

Secession of States and Self-determination in contemporary International Law

Processes of secession and succession of States in the post-Soviet space with
attention to the so-called “de facto States”

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Abstract: The dissolution of the USSR in late 1991 is undoubtedly one of the most significant events in international society of the late twentieth century. This led to the emergence of fifteen new states and as a result, to the appearance of different processes of succession of states. However, the end of the USSR did not mean the end of territorial, ethnic or national tensions, which were sometimes cruelly manifested in the new recently constituted States, causing secession processes that have led to the emergence of de facto States and that have been perpetuated over time with the support of Russia.

Keywords: Post-Soviet space – Succession of States – Frozen conflicts – de facto States

(A) PRELIMINARY CONSIDERATIONS ON
THE PROCESS OF DISSOLUTION AND SUCCESSION OF THE USSR

(1) The process of dissolution of the Soviet Union

The disintegration of the Soviet Union (USSR) was the result of a serious deterioration of economic mechanisms within a framework of progressive questioning of the current political system, enhanced by the environment of timid reforms that made *perestroika* and the information transparency policy which facilitated the *glasnost* possible. On the other hand, the demands of the Republics became increasingly insistent in demanding the application of their rights, which fictitiously recognized the Soviet Constitution. In effect, the 1977 Constitution recognized the principle of self-determination, the right of the republics to freely separate and to even maintain full external relations. These rights would be maintained in the successive constitutional reforms. However, in reality, the Soviet state was a rigid unitary and centralist state of federal appearance under the strict discipline of the Communist Party¹, which maintained, in this way, within its vast borders, a mosaic of peoples, cultures and languages.

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¹ On the complex “national question” in the Soviet Union, see, among others G. Smith (Ed.), *The nationalities question in the Soviet Union* (Longman, London-New York, 1990); M. Lesage, *La crise du fédéralisme soviétique* (La Documentation française, Paris, 1990); H.R. Huttenbach (Dir.), *Soviet Nationality Policies*. (Mansell, London, 1990).

When the repression ceased, the republics regained prominence and, with it, they recovered growing spheres of power. In turn, they created the appearance of nationalist conflicts that sometimes manifested themselves in a bloody manner. For instance, at the end of 1986, in Alma-Ata and other cities in Kazakhstan were incidents that caused dozens of deaths; in 1987, the incidents took place in Kyrgyzstan and then Azerbaijan, where anti-Armenian pogroms were held, following the anti-Azeri manifestations of Yerevan, capital of Armenia. The long string of conflicts continued in the Baltic Republics, in Georgia, or in Uzbekistan, among others.²

The nationalist vindications were very quickly generalized in various republics, a factor that would very soon become essential, although not unique, in the accelerated crisis affecting the Union.³ The proclamation of sovereignty by the republics and the supremacy of their laws over those of the USSR in the second half of 1990, not only in all the federated republics but also in several autonomous republics of Russia, such as Karelia, Bashkiria and Yakutia and even by some minorities without administrative autonomy⁴, as well as the refusal—massive in some cases—to join the Soviet army, accelerated the process of disintegration. The reaction of the conservative forces in the autumn of 1990, for which Gorbachev tried to grasp control the situation again could not stop the disintegration.

The consensus to declare the dissolution of the USSR was already growing among the Presidents of the new emerging States. It was only necessary to find a legal formula for independence to be declared. The overwhelming result in favour of independence in the Ukrainian referendum, its recognition by the Russian Federation and the abrogation of the 1922 Union Treaty by the Parliaments of Ukraine, Russia and Belarus, proved that the project of any form of union was definitively ruled out and the consensus to dissolve the USSR was firm and definitive. Surprisingly, the Soviet implosion took place in a few months and barely aroused any opposition; there was no generalized explosion of violence, even though, as noted before, the root causes were coming from afar.

Once the objective of dissolving the USSR had been achieved and after rejecting Gorbachev's last attempt to approve the Treaty of the Union, the President of the Russian Federation, Boris Yeltsin, attempted to re-establish the links between the three Slavic Republics.

² On the origin and development of different kinds of conflicts which appeared in the territory of the former USSR, see A. Blanc Altemir, *Conflictos territoriales, interétnicos y nacionales en los Estados surgidos de la antigua Unión Soviética* (Tirant lo Blanch, Valencia, 2003).

³ See A. Cucó, *El despertar de las naciones. La ruptura de la Unión Soviética y la cuestión nacional*. (Servei de Publicacions. Universitat de València, 1999), p. 35.

⁴ The "sovereignty fever" reached the point that by the end of 1990, all the federated republics, including Russia, had declared their sovereignty. However, these declarations were not stopped here, since sixteen autonomous republics - of a total of twenty - did the same, as well as five of the autonomous regions and four of the ten autonomous districts. Even two districts of Moscow and some companies declared their sovereignty. Cfr. R. Lomme, Ph. Méchet «Le dépérissement de l'État soviétique», 55/4 *Politique Étrangère*, (1990), pp. 799-812.

He had to overcome the initial resistance of Ukraine, which was afraid that Russia would maintain its hegemony in the structure resulting from the disintegration of the USSR due to its history, its language, demography, territory, economic potential and military superiority.

With these premises, on December 8, 1991, the Presidents of the Russian Federation, Belarus and Ukraine signed the Agreement on the Foundation of the Commonwealth of Independent States (CIS) in Minsk, which should lay the foundations for the new structure that would follow the USSR, once its continuity was definitively discarded.⁵

(2) Identity, continuity and succession of the States in the post-Soviet space. The interaction between recognition and succession of States

However, it should be noted that not all territorial changes necessarily imply the disappearance of the preceding State, because in certain cases, and despite important mutations that affect the constituent elements of a State, particularly the territory, the State does not disappear and continues to exist. In these cases, the continuity of the preceding State prevents the succession or, in other words, its substitution by another State. In short, the preceding State maintains its identity despite the fact that its territory and population have diminished or increased significantly.

Continuity and identity would therefore constitute two intimately related although differing notions.⁶ As Czaplinski affirms, the notion of state identity is fictitious because it is an identity of international subjectivity and not an identity of territory, population or state power. In his opinion, which I share, the identity of States would be determined by the comparison of two state entities in two different moments, while the continuity would derive from the existence of a State without interruption during a certain period of time. From this perspective, if the continuity of a State is accepted, its identity cannot be questioned. However, the interruption of the continuity of a state, due to the cessation of its existence, would generally exclude all identity.⁷

On our part, we consider that the expression “continuity in the identity”, used by some authors⁸ reflects the situation more accurately created by the possible territorial

⁵ On the process of creation, legal nature and characteristics of the CIS, see A. Blanc Altemir, *La herencia soviética. La Comunidad de Estados Independientes y los problemas sucesorios* (Tecnos, Madrid, 2004), pp. 26-94.

⁶ For K. Marek, it would be two inseparable notions, the first one being the result of the second. K. Marek, *Identity and Continuity of States in Public International Law* (Droz, Genève, 1954), pp. 4-6. For Cansacchi, a State would continue to exist in the event of being the same international subject without interruption. G. Cansacchi, “Identité et continuité des sujets internationaux”, 130 RCADI, (1970-II), pp. 7-II.

⁷ W. Czaplinski, “La continuité, l’identité et la succession d’États-Evaluation de cas récents”, RBDI, (1993/2), p. 374.

⁸ See in particular J.A. Pastor Ridruejo, *Curso de Derecho Internacional Público y Organizaciones internacionales*, (6ª ed. Tecnos, Madrid, 1996) 312-314; J.M. Ortega Terol, “Aspectos teóricos y prácticos de la continuidad en la identidad del Estado”, XV ADI, (1999), pp. 273-323.

transformations that States can suffer. It merges the two elements which could be affected: the temporal dimension of the State and the preservation of its international legal personality.

The principle of continuity of the State operates as a presumption in the field of international subjectivity, a fact that is almost unanimously accepted by the majority of renowned scholars in this discipline.⁹ The application of this principle would justify both the continuity in the state identity in those cases in which there are changes in the organs of government of the State, and in those insignificant alterations that affect the rest of the constituent elements of a state entity, i.e. the territory and the population. From this perspective, the State would continue to exist from an international legal point of view unless its actual dissolution could be verified, that is, the cessation of its own existence.

