiction to the Soviet Constitution. It also raised the same unresolved questions as the constitutional provisions designed by Sakharov. Who would delineate the territories in which the majority of a population would have the right to create a sovereign nation? This question was particularly difficult to answer in a situation where populations were ethnically mixed. Who would decide on the legality of the procedures, including the question that would be asked at a referendum? Territorially concentrated 'new' minorities created by newly independent states would also have the right to create independent states, leading to fragmentation. The lack of clear answers to these questions demonstrates that such a position cannot be considered as having a reasonable chance of success in solving conflicts on sovereignty or as being cost-effective.

None of the union republics went through the formal proceedings prescribed by this law (Walker 2003, p. 166). Hence the law was never put into practice, and it had no substantial impact on recognition policies in 1991. In the post-Soviet era, this law has only been used to undermine the interpretation of the Soviet Constitution implied in the continuity position and to strengthen the remedial position in disputes over independence. Abkhazia, for instance, has referred to this law to reinforce its argument that its push for independence was in line with Soviet constitutional provisions (Chirikba 2013, pp. 5–6, 10). Similarly, in 2008, the Russian authorities referred to this law to justify the recognition of Abkhazia and South Ossetia (Allison 2013, p. 160). In both cases, it was part of a set of arguments in support of a remedial position, and not in defence of a choice position on recognition.

The choice position became attractive for Russia in the context of its territorial dispute with Ukraine. Russia annexed Crimea on 18 March 2014, after having recognised its independence from Ukraine. Both decisions were in line with the choice position, even if Russia's policies were mainly driven by geopolitical considerations. The Russian government was convinced that it had to establish full territorial control on the peninsula to counter what it perceived as an expansion of EU and NATO influence in the region. These decisions led to conflict

escalation and the creation of a new intractable dispute on status—including with minority populations in Crimea itself, such as a large part of the Tatar community. This means that the choice position cannot be considered, in this particular case, a valid alternative to the continuity position with respect to the principles of likelihood of success and proportionality.

Sakharov's and Starovoitova's motives in defending the choice position are very different from those of the drafters of the Soviet Law on Secession or of the Russian authorities in respect of Crimea. This allows us to conclude that the main motive for the defence of the choice position may not necessarily be freedom of choice, just as the correction of injustices is not necessarily the main motive for those defending the remedial position.

The choice position has found far less international support than the continuity and even the remedial positions. It does not answer the question of how states and nations can agree on the definition of the self in the principle of national self-determination, in the case that a unilateral right to secession is granted to the population of any given territory. Nor does it address the problem of the proliferation of states. The choice position has had few opportunities to be implemented, and attempts to implement this approach—as in Crimea—have come at a high cost in terms of conflict. Thus it cannot be considered a valid alternative in respect of the post-Soviet space overall.

Regarding the dispute on the international status of Abkhazia specifically, both conflict parties would have resisted the application of the choice position on recognition at the time of the dissolution of the Soviet Union. At that time, both parties had already engaged in confrontation and were defending very firm positions regarding the right to independence that were entirely at odds with the choice position. From the Georgian perspective, the ability of an ethnic minority to mobilise a majority of the population on a particular territory did not grant it any right to secede. Abkhazia's historical belonging to Georgia should not be questioned, particularly in the context of multi-ethnic coexistence. The Georgian population constituted a relative majority of 45% in Abkhazia. According to the choice position and its interpretation of the majority rule, this would give a decisive role to other minorities, such as the Armenians. Moreover, the Georgian population was vastly outnumbered by Ossetians in South Ossetia and was also a minority in other regions of Georgia, such as Javakheti. The Abkhaz authorities would have likewise opposed the choice position, as it would have given equal rights to a population considered 'settlers'. From their perspective, the majority rule on which the choice position rests was invalid in a situation where the Abkhaz had become a minority as a consequence of Russian, Soviet and Georgian policies of colonisation. The choice position would also have been unacceptable to the Abkhaz authorities in respect of the situation after the 1992–1993 war, when they refused a general right of return to the Georgian population that had fled the war, a refusal that is difficult to reconcile with the choice position. After 1993, and despite this refusal, the Georgian population still constitutes the vast majority of the Abkhaz region of Gali. Also in respect to this small region, the Abkhaz authorities would have firmly resisted the application of the choice position on the right to secession, as they always considered this region as an inalienable part of the Abkhaz territory.