There would, therefore, be a series of situations that would not have an impact on the continuity in the identity of a State, that is, on its international legal personality. Consequently, certain territorial changes, which could be manifested both in the form of acquisitions and losses of territory, would not affect the continuity in the identity of a State.¹⁰ However, other alterations, in particular the loss of sovereignty or very significant loss of territory to the point that it would affect the minimum territory necessary for its own existence, would in fact have an unquestionable effect on their legal personality and would therefore negatively affect the continuity in the identity of that State.¹¹

However, it is unquestionable that the loss of independence or sovereignty, as a constituent element of greater significance from the perspective of International Law, would mean the disappearance of the State and with it any possible continuity of its identity. Nonetheless, in the event that the loss of sovereignty has occurred for reasons which are not accepted by international legal standards - such as an annexation - and that independence is later recovered, as in the case of the Baltic States in relation to the former USSR, we would find ourselves confronting a case of recovery of the identity, without solution of continuity, of the reappeared States. This way, the new States of Estonia, Latvia and Lithuania would continue in the identity

⁹ See among others, J.L. Kunz, "Identity of States under International Law", 49, *AJIL*, (1955) at 68; J. Crawford, "The Criteria for Statehood in International Law", 48 *BYIL*, (1977), p. 139.

¹⁰ History offers us many examples in this regard: the continuity in the identity of the former colonial States (Spain, France, Belgium, United Kingdom, etc.) was not questioned despite the loss of important territories after the different decolonization processes. The twentieth century also offers us numerous cases derived, in particular, from the dissolution of the Ottoman and Austro-Hungarian empires. The most renowned scholars in this discipline accept in a practically unanimous way that the continuity in the identity of a State is not affected by certain territorial modifications. See J. Crawford, *The Creation of States in International Law*, (Clarendon Press, Oxford, 1979), p. 404.

¹¹ See H. Bokor-Szego, "Naissance et disparition des Etats dans le droit international contemporain", *Acta Juridica Scientiarum Hungaricae*, (1983), p. 355.

of the homonymous States that disappeared in 1940 as a result of the annexation operated by the USSR. It was considered illegal from the perspective of International Law.

If we place ourselves in the perspective of the original State, in which the territory subject to a partial modification was based, it is more likely that it would continue to exist since the modification would not have altered its continuity. This means that we would be facing a continuity in identity. Nevertheless, in the event that the territorial alterations have been significant and they have implied a State's dissolution, leading to the creation of two or more new States, it would be discussed whether one of them is considered as a continuator of the disappeared State (as in the case of the Russian Federation with respect to the USSR) and the rest would be considered new States, i.e. successors, or whether all of them are considered new and none of them is recognized as a continuator (as in the case of the former Socialist Federal Republic of Yugoslavia or Czechoslovakia).

Although the majority of scholars distinguish between succession and continuity of the States, the differences are diluted when one passes from the theoretical to practical analysis, as the dissolution of the USSR demonstrates. The identity and the continuity are opposed to the succession: the former is based on the persistence of the State in question while the succession implies its disappearance and substitution by a new one.

In the case of the USSR, the three phenomena which were previously analysed are present at the same time: the identity without continuity of the Baltic States; the continuity of the USSR by the Russian Federation; and finally, the succession of the other eleven republics of the USSR, with a particular situation for Belarus¹² and Ukraine within the framework of belonging to the International Organizations (in particular to the United Nations).

There is an obvious interaction between the succession and continuity of States, on one hand, and in recognition, on the other. In relation to the extent to which the state projects itself to the new subjects (States) that appear as a consequence of a territorial transformation (succession) and to its own intention to continue being a legal personality, which is associated with the acceptance of its status as a continuator by the other States.

As recognition is a political act, even though it has unquestionable legal effects, States have the freedom to set the conditions under which they recognize the new subject. These conditions, however, are limited by the respect of International Law, as it was established by the then European Community.¹³

¹² From now on, we will refer to Belarus to designate the new State constituted from the former Soviet Socialist Republic of Belarus.

¹³ Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union', adopted by the EC in the Extraordinary Ministerial Meeting of the European Political Cooperation (EPC) on December 16, 1991. Cf. *Actividades, Textos y Documentos de la Política Exterior Española*, (1991), pp. 915-916.

Along with these guidelines adopted for the new states of Eastern Europe and the USSR, the European Community within its recognition policy distinguished between three legal statutes of States, which were product of the dismemberment of the USSR. This was the stance adopted by the majority of international organizations and non-member states: (a) The case of the Baltic republics; (b) The case of the Russian Federation; and (c) The case of the other independent States in the territory of the former USSR.

In connection with the first case, we will only refer to the fact that the Baltic States were recognized as continuators in the identity of the homonymous States which existed until 1940, the year when they were annexed by the USSR. The classification of the succession of States which was operationalised, in the light of the Vienna Conventions on succession in respect of the 1978 treaties and on succession in respect of property, archives and debts of 1983, would be a separation of States. However, from the moment Estonia, Latvia and Lithuania did not accept this qualification, they presented themselves, as Professor Paz Andrés has pointed out, as “resuming, without continuity, the international legal personality of the three States annexed in 1940”.¹⁴ We are therefore faced with a case of restoration of the independence of the former Baltic States, whose legal personality has been perpetuated over time.¹⁵ And from this point of view, Estonia, Latvia and Lithuania would continue as the States annexed by the USSR in 1940. This was the stance adopted not only by the States in question, but also by the Member States of the European Community, stating that “the Community and its Member States warmly welcome the restoration of the sovereignty of the Baltic States that they had lost in 1940 ...”¹⁶.

As affirmed by Tatsiana Ushakova¹⁷, the Baltic republics did not participate in the process of distribution of the goods and rights of the former USSR, operating in this way with full coherence. However, the practice in terms of treaties has been more contradictory. Whereas in some cases the republics have maintained valid agreements concluded by the former USSR after 1940, in other cases, they have denied them and have invoked the doctrine of the *tabula*

¹⁴ See P. Andrés Sáenz de Santa María, “Problemas actuales de la sucesión de Estados”, *Cursos de Derecho Internacional de Vitoria-Gasteiz*, Servicio Editorial de la Universidad del País Vasco-Edit. Tecnos, Madrid, (1994), pp. 157-214, p. 178. The Baltic States are, therefore, a particular manifestation of what Crawford calls “identity without continuity”. J. Crawford, *The Creation of States in International Law* (Clarendon Press, Oxford, 1979), p. 407.

¹⁵ As stated by Bothe and Schmidt, a precedent of this conception be the case of Austria which even though it was part of the German Empire between 1938 and 1945, it recovered its independence later on. M. Bothe et Ch. Schmidt, “Sur quelques questions de succession posées par la dissolution de l’URSS et celle de la Yougoslavie”, 96 *RGDIP*, (1992/4), pp. 822- 823.

¹⁶ “Declaración de los Doce sobre los países bálticos”. Bruselas, 27 de agosto de 1991. Cf. *Actividades, Textos y Documentos de la Política Exterior Española*, (1991), pp. 881-882.

¹⁷ T. Ushakova, *La sucesión de Estados en materia de bienes, archivos y deudas; el caso de la URSS*, (Editorial Universitaria Ramón Areces, Universidad de Alcalá, Madrid, 2006), p. 48.

rasa. This concept is in principle linked to the succession of recently independent States. Many of the treaties and agreements prior to 1940 have not been able to be restored due to the long period of time that had elapsed.

Regarding the recognition of the Russian Federation as a continuing State of the USSR, it should be noted that when the dissolution formally took place, the identity between the Russian Federation and the USSR was an established fact, accepted as such by the international community.¹⁸ The different position of the Russian Federation, as a continuing State of the former USSR, and of the other Republics, as successor States, has been assumed not only by the Russian Federation itself, which officially maintained this interpretation from the beginning, but also by the rest of the States whose attitude in favour of this continuity has been practically unanimous.

The position adopted by the Member States of the European Community reflected in the Declaration on the future status of Russia and other former Soviet Republics, formulated on December 23, 1991, was particularly marked as they “confirm that international rights and obligations of the former USSR, including those derived from the Charter of the United Nations, will continue to be exercised by Russia. They welcomed the acceptance of these commitments and responsibilities by the Russian Government and on this basis they would continue their dealings with Russia, taking into account the modification of their constitutional status”.¹⁹

Certainly, the legal consequences differ considerably in the event that the Russian Federation was the continuing under the identity of the former Soviet Union or simply its successor. Indeed, in the first case, the recognition by the other States of the international community²⁰ would be unnecessary and the Russian Federation would assume the legal position of its predecessor in terms of rights and obligations. However, if it was its successor, the other states would need to recognise the new state and the Russian Federation would need to recognise and accept both its rights and obligations. This would be limited to the framework established by the rules governing the succession of States. In any case, the thesis of continuity in the identity of the predecessor State —Soviet Union— for its most essential part —Russian

¹⁸ The tendency to identify the Russian Federation with the Soviet Union was constant, even from long before. See L. Antonowicz, “The Disintegration of the USSR from the Point of View of International Law”, *PYIL*, vol. 19, (1991-1992), p. 9.

¹⁹ “Declaración de los Doce sobre el futuro “status” de Rusia y otras ex-Repúblicas soviéticas”, La Haya-Bruselas, 23 de diciembre de 1991. Cf. *Actividades, Textos y Documentos de la Política Exterior Española*, (1991), pp. 918-919.

²⁰ As stated by B. Stern: “S’il y a continuation, cela signifie que l’État reste identique à lui même, et que, en principe, il n’y a donc pas besoin de reconnaissance, contrairement à ce qui se passe en cas de succession, où apparaît un nouvel État qui doit être reconnu». B. Stern, “La succession d’États», 262 *RCADI*, (1996), pp. 15-436, p. 59.

Federation— is rather in line with the international practice and with the interests of the international community, which prefers that the relations between the old State and the outside world are not extinguished and are maintained by the continuing State, thereby providing greater security and stability in international relations.²¹

The stance stating that the Russian Federation was the continuing in the identity of the former USSR was based not only on the statements made by the Russian authorities, in which the term continuator was systematically used instead of successor, but also in the fact that the Alma-Ata Declaration, which involved the members of the newly constituted CIS, decided that Russia should be the continuation of the USSR in its capacity as a member of the United Nations. This included its position as a permanent member in the Security Council, as well as of other international organizations. This claim was accepted by all the members of the United Nations as well as other international organizations. In our opinion, this fact constitutes a determining factor to consider the Russian Federation as a continuation in the identity of the former USSR.²²

In contrast, with the exception of Ukraine and Belarus the other former Soviet republics had to reapply for membership as members, as original members of the United Nations. Also, the diplomatic representations accredited in Moscow continued exercising their representative functions before the Russian Federation. Thus, it can be said that the “essence” of the former USSR persisted in the Russian Federation because, as stated by Koskenniemi and Letho, it was its backbone in terms of population, territory, GDP or nuclear weapons.

As for the recognition of other States in the territory of the former USSR as successors, it should be noted that after the aforementioned Alma-Ata Declaration, the international community recognized the new independent States with the exception of the Russian Federation for the reasons given. The Member States of the European Community followed the guidelines incorporated in the also aforementioned Declaration of December 16, 1991, which conditioned the recognition to the acceptance by the new States of a series of fundamental rules of International Law.

The recognition, as a step previous to the establishment of diplomatic relations, was made only with respect to the split republics of the USSR, but not with respect to the Russian Federation, which was considered a continuation of the former USSR. For this reason, the

²¹ H. Bokor-Szegö, “Questions of State Identity and State Succession in Eastern and Central Europe”, in M. Mark (Ed.): *Succession of States*, (Martinus Nijhoff Publishers, The Hague/London/Boston, 1999), p. 99; T. Ushakova, *La sucesión de Estados en materia de bienes, archivos y deudas; el caso de la URSS*, (Editorial Universitaria Ramón Areces, Universidad de Alcalá, Madrid, 2006), p. 50.

²² In the same line, see V.D. Degan, “Création et disparition de l’Etat (à la lumière du démembrement de trois fédérations multiethniques en Europe”, 279 RCADI, (1999), p. 306.

effects of the succession clearly reached the eleven remaining States, and the Baltic States were also excluded for the reasons that have been mentioned.

However, it is important to point out the particular situation of Ukraine and Belarus, which, as we have noted, were founding States of the United Nations and retained their status as members of that organization and of other organizations of the system in which they participated independently of the USSR.²³ In contrast, these two States had to go through the usual admission procedure for the organizations of the system of the United Nations in which only the USSR was a part.

With regards to international treaties, it must be remembered that in the aforementioned Declaration of the European Community on the future statute of Russia and other former Soviet republics, was reiterated as one of the conditions for recognition to guarantee the fulfilment of the commitments of the USSR; in particular those derived from the Conventional Forces in Europe treaty and those related to the sole control of nuclear weapons and their non-proliferation.

In short, we can hold that the international legal personality of the States that emerged from the former USSR did not present problems by proclaiming themselves as independent States and successors of the USSR and as recognized by the international community.

(B) THE CURRENT STATUTE OF THE DENOMINATED “DE FACTO STATES” IN THE POST-SOVIET SPACE

Prior to the demise of the USSR at the end of 1991, the progressive weakening of the Soviet central power had boosted the emergence of ethnic conflicts. The most remote causes of these conflicts are to be sought both in the policy of the nationalities sponsored by Stalin with the consequent aberrant plot of internal borders²⁴, as in the effects, often perverse, of the territorial division of labour. It has been quite rightly pointed out²⁵, the peculiarities of the Soviet empire made it difficult to fully dismantle it, and once it was consummated, regional interdependencies and specificities determined that the disappearance of the USSR did not automatically mean the disappearance of the former Soviet space. Russia, mainly through the CIS, occupied this

²³ In this sense, see A. Blanc Altemir, “La successione nella condizione di membro delle organizzazioni internazionali alla luce della recente prassi internazionali”, LXII *La Comunità Internazionale*, (2007/1), pp. 84-85.

²⁴ The borders between the federated Republics were modified ninety-four times during the URSS. F. Valdés, O. Tarasov, “La Comunidad de Estados Independientes: génesis y perspectivas”, *Política Exterior*, 33 (1993), p. 31.

²⁵ C. Aguilera de Prat, “Rusia y la CEI: ¿relaciones de política exterior o interior?”, 42 *Revista CIDOB d’Afers Internacionals*, (1998), p. 7. In his opinion, the Russian empire, which was first Tsarist and then Soviet, was characterized by being a contiguous geographical entity—unlike the “traditional” empires such as the Spanish or the British that were transoceanic—and that was progressively configured with the Slavic and Turkochan territorial annexations.

empty space by means of its economic and military supremacy which has acted as a mechanism to contain conflicts, although with unequal success.

The disappearance of the USSR and the consequent access of the Republics to independence did not mean the end of territorial, ethnic or national tensions. The reason being that although many of them originated within the USSR, their true causes went beyond the political and historical framework in which they were born and developed.²⁶ In effect, if we compare the situation of the conflicts, present or latent, which existed at the end of the Soviet period, that is to say in 1990-1991, with the evolution of the following years, once the disintegration and the appearance of the new independent States had taken place, we can observe that, in itself, this did not provoke an improvement of the conflictive situations, instead in many occasions, they were aggravated.²⁷ Therefore, we can state that although the process of succession occurred in a relatively organised way, it should be noted that the dissolution of the USSR did not satisfy all the nationalist movements that existed within it and ended up multiplying the conflicts of ethnic and identity character. In some cases these had already been manifested even before the creation of the USSR but had remained dormant during the USSR existence and reappeared at times in a violent manner in the final era that led to its demise. Also, it should be noted that the aggravation of existing ethnic tensions also added to the problem of Russian citizens who remained outside the borders of the new Russian Federation.