The effectivist position

The effectivist position²⁷ on the legitimacy of recognition focuses on whether or not a political entity exercises effective control over a territory and if it has the support, or at least tacit obedience, of its inhabitants. It does not matter here if state power is exercised on the basis of the provisions of a valid constitution, as in the continuity position. Nor does it matter if effective state power has been established in order to redress previous injustices, as advocated in the remedial position. It is also of no concern to the effectivist position if state control has been established through the clearly expressed will of the population, as in the choice position. What is important is that a normative coercive order has been established within territorial limits.

Seen from the perspective of the effectivist position on the legitimacy of recognition, unresolved conflicts on sovereignty can represent a severe threat to international order. Counter-secession policies become harmful when there is no reasonable chance of achieving reintegration through peaceful negotiations or the use of military force. According to this position, states confronted with unresolved secessionist conflicts have an interest in leaving them behind, even if it is difficult for them to reconcile this with their national identity. Otherwise, these states have to endure permanently unsettled tensions that invite foreign mediation and intervention in internal affairs, which necessarily increases international tensions (Fabry 2010, pp. 13–4). When confronted with such a situation, the international community of states may have an interest in abandoning the continuity position in order to deal pragmatically with existing realities. In such a case, effective control over a territory and a population is the main criterion to be taken into account. No state confronting a breakaway state may under such conditions deny the right of other states to proceed to recognition. The effectivist position regarding recognition is thus based on both fact and right.

The effectivist position is absent from philosophical debates on the ethics of secession, in contrast to the remedial and choice positions.²⁸ It is also marginal in contemporary discussions on recognition. Arguments in line with effectivism were widely made in international politics before World War II, but, since then, this position has been largely abandoned (Fabry 2010, 2012). Despite the pragmatism of the approach, no government has ever officially defended a recognition policy in the post-Soviet space in line with the effectivist position. In July 2016, during his US presidential campaign, Donald Trump stated that he would have to look again at the question of Crimea, without excluding recognition of its annexation by Russia beforehand (Pager 2016). However, Trump ceased to voice this position after taking office. It was, moreover, expressed in relationship to an irredentist conflict where a declaration of

²⁷On various descriptions of what is designated in this essay as an ‘effectivist’ position on recognition, see Kelsen (1969), Peterson (1997), Fabry (2010). The related concept of ‘defactoism’ is used by Menon (1994), among others. See also ‘Recognition: U.S. Policy in the Recognition of States’, *Encyclopedia of the New American Nation*, available at: <http://www.americanforeignrelations.com/O-W/Recognition-U-s-policy-in-the-recognition-of-states.html>, accessed 14 October 2016.

²⁸Effectivism is, in contrast to its absence in the ethics of secession, strongly present in discussions on the criteria of statehood in legal theory and political science. The definition of statehood to be found in the Montevideo Convention of 1933 is, for instance, based on effectiveness, a criterion that was prevailing in the legal conception of the state at the time of its drafting. But the Montevideo criteria are not about recognition. They provide a definition of statehood. As indicated by Thomas D. Grant (1999, p. 452), a distinction is to be made ‘between the legal criteria that make a state and the political criteria that condition recognition’. The present essay focuses on the latter.

independence had been used to legitimise the annexation of a territory by a neighbouring state and not to create a new state.

There are good reasons why the effectivist position is not considered acceptable. It is in line with the interest that recognising states may have in re-establishing their presence in a breakaway territory but would be contrary to the widely accepted doctrine that territorial changes executed by force should not be legalised or justified. It is also unhelpful in finding a pragmatic solution to such disputes, as it strengthens the opinion that a military approach to a conflict on sovereignty is necessarily more effective than negotiations.