In a more or less simultaneous way and coinciding with the progressive Soviet disintegration and the first post-Soviet period, the conflicts of South Ossetia, Abkhazia, Transnistria and in the Nagorno-Karabakh took place. These had different roots and dynamics: while the first three had a very marked ethnic component, the Transnistrian conflict was rather related to political and economic factors, but with similar results, as they all ended with the birth of *de facto* States thanks to the support of Russia (and of Armenia in the Nagorno-Karabakh conflict). Russia was the heir to the USSR and as such contributed to the weakening of the post-Soviet states affected by these processes of secession and guaranteed an enormous capacity for interference in their political life: this happened in Moldova (in the conflict of Transnistria) or Georgia (South Ossetia and Abkhazia) and more recently in Ukraine (Donbass conflict, after the annexation of Crimea).

At the same time, as the process of disintegration of the USSR consecrated the independence of the fifteen Soviet Socialist Republics (SSR), some territories with identity peculiarities that

²⁶ A. Cucó, *El despertar de las naciones. La ruptura de la Unión Soviética y la cuestión nacional*. (Servei de Publicacions de la Universitat de Valencia, 1999), p. 19.

²⁷ At the beginning of 1993, the Russian Army General Staff counted a total of seventy real or potential conflicts in the post-Soviet space. Of them, about thirty would correspond to the territory of the Russian Federation. A. Nenarokov, "La question nationale: paix civile ou guerre civile?", in V. Garros (Dir.): *Russie post-soviétique: la fatigue de l'histoire?*, (Complexe, Bruxelles, 1995), p. 96.

did not possess the status of SSR, tried to accept being new States. In some cases, such as those of Gagauzia in Moldova ²⁸, Crimea in Ukraine or Tatarstan in Russia, the new post-Soviet metropolises knew how correct, at least initially, the pro-independence aspirations in a relatively peaceful way and were able to integrate these territories into the new architecture of the respective States offering them different degrees of self-government.

On other occasions, the secessionist entities managed to consolidate their independence after defeating the metropolitan states militarily. Thus, Transnistria managed to underpin its secession from Moldova; Nagorno-Karabakh from Azerbaijan; South Ossetia and Abkhazia of Georgia and Chechnya of the Russian Federation. While Chechnya would end up returning to the discipline of Moscow after the Russian victory in a second war ²⁹, the other four territories maintained their independence to this day and have provided themselves of the institutions and instruments which are characteristic of nation-states without substantial changes in their situation of little or no international recognition. ³⁰ To characterize this complex reality, numerous terminologies have been created: States not recognized or partially recognized; pseudo-States; semi-states; quasi-States; States subject to dispute or contested; de facto States; protracted conflicts, forgotten conflicts; frozen conflicts ³¹ among others.

In our opinion, the most appropriate term to define the complex reality that we analyse is “de facto State”³², which Scott Pegg applies to secessionist territories where a government with sufficient popular support controls and provides services to the population for a prolonged period of time. ³³

The war in the East of Ukraine, in the Donbass region, where the self-proclaimed popular republics of Donetsk and Lugansk are located, has once again placed the so-called “de facto States” in the foreground as one of the possible solutions to this new conflict in the Ukrainian

²⁸ From now on we will refer to Moldova to designate the new State constituted from the former Moldovan Soviet Socialist Republic.

²⁹ A. Blanc Altemir, “El conflicto de Chechenia: implicaciones en el ámbito del Derecho Internacional Humanitario y de los Derechos Humanos”, VI *Cursos de Derechos Humanos de Donostia-San Sebastián*, Servicio Editorial de la Universidad del País Vasco, (2005), pp. 67-148.

³⁰ N. Caspersen, “Playing the Recognition Game: External Actors and De Facto States”, 44 *The International Spectator. Italian Journal of International Affairs*, (2009), pp. 47-60.

³¹ C. Ciobanu, “Frozen and Forgotten Conflicts in the Post-Soviet States: Genesis, Political Economy and Prospects for Solution”, (United States Institute of Peace, Virginia State University, Richmond, 2008); J. Coyle, *Russia's Border Wars and frozen Conflicts*, (Palgrave Macmillan, New York, 2017).

³² We agree on the appropriateness of this denomination with R. Martín de la Guardia, R. González Martín, C. García Andrés, *Conflictos postsoviéticos. De la secesión de Transnistria a la desmembración de Ucrania*, (Dykinson, Madrid, 2017), p. 16.

³³ S. Pegg, *International Society and the De Facto State*, (Aldershot, Ashgate Publishers, 1998). In this sense, cf. D. Lynch, *Engaging Eurasia's Separatist States. Unresolved Conflicts and De Facto States* (United States Institute of Peace Press, Washington, 2004).

East is precisely the conformation of a *de facto* State in the image of what happened in the other four territories mentioned.

To situate ourselves we will analyse, although very briefly for obvious reasons of space, the situation of the existing conflicts in the post-Soviet space that have led to the progressive consolidation of the so-called *de facto* States, starting with those located in European territory, Donbass in Ukraine and Transnistria in Moldova, and continuing with those located in the Caucasus, South Ossetia and Abkhazia in Georgia and Nagorno-Karabakh in Azerbaijan.

(1) The Donbass conflict in Ukraine

The increase in protests and demonstrations in Kiev and in the main cities of the country, under the framework of the so-called Maidan, resulted in the flight of the Ukrainian President Yanukovich to Russia on February 22, 2014, as well as his subsequent dismissal by the Parliament and the appointment of a new president, Alexander Turchinov.³⁴ Russia did not accept the legitimacy of the new government, which she referred to as a coup, and warned that forcing Ukraine to choose between the EU, which had already recognized the new government, and Russia, would seriously harm the country's territorial integrity. In fact, protests against new authorities and in favour of independence began to be detected in some regions of eastern Ukraine. The clearest case, however, could be observed on February 26, 2014 in Crimea, where protesters called for the incorporation of the peninsula to the Russian Federation.

Despite the appeals for calm to maintain the territorial integrity of the country, on March 1, 2014 the Crimean authorities asked Russia to send troops to restore security in the area, as they did not consider the Ukrainian Army as their own. At the request of President Putin, the Duma authorized the deployment of troops in Crimea whereas in other areas in the East, which were mostly Russian-speaking, there were protests against the new government of Kiev and in favour of an approximation to Russia.

The so-called aid to Crimea by Russia consisted rather in an occupation of the territory, which was welcomed with enthusiasm by the majority of the population. The EU, in addition to the G-7, strongly condemned the violation of the sovereignty and territorial integrity of Ukraine by the Russian armed forces and reminded Russia of the commitment it had made to respect that integrity in the bilateral Treaty of Friendship, Cooperation and Mutual Assistance of 1997, demanding the immediate withdrawal of its army from Crimea.

³⁴ For an exhaustive analysis of the events that took place during the Maidan and its consequences, see, among others, R. Bermejo García, *La vuelta de Ucrania a la madre-patria*, (Tirant lo Blanch, Valencia, 2015); F. Ruiz González, "Ucrania: revolución y guerra civil. Una visión alternativa de la crisis". Instituto Español de Estudios Estratégicos, *Documento Marco* 19/2014, (November 13, 2014), J.M. Faramiñán Gilbert, "Ucrania, sobre la línea roja", Real Instituto Elcano. *Documento de Trabajo* 17/2014, (December 30, 2014).

However, far from becoming more stable, the situation in Crimea was increasingly complicated, as its Parliament had voted in favour of the annexation to Russia and had convened over a referendum on March 16, 2014 in which citizens would choose whether they wanted to belong to Russia or Ukraine. The EU declared that it was an illegal referendum, as it violated the democratic constitution valid in Ukraine. However, the warnings were fruitless as the process went ahead and on March 16, almost 97% of the population of Crimea voted in favour of unification with Russia³⁵ and President Putin recognised the results in the ballot boxes.

The declaration of independence made on March 17, the day after the referendum, replaced the Autonomous Republic of Crimea (integrated in Ukraine) by the (independent) Republic of Crimea, and after appealing to the United Nations and to all the States in the world to request recognition as an independent State, requested to be included as a new republic of the Russian Federation.

This unilateral declaration of independence was intended to pave the way for its integration into Russia through a bilateral international agreement, adopted and signed by Russia and Crimea as two subjects with full international legal subjectivity. The formalization of the merging process required the recognition of the independence of Crimea by Russia, the signing of the bilateral treaty that should be submitted to the Constitutional Court of the Russian Federation, and the subsequent voting in the two chambers of the Russian Parliament (Duma and Senate) and the signature of the Russian President.

All the proceedings were carried out with unusual celerity and on March 18, only two days after the referendum, the annexation-merging was effective with the signing of the bilateral treaty between President Putin, the first Minister of the New Republic of Crimea, the President of the Parliament of Crimea and the Mayor of Sevastopol while they waited for the process of approval of the Parliament and the Russian Constitutional Court.

The parallelism that Russia alleged between the cases of Kosovo and Crimea, which led President Putin and his Foreign Minister Sergey Lavrov to state that “if Kosovo was a special case, Crimea is also a special case”³⁶, presents some reservations that should be noted. It is true

³⁵ To the first question: “Are you in favour of the reunification of Crimea with Russia in the rights of the Russian Federation?” 96.77% voted in favour, and to the second question: “Are you in favour of restoring the Constitution of the Republic of Crimea of 1992 and the status of Crimea as part of Ukraine planned in it?”, only 2.51% voted in favour. See Foundation Robert Schuman, 617 *La Carta*, (March, 18 2014).

³⁶ Both Putin, in his telephone conversations with Obama or other Western leaders particularly from the EU, and the Foreign Minister Lavrov frequently used this parallelism. In the meeting that the heads of American and Russian diplomacy, Kerry and Lavrov, held in London to approximate positions on the crisis of Ukraine and the situation in Crimea, Lavrov used once again the precedent of Kosovo as a justification for Russian action in Crimea, adding that “Crimea is much more important than the Falklands for the United Kingdom or the Comoros for France”. See *El País*, March 15, 2014, p. 3.

that in both cases we find parts of the territory of a State from which they decided to separate unilaterally, and also in both cases the population settled in that territory represents an ethnic majority different from the dominant ethnic group in the original State. In addition, in both cases there was an external military intervention without prior authorization from the United Nations Security Council, and both clearly violated the domestic law of the State to which they belonged (Serbia and Ukraine).

There are, however, remarkable differences such as the fact that in Kosovo, Serbia perpetrated massive and systematic violations of human rights that were described as ethnic cleansing, a fact that was not produced in Crimea by Ukraine. This circumstance would justify the exceptional nature of Kosovo for some, or at least give it moral legitimacy. Even though it is true that we can accept this “moral legitimacy”, which is not present in the Crimean case, international legality seems to be outside of both situations. In Kosovo, it is due to the existence of the Resolution 1244 of the Security Council that guaranteed the territorial integrity of Serbia. Serbia’s aggression against the Kosovar population occurred nine years before the declaration of Kosovo’s unilateral independence, whose territory was under the mandate of the United Nations at that time. In Crimea, it is due to the circumstances surrounding the Russian intervention, the call and realization of the referendum and the subsequent annexation.

At the same time, the situation in Donbass, in the East of Ukraine, continued to deteriorate from the beginning of April 2014. Many pro-Russian demonstrations took place in different eastern cities, particularly in the Donetsk and Lugansk regions, including the occupation of official buildings. In both regions, the insurgents fixed May 11 as the date to hold a referendum similar to that of Crimea. Both the Government of Ukraine and the EU accused Russia of being behind these uprisings in favour of fracturing the country.

The presidential elections in Ukraine were held on the scheduled date (May 25, 2014). The independent candidate Petro Poroshenko, who was supported by the Ukrainian Democratic Alliance for Reform (UDAR), widely won the first round and obtained 54% of the votes. The elections were held without incidents, except in the Donbass, with a total participation slightly over 55%.³⁷

However, within hours of communicating the official result of the presidential elections, the armed rebel groups that had taken power in the Donetsk province took control of the capital’s international airport. This fact triggered a series of events that would lead to the self-proclaimed republics of Donetsk and Lugansk, whose eyes were gazing towards Moscow, because they

³⁷ A list of the candidates and parties that attended the presidential elections on May 25 can be seen in C. Deloy, “Petro Porochenko (indépendant) favori de l’élection présidentielle en Ukraine”, *Fondation Robert Schuman. Election présidentielle en Ukraine*, (May 25, 2014).

intended to forge an alliance with Russia, which again cast serious doubts on Ukraine's national sovereignty.

This atmosphere, which was full of deep disagreements, coincided with the destruction of a plane in the Donestk region, on July 18, 2014, from Amsterdam to Kuala Lumpur (Malaysia) and caused the death of 298 people, among whom there were numerous EU citizens. This turned the Ukrainian conflict into a global event.³⁸

On the other hand, the pro-Russian rebels, encouraged by the unwillingness of President Putin to dialogue with his Ukrainian counterpart, expressed their decision not to accept the authority of Kiev. With this new situation, which was marked by the military victories of the pro-Russian separatists, the Minsk conversations were held at the beginning of September 2014 and were sponsored by the OSCE. Russia, the rebels from the East of Ukraine and the Government of Kiev participated in these conversations.

The recent military victories of the pro-Russian separatist rebels marked the start of the Minsk talks, which after several days of negotiations led on September 5, 2014 to the signing of a protocol of twelve points. These points included the immediate truce declaration which was verified by the OSCE. The OSCE would also control the border between Ukraine and Russia as well as the creation of a security zone in the border areas; immediate release of all prisoners and persons illegally detained; decentralization of power and creation of an autonomous government in the Donetsk and Lugansk regions, where, on the other hand, measures would be taken to improve the humanitarian situation, and later on, early local elections would be held.

The Ukrainian outlook at the end of 2014 left little room for optimism: the structural economic crisis was accompanied by the civil conflict in the East, which placed the country in a situation of fragility. Crimea appeared in this scenario as a missing link despite sanctions were imposed on Russia by the EU.³⁹ At the same time, the negotiations carried out among France, Germany, Ukraine and Russia to stabilize the conflict in the Donbass resulted in the Agreement of Minsk on February 12, 2015. The Agreement consisted of 13 points that recovered the spirit of the previous Protocol signed in September and included a ceasefire, which was

³⁸ The diplomatic confrontation between Ukraine and Russia was reproduced in October 2015 when, after lengthy investigations, the Government of the Netherlands determined that a Russian-made missile had been the cause of the demolition of the plane in eastern Ukraine in July 2014. In this line, on May 24, 2018, the International Commission of Inquiry, made up by Australia, Belgium, Malaysia, the Netherlands and Ukraine, determined that a Russian shuttle fired the missile that shot MH17. Far from accepting these conclusions the Kremlin continued to blame the Ukrainian State forces for the tragedy.

³⁹ On its application and impact, see A. Blanc Altemir, "The European Union-Russian Federation Relations: Multidimensionality in the Complexity", in A. Blanc Altemir, A. (Dir.): *The European Union and the BRICS (Brazil, Russia, China, India and South Africa)*, (Thomson Reuters Aranzadi, 2015), pp. 91-109.

initially respected but was repeatedly violated by both parties in the framework of a conflict in which and until that moment, several thousands of people had been killed.

In reality, there was little room for optimism in connection with the commitments of the new Minsk Agreement due to the difficulty of finding balance in a country such as Ukraine, which was deeply divided. The challenge of becoming a fully democratic and European State seemed to be difficult to solve, not only because of the existing deep division, but also because of three other problems that have persisted since Ukraine's independence: corruption, lack of rule of law and economic crisis.

By the end of 2015, the breach of the Minsk Agreements was evident: Ukraine had not carried out a constitutional reform to give a special status to the eastern insurgent regions, while Russia continued its interference in these regions through all kinds of aids, including economic ones. Undoubtedly, what happened in the Donbass region was becoming increasingly similar to other conflicts entrenched in territories of the former USSR, such as Transnistria, Abkhazia and South Ossetia or Nagorno-Karabakh.