The effectivist position still affects debates on secession in the post-Soviet space, despite its lack of international acceptance. Representatives of the *de facto* authorities of contested states such as Abkhazia are convinced that the international community will have to acknowledge their existence sooner or later—an argument in line with the effectivist position. The former president of Georgia, Eduard Shevardnadze, defended such a position on Abkhazia, but only after he had left public office. He declared in June 2011 that the recognition of Abkhazia by Georgia would be a sensible option, particularly in regard to the facilitation of the return of the Georgian refugees to this territory.²⁹ This stance of a former head of state may be considered an important intervention in a domestic controversy on conflict resolution, even if there were few chances that it could have persuaded the Georgian government to change its policies. A distinction is to be made here between such an attempt by a citizen of a country confronting breakaway territories to change the majority opinion and the recognition policies of external actors that would go against this majority opinion. The former is legitimate as part of a democratic debate, even if it is not necessarily effective, whereas the second may in contrast be resisted as an illegitimate foreign intervention in domestic affairs. Any attempt to impose an effectivist position on the Georgian–Abkhaz conflict would therefore have few chances of success and entail more costs than benefits. This also holds true for all other secessionist conflicts in the post-Soviet space.

Conclusions

The nexus created by the continuity position between the acknowledgement of Soviet constitutional norms and the implementation of democratic and human rights norms was considered key for stability and reform in the post-Soviet era, but it did not facilitate the settlement of a number of secessionist conflicts, such as the one over Abkhazia. Furthermore, the international community became increasingly divided over the question of whether or not any exceptions to the continuity position should be allowed—in the Balkans, these divisions emerged over Kosovo and in the Caucasus over South Ossetia and Abkhazia. In these cases, exceptions to the continuity position have mainly been justified on the basis of the remedial position. Russia has furthermore justified its annexation of Crimea on the basis of the choice position. The effectivist position is only present at the margin in post-Soviet debates.

This essay asks if any of the three alternative positions to the continuity position would have been more appropriate for the post-Soviet space as a whole, or specifically for Abkhazia.

²⁹The Georgian authorities did not consider it necessary to comment on the view of ‘a private citizen’, even if he was a former president. On Shevardnadze’s position see, ‘Shevardnadze Supports Recognition of Abkhazia’, *Voice of Russia*, 29 June 2011, available at: <https://sputniknews.com/voiceofrussia/2011/06/29/52570203.html>, accessed 14 October 2016.

A comparative normative analysis allows us to determine if the lack of a solution to the international status of Abkhazia should be considered a necessary price for the international community to pay for maintaining a principled stance concerning the continuity position. Four core questions have been raised in the introduction of this essay to answer the larger research question on a better alternative to the continuity position. The first one was about the way in which just cause was defined in each of the positions; the second concerned the actual motives of its supporters; the third was about the likely success of this alternative position; and the fourth about the moral costs and benefits to be expected from its implementation. These four core questions were then addressed for each of the four positions in separate sections, comparing the continuity position with each of its three alternatives.

Each of the four positions aims to achieve a specific objective, but this does not exclude the presence of other just causes. The stated aim of a recognition policy based on the remedial position is the correction and prevention of injustices. In principle, this objective is also present in the choice position, which mainly focuses on the free choice of any nation to create a new state. Sakharov and Starovoitova, for instance, were convinced that the free choice of all nations would not only preserve stability but also undo all historic injustices. The correction of injustices is further present as a just cause in the continuity position, which mainly asserts the preservation of the stability of the international system as a guarantee to prevent future injustices, without, however, aiming at the correction of historic injustices that nations have suffered in the Soviet past. The continuity position also fails to question why some Soviet nations acquired the right to external self-determination by becoming titular nations of union republics and others did not. The correction of past injustices is, from this perspective, considered as potentially destabilising, which may easily lead to new injustices. The effectivist position, which claims to address circumstances pragmatically, may advance the argument that recognition of a contested state is an effective way to resolve past injustices—as, for instance, through the return of the displaced Georgian population to an independent Abkhazia. Yet its main objective is not the correction of past injustices but the avoidance of the negative consequences of unsettled conflicts. Freedom is the main value in the choice position, and it is also present in the remedial position to the extent that denial of the right to national self-determination is considered unjust. The continuity position cherishes freedom as a democratic value, but it does not consider the principle of voluntary association as the basis of the state.