This situation of instability, which has become permanent in Ukraine, operates in favour of the insurgents' interests and of the Russian interference in the area. The pro-Russian authorities of these separatist regions have announced that they would issue their own passports as a preliminary step to issuing Russian passports, as it is already the case in the regions of Transnistria, Abkhazia and Ossetia. Similarly, in the self-proclaimed popular republics of Donetsk and Lugansk the rouble has replaced the hryvnia and the trade with Russia has replaced the trade with the rest of Ukraine.

The control of the institutional power and of the main economic sectors of the country in the hands of the political and economic oligarchy that comes from the end of the communist era, together with the constant Russian pressure, makes it very difficult for the reforms proposed by the new prime minister, Vladimir Groisman, to prosper. Among these reforms, the fight against widespread corruption stands out as well as a closer approach to the EU. On the other hand, the Kiev Government does not have sufficient military capacity to end the pro-Russian insurgency. Meanwhile, the instability favours the interests of Russia that include the obstruction of the normalization of the country and mainly the delay and hindering of the approximation of Ukraine to the EU.⁴⁰ In short, it seems clear that Putin's attempts to place Ukraine under its orbit once and for all are aimed at creating a security belt on the perimeter of its border, adding its influence to the one that is already exercised in Transnistria, as well as in Abkhazia and South Ossetia.

⁴⁰ See R. Martín de la Guardia, R. González Martín, C. García Andrés, *Conflictos postsoviéticos. De la secesión de Transnistria a la desmembración de Ucrania*, (Dykinson, Madrid, 2017), p. 131.

(2) The Transnistrian conflict in Moldova

Transnistria is located on the narrow strip of land between the Moldovan stretch of the Dniester river and Ukraine. A border of around four hundred kilometres with each of its neighbours delimits a modest territory of slightly more than 4,000 km² and a population of 505,000 inhabitants according to the last census of 2014, a population which has progressively diminished in number in recent years. This represents approximately 12% of the population and the area officially attributed to the Republic of Moldova. The ethnic composition of the population also differs significantly from the rest of the country. While the majority of the population belong to the Moldovan ethnic group (or Romanian if you prefer), in Transnistria, Moldovans, Russians and Ukrainians have a similar weight, which is around 30%.

The de facto State of Transnistria or Vltava Republic of Pridnestrovie has been built upon the basis of a past which differs from that of the western border of the Dniester. Such historical peculiarities are the basis of the identity construction of the Transnistrian Republic and one of the root causes of the conflict together with the Russian geopolitical interests, the fear of the “Rumanization” of Moldova in the framework of the collapse of the USSR and the unequal socio-economic development of both margins of the Dniester.

After the Supreme Soviet of Moldova proclaimed its independence in August 1991⁴¹ the Russophone minorities of the Transnistria region proclaimed the Republic of Transnistria on September 2 of the same year, and they began to create their own institutions with the support of the XIV Soviet Army stationed Tiraspol, the capital city.⁴² The justification of this measure must be sought both in ethnic and political or ideological reasons⁴³ and was mainly motivated by the fear of the Russophone population to an integration of the new Moldovan State in Romania, which would have threatened their privileges, and also provoked a “Rumanization” of what they historically considered as a territory linked to Russia.

The Supreme Soviet of the soviet socialist Republic of Moldova annulled the declarations of independence of Transnistria and Gagauzia for being unconstitutional. In this last territory, the Gagauz⁴⁴ accepted a self-government status, which facilitated the understanding in December 1994. However, in Transnistria the conflict became worse as a confederation between

⁴¹ As early as June 1990, the Soviet of the Moldovan republic had declared for the first time the independence of Moldova from the USSR. In September of the same year, Gagauzia and Transnistria proclaimed their independence regarding Moldova.

⁴² V. Socor, “Russian Forces in Moldova”, 1/34 RFE/RE Research Report, (28 August 1992), pp. 38-43.

⁴³ CH. King, *Post-Soviet Moldova. A Bordeland in Transition*. (Royal Institute of International Affairs, London, 1995).

⁴⁴ The Gagauz people are Turks of Christian religion concentrated in the Moldovan territory bordering the Ukrainian region of Odessa where they settled in the late eighteenth century (an area in which some 150,000 live today).

the three territories (Transnistria, Gagauzia and Moldova) was claimed, an option which was immediately rejected by the Moldovan government.

The armed conflict was inevitable due to the systematic disobedience to the requests of the Moldovan central government. The identity but not ethnic conflict which consisted in a brief war between June and July 1992 led to hundreds of deaths and thousands of refugee. The Moldovan State had to accept this situation for its obvious inferiority to the XIV Soviet Army stationed in the area of the Transnistria that supported the rebels. The opposing sides were, on the one hand, the Russophone separatist militias, with the human and logistical support of the XIV Russian Army settled in the region, as well as by volunteers arriving from all points of the former USSR, mainly Cossacks arrived from the South of Russia.⁴⁵ On the other hand, the Moldovan Army was in the process of being established and, although they enjoyed great sympathy in Romania, they lacked external support.

The secessionist militias, which were better equipped and trained, inflicted numerous defeats on a government army with scarce resources. After a period of open conflict, the Moldovan President Snegur, who felt pressured by the need of energetic supply and raw materials, which came mainly from Russia, and who was afraid that the open military confrontation could spread to Gagauzia, which was also in the process of secession, tried by all means to negotiate a ceasefire.

With the signing in July 1992 of a ceasefire between Moldova and the Russian Federation, the doors were opened for the deadlock of the conflict and the maintenance of the de facto independence of the self-proclaimed Vltava Republic of Pridnestrovie, after adopting its own Constitution in 1991.

Around the border of the Dniester, a security area was established with the aim of maintaining peace. Three battalions, a Russian one, a Moldovan one and a Transnistrian one, have been participating in it to this day. Since then, the negotiation processes (within the Conference for Security and Cooperation in Europe, after the OSCE, with Moldova, Russia and Ukraine) and the proposals to end the conflict have been as numerous as modest have been the progresses made.

Such issues as the future status of Transnistria and the sharing of powers with the government of Moldova as well as the role of the various international actors in the process, in particular the withdrawal of Russian troops from that territory⁴⁶, have ended up frustrating half a dozen of serious proposals which have been presented to date.⁴⁷

⁴⁵ V. Socor, "Creeping Putsch in Eastern Moldova". *RFE/RL Research Report*, (17 January 1992), pp. 8-13.

⁴⁶ There are currently about 1,500 Russian soldiers, a lot less than the 10,000 who were there in 1992. However, this are enough to balance the military power of with the state of Moldova.

⁴⁷ A detailed analysis can be seen in J.A. López Jiménez, "El despliegue geopolítico de la Federación Rusa: El near abroad y los conflictos congelados", in J.A. López Jiménez, J. Morales Hernández, *La política exterior de*

Transnistria is an area of strategic interest for Russia and although it has not officially recognized it, given the threat of Moldova to leave the CIS if such recognition occurred, Transnistria has continued to maintain its status as a *de facto* State, thanks to the political, military and economic support from Russian (the latter in the form of subsidies and humanitarian aid). Undoubtedly, this support responds to much broader interests than the emotional ties and the will to protect Russians from outside Russia, which have so often been used by the Kremlin to justify its influence on the national sovereignty of some ex-Soviet countries.

Once *de facto* independence was achieved, the leading group hastened to set in motion a process of identity construction sustained by the control of the media and the educational system, thus forging a trans-national identity closely related with the notion of the “Great Russia”. Certainly, it can be affirmed that this process of “transnistritization” is the best guarantee to perpetuate the *de facto* independence of this territory. For Russian foreign policy, Transnistria is an important tool and due to its geographical location, it also has an undeniable strategic value: the border of the Dniester delimits areas of influence and the presence of the Russian military in the area is undoubtedly extremely important.

(3) The conflicts of Abkhazia and South Ossetia in Georgia

The proclamation of independence by Georgia occurred for the first time in May 1918, after making sure that they would be protected from the German occupation forces. The Republic of Georgia was recognized by a total of 22 States, including France and Great Britain, and was represented at the Paris Peace Conference.

In 1921, the Red Army, led by Stalin and Ordzhonikidze who are both from Georgia, established the Soviet regime in Georgia, which would be integrated into the Soviet Republic of Transcaucasia together with Armenia and Azerbaijan. Later on, in 1936, Georgia would be recognized as a Federal Republic within the USSR. Gorbachev came to power and the first feelings of liberalization facilitated the resurgence of the nationalist movements not only in Georgia and other republics of the USSR but also within some of them. This was the case of Georgia. It is worth mentioning that, in addition to the Georgian nationalist movement which demanded the secession from the USSR, and which had shown great dynamism, there were also secessionist movements in some regions of the country such as Abkhazia and South Ossetia that shortly after would provoke the conflicts that we are going to refer to.

(a) *South Ossetia*

Rusia. *Los conflictos congelados y la construcción de un orden internacional multipolar*, (Dykinson, Madrid, 2017), p. 133.

Ossetia has been traditionally linked to Russia, not only in the 19th century, when together with Armenia and Georgia was integrated into the Russian Empire, but also from the Sovietization of the Caucasus, a process in which it had an active participation. In 1922 the autonomous region of South Ossetia was created within the framework of the Georgian Soviet Socialist Republic, and in 1924 the autonomous region of North Ossetia (8,000 km² and 630,000 inhabitants) integrated into the Russian Soviet Socialist Republic. At the end of the eighties, the region of South Ossetia with some 4,000 km² and about 100,000 inhabitants, began a process of claiming greater autonomy from the Georgian central power. Georgia's central government refusal to grant greater autonomy led to a progressive radicalization that led to the proclamation of the Republic of South Ossetia independent from Georgia in September 1990.

The Georgian Supreme Soviet invalidated this decision and dissolved the autonomous region, which provoked an authentic civil war between Ossetians and Georgians. The intervention of the Soviet troops, which were clearly in favour of the Ossetians, in the spring of 1991, did not prevent the continuation of the fighting, which caused hundreds of deaths and tens of thousands of refugees.

The signing of an agreement between the Russian President Yeltsin and the Georgian President Gamsakhurdia for the withdrawal of the Soviet troops, as well as a ceasefire and the return of the refugees did not prevent that on December 22, 1991, once consummated the Soviet disintegration, the Ossetian Parliament would proclaim the independence that would confirm the subsequent referendum of January 19, 1992 with 90% of the positive votes (although the important Georgian minority boycotted the vote), and the adoption of a Constitution.

The declaration of a truce between the parties in June 1992 with the participation of Russia, led to an agreement involving the cessation of hostilities and the deployment of a tripartite peace force composed of Russians, Ossetians and Georgians who occupied a line of separation between the combatant parties. The situation in the self-proclaimed Independent Republic of South Ossetia, which lacked international recognition, remained frozen, even though it was similar to a *de facto* independence until August 2008, when the Georgian President Saakashvili sent the Army to "recover" the South Ossetian rebel territory.

Russia came to the defence of South Ossetia and sent its army to repel the invasion entering the Georgian territory and arriving until Tbilisi, the capital city, in what has been referred to as "the five-day war". The truce was reached under the auspices of the EU, which signed an agreement between the French President Sarkozy—who held the six month presidency of the EU—and the Russian President Medvedev. The talks began in Geneva in October 2008 and counted on the participation of Russia, Georgia, South Ossetia, Abkhazia, the United States of America, the EU, the OSCE and the UN. However, up to date there has not been any further progress than the prevention of conflicts thanks to the deployment of an EU

Observation Mission. Russia transformed the former “peacekeeping missions” which had existed before the war in August 2008, into a full-fledged military presence. The military presence, in addition to reassuring Ossetians and Abkhazians, ensured Moscow’s geostrategic interests in the face of an eventual, but distant, enlargement of the NATO in the Caucasus.

(b) *Abkhazia*

The region of Abkhazia, with an extension of 8,700 km², is located in the Northwest of Georgia and shares a border with Russia in the North, and the Black Sea in the South and West. The total population was, according to the last Soviet census of 1989, 525,000 inhabitants, of which 47% were Georgian and only 17% were Abkhazians (the rest were Armenians and Russians). The cause of this demographic imbalance, which determined that the Abkhazians were traditionally minorities in their own territory, lies in the two waves of mass deportation that they suffered towards the Ottoman Empire in 1866 and 1878.

During the 19th century, Abkhazia was a Russian protectorate that soon became part of the empire. Three years after the independence of Georgia in 1918, and the subsequent Sovietization of the region, the Soviet Republic of Abkhazia was created. In 1930, it became an autonomous Republic within Georgia. The centralization process carried out by the Georgian Government provoked misgivings in the Abkhaz Republic, which constituted a permanent factor of radicalization and instability. At the same time, the Soviet central power subliminally supported the Abkhaz claims as a way of maintaining and controlling the rebellious Georgia within the USSR.

Following Georgia’s declaration of sovereignty from the USSR in March 1990, Abkhazia did the same from Georgia in August 1990. This caused great tensions in Tbilisi which considered such a decision null and void. The situation would lead to an armed intervention by the Georgian army as two years later and shortly after Georgia’s accession to independence, Abkhazia insisted on its secessionist demands which could be summarised in returning to the Constitution of 1925, which meant that Abkhazia would be a sovereign Republic, and in proposing to Tbilisi the signing of a treaty of union.

The entry of Georgian troops in Abkhazia, in August 1992, triggered the division of this Republic into two different parts: one controlled by the Georgians and based in Sukhumi; and another one with an Abkhazian government in Gudauta. However, the successive Abkhazian offensives, favoured by the active neutrality of the Russian army and by the poor preparation of the central army ⁴⁸, managed to reduce the Georgian positions and even take the Abkhazian

⁴⁸ Another factor that explains the military success of the Abkhazian rebel troops in front of the government troops is the participation of numerous combatants from Russia, Transnistria or Armenia and especially the Confederation of the Peoples of the Caucasus, created in 1991 by representatives of fourteen Caucasian peoples in order to create a Caucasian state that would span from the Black Sea to the Caspian Sea. The Abkhaz government

capital city in October 1993. This fact caused the exodus of more than 300,000 people.⁴⁹ This was described as an authentic ethnic cleansing by the Security Council⁵⁰, which had previously decided to establish the United Nations Observer Mission in Georgia (UNOMIG) in its Resolution 858 (1993) of 24 August.

With the aim of curbing the secessionist wave that was advancing on several fronts, Georgia opted to join the CIS, a possibility that it had initially rejected. This incorporation was due to an attempt to rein the Russian support for the Abkhaz secessionists back. Indeed, we must consider that the Russian-Georgian relations were poisoned, not only by the massive enlistment in the Abkhazian ranks of citizens from the Russian Federation, mainly Caucasians, but also by the “active neutrality” of the Russian Army in favour of the Abkhaz rebels. The integration of Georgia into the CIS and the signing of a treaty of friendship and cooperation with Russia were an attempt to change the situation and to open a new period of greater understanding with the Russians.

This fact motivated the sending of Russian interposition troops under the mandate of the CIS in mid-1994. At the end of that year, the Supreme Abkhazian Soviet adopted its own Constitution declaring Abkhazia a democratic and sovereign State. This fact, despite not being recognized by the international community, added more tension to the conflict.

(c) *The evolution of both territories after the war in August 2008*

The breach of the six-point peace plan by Russia, which involved the withdrawal of its armed forces from the territory of South Ossetia, was criticized by both the United Nations and the EU. The criticisms, also made by France and Germany, extended to the recognition of the independence of both territories (South Ossetia and Abkhazia) by Russia, which was clearly incompatible with Resolution 1808 (2008) of 15 April 2008 that reasserted the territorial integrity of Georgia, as well as the mandate of its Mission – UNOMIG.

From that moment, Russia, which alleged the precedent of Kosovo, initiated a series of actions with the aim of consolidating the independence of both territories: firstly, an aid plan covering all areas, military, commercial, energy and infrastructures; secondly, the granting of

recognized foreign combatants the right to access “Abkhaz citizenship” after six months of service in the rebel forces. Cfr. R. Yakemtchouk, “Les conflits de territoire et de frontière dans les États de l'ex-URSS”, A.F.D.I., (1993), pp. 427-428.