The question of a correction of past injustices was, however, very present in all Soviet and post-Soviet conflicts on secession, and it was also prominent in the recognition of the Baltic states—but for the external powers only to the extent that it did not destabilise the Soviet reform process. It was also an important motive behind Sakharov's and Starovoitova's defence of the choice position. In contrast, it cannot be concluded that the correction of past injustices was a main motive for the drafters of the 1990 Soviet Law on Secession—who were defending a particular variant of the choice position—or for the external actors defending the continuity position. In defending this position, the international community was, however, very concerned about the prevention of future injustices, and particularly of its destabilising effects. The correction of future injustices does not seem to have been a major motive of the drafters of the 1990 Soviet Law on Secession, which contrasts again with the position of Sakharov and Starovoitova.

The continuity position allowed for a consensual form of dissolution of the Soviet Union in 1991, but it has been challenged—Russia's recognition of Abkhazia and South Ossetia

is illustrative of its weakening. However, the continuity position still has more support—including from Russia—than any of the alternative positions. Although the remedial position permitted a consensual separation of the Baltic states from the Soviet Union, it failed to overcome Russia's isolation when it justified its recognition of Abkhazia and South Ossetia within this framework. There is nothing that would indicate that either the choice position—defended by Russia to justify its annexation of Crimea—or the effectivist position—used by contested states in order to express their expectations for future integration within the international community—would gain significant international support in the foreseeable future.

Even if the choice or the remedial position were to be accepted by the international community—which can only be considered as a thought experiment—neither would guarantee the consent of the conflict parties. Some authors advocating one or other of these positions have therefore defended the thesis that a judicial organ, such as the International Court of Justice, should play a key role in a decision that is traditionally the prerogative of states (Wellman 2005; Coleman 2015). Those who favour international tribunals for solving disputes on recognition expect that such institutions would be able to take an impartial decision on a principled basis. A judicial process is, however, insufficiently flexible to replace the classical instruments of diplomacy in a conflict over secession. There is nothing that indicates that a judicial process would have been effective in solving the severe conflicts over the international status of breakaway territories in the post-Soviet space.

Regarding consequences, the remedial position facilitates conflict resolution when there is a consensus among conflict parties and within the international community on the need to correct severe injustices. This was the case in the Baltic states in 1991, but only for a brief period of time—Russia has since changed its view on their annexation by the Soviet Union. It is very likely that the application of the remedial position to the whole Soviet space would have activated numerous historical grievances and disputes over sovereignty, including on the status of Abkhazia. There is, indeed, no agreement on the nature and scope of past injustices and their possible remedies between Georgians and Abkhaz.

The effectivist position is based on the view that external actors are not bound to a duty of non-recognition when there is no reasonable chance of achieving a settlement through peaceful or military means. The lack of perspective for resolution of a conflict over secession through negotiations or any other means justifies the acceptance of the facts as a guideline for recognition policies. These facts include the *de facto* control of a political entity over a territory and its population. Recognition then becomes a legitimate instrument for a state to defend its own interests. However, the application of such a position in 1991 would inevitably have favoured conflict escalation in the post-Soviet space overall, as it would have created an incentive for the breakaway territories to refuse negotiations. It is, moreover, unacceptable for states confronting breakaway territories, such as Georgia. Tbilisi does not have any political or military prospects of achieving reunification in the foreseeable future, but it still has the strength to pursue policies of counter-secession. For these reasons, the effectivist position cannot be considered as a pragmatic solution for any of the intractable conflicts, such as the one over Abkhazia.

The arguments highlighting the lack of a reasonable chance of success and the negative consequences of applying the remedial and the choice positions to the post-Soviet space also suggest that a combination of the continuity position and any of these two alternative

positions would not be appropriate. Such a mix was unanimously accepted by the international community in 1991 in the defence of the remedial position regarding the Baltic states and the continuity position regarding the remaining Soviet republics and was also present in the recognition policies of Russia regarding Crimea (where it defended the choice position), Abkhazia and South Ossetia (where it used remedial arguments), and the other states that it recognises in the post-Soviet space (where it still defends the continuity position). There is nothing to indicate that such a mix would be accepted by the international community today or that it would be helpful in resolving conflicts such as the dispute over Abkhazia.

After comparing the continuity position with its three alternatives, it is possible to conclude that the international community adopted the correct approach in 1991, when it combined the remedial position for the Baltic states with the continuity position for the remaining states in the former Soviet Union. There are no strong arguments in support of the thesis that an exception should have been made or should be made for Abkhazia.

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