⁴⁹ They constituted three quarters of the total population. Knowing their minority position, the Abkhaz separatists provoked the departure of the non-Abkhaz population with the aim of changing the ethnic composition of the autonomous Republic, which is why the Abkhaz secessionists have systematically rejected the commitment to adopt concrete schedules for the repatriation of refugees and people displaced to their places of origin. V.Y. Ghebali, *L'OSCE dans l'Europe post-communiste, 1990-1996. Vers une identité paneuropéenne de sécurité*. (Bruylant, Bruxelles, 1996), p. 282.

⁵⁰ SC Res 876 (1993) of October, 19.

passports and Russian citizenship to the applicants at the same time that it promoted the displacement of the Georgian population from the Ossetian and Abkhaz localities. These practices were already initiated in the military conflict of August 2008⁵¹ and were reported in several reports by the OSCE and by various non-governmental organizations as they presented the characteristics of an ethnic cleansing.

The Geneva talks, within the framework of the OSCE, have not had positive results for the interests of Georgia. On the contrary, they have contributed to the consolidation of the interests of the secessionist entities and of Russia itself⁵², which was weaving a network of treaties and agreements with both separatist entities but without culminating, at least for the moment, the integration of both territories in the Russian Federation.

On the other hand, the action of other international organizations involved in the conflict, such as the United Nations and the EU, did not go beyond symbolic demonstrations that further reflect, if possible, its impotence. Regarding the UN, it should be mentioned that the different attempts of the Security Council to adopt a resolution condemning the Russian intervention (which recognized the Georgian territorial integrity in the face of the recognition made by Russia in relation to South Ossetia and Abkhazia) have systematically come up against the Russian veto as it would approve a first renewal of the mandate of UNOMIG but later veto a second renewal in June 2009.

In connection with the EU, besides the deployment of the Observation Mission in Georgia in 2008, it has reasserted its support for the sovereignty and territorial integrity of Georgia within internationally recognized borders. The recent appointments of the new EU special representative for the South Caucasus and the Crisis in Georgia, as well as the new Head of the EU Observer Mission, are clear signs of the EU's commitment to resolving the conflict, in the framework of the ceasefire agreement of August 12, 2008 and the Geneva talks. The coming into effect of the EU-Georgia Association Agreement on July 1, 2016, which includes a free trade area of broad and deep scope, establishes an Association Council to supervise its application. At its last meeting in February 2018, the Council expressed concern about the continued application of the so-called "integration treaties" signed by Russia and the independent entities of Abkhazia and South Ossetia, as well as for the opening of customs in Sukhumi, capital city of Abkhazia and Akhagori, in the east of South Ossetia, and for the holding of a referendum in South Ossetia, which resulted into 80% of favourable votes to

⁵¹ J. Wheatley, "Managing ethnic diversity in Georgia: one step forward, two steps back", 28 *Central Asian Survey*, (2009), pp. 119-134.

⁵² A. Makarychev, "Russia, NATO, and the Color Revolutions: Discursive Traps", 47 *Russian Politics and Law*, (2009), pp. 40-51.

proceed with the change of name of the separatist entity to that of the Republic of South Ossetia—the State of Alania.

This being the case, and before the verifiable manifestation of impotence that the EU seems to adopt in these territories, everything seems to indicate that there are few or rather null possibilities of changing the current status quo towards a scenario which is more favourable to the interests of Georgia, given the progressive consolidation of both secessionist territories as separate *de facto* States.

(4) The Nagorno-Karabakh conflict in Azerbaijan

Nagorno-Karabakh comprises of 4,400 Km² and 160,000 inhabitants located in the State of Azerbaijan. It was conquered from Persia by Tsarist Russia, which declared it a Russian province in 1805, as well as other territories constituted by the rest of Azerbaijan and Armenia. From the beginning, the establishment of a statute for the enclave of the Nagorno-Karabakh posed serious difficulties.⁵³ When the Turks left these territories, Azerbaijan claimed them, even those that were mostly populated by Armenians, as in the case of the Nagorno-Karabakh. Later on, the British, who were present in the Caucasus, encountered the same problem and before leaving these territories, in 1919 they decided to place the enclave under the authority of an Azeri governor, in front of the protests of the Armenians who were the majority Armenians in the enclave.

The new Soviet power, established throughout the Caucasus, decided in 1920 to militarily occupy the Nagorno-Karabakh until deciding its future, given the high instability that reigned in this territory. Later on, Azerbaijan renounced the disputed provinces, yielding the Nagorno-Karabakh and the regions of Nakhichevan and Zangezur to the Soviet Armenia.⁵⁴ With the support of Turkey, the Azeris responded the decision of their leaders with great demonstrations. This fact caused that the Soviet regime definitively placed the Nagorno-Karabakh and Nakhchivan under the authority of Azerbaijan⁵⁵, leaving the Zangezur corridor under Armenian control. In 1923, Azerbaijan granted the status of autonomous region to Nagorno-Karabakh, and in 1924 it granted the status of autonomous republic to Nakhchivan, which was

⁵³ The Upper Karabakh constitutes a “mythical territory” in which both the Armenian and Azeri people identify the history of their respective origins. This determines that both peoples claim historical rights over the same “sacralized land” - *hogh* in Armenian, *toprag* in Azeri – which is written and declined with a possessive in both languages. See A.Ter Minassian, “L’Arménie et le conflit du Haut-Karabagh”, in M. R. Djalili (Dir.), *Le Caucase post-soviétique: la transition dans le conflit*. (Bruylant-LGDJ, Bruxelles-Paris, 1995), p. 67.

⁵⁴ Nakhichevan is currently an autonomous Republic of Azerbaijan. It is located in the territory of Armenia, it has an area of 5,500 km² and a population of some 300,000 inhabitants. Nakhichevan is separated from the rest of Azerbaijan by the Armenian corridor of Zangezur.

⁵⁵ The position adopted by Moscow in favour of Azerbaijan was due to its desire to maintain good relations with Turkey, traditionally allied with the Azeris, attracting, in addition, the sympathies of other Muslim peoples integrated into the Soviet Union, similarly to what the British had done years before.

populated at that time by 40% of Armenians. From 1922 to 1936, Armenia and Azerbaijan, together with Georgia, made up the Federation of Transcaucasia and later on they became federated republics of the USSR.

This conflict is prior to the constitution of the Soviet state and is another example, undoubtedly the most tragic, of the always difficult relations between Armenians and Azeris. However, the animosity between the two peoples remained latent until the end of the Soviet era, as in other cases. Indeed, at the beginning of 1988, massive demonstrations took place in Yerevan, the Armenian capital city, and in Stepanakert, the capital city of the enclave, demanding the integration of Nagorno-Karabakh in Armenia. The Parliament of the Nagorno-Karabakh region requested in February of the same year its “reunification” with Armenia, which was firmly rejected by the Supreme Soviet of Moscow, fearing that the modification of the Armenian-Azeri border constituted a dangerous precedent for other conflicts that began to emerge in the immense Soviet territory. However, this refusal did not ease the situation, because in June of the same year, 1988, the Armenian Parliament voted for a declaration demanding the integration of the Nagorno-Karabakh to Armenia, which would be rejected by the Supreme Soviet of Azerbaijan and once again by the Presidium of the Supreme Soviet of the USSR, claiming that in accordance with article 78 of the Soviet Constitution, the territory of a federated Republic could not be modified without its consent.

After terminating the direct administration of the enclave, the Supreme Soviet of the USSR decided to return the Nagorno-Karabakh to Azerbaijan. However, given the worsening of the situation, it decided to declare the state of emergency in the enclave. After the failed coup d'état in Moscow and the proclamations of independence of Armenia and Azerbaijan in 1991, the Karabakh State became an independent republic in September 1991. The result of the referendum was 99% in favour of the secessionist option. The proclamation of independence, which was carried out at the beginning of 1992, was rejected by the Azerbaijani Parliament and at the same time it cancelled its statute of autonomy.

From this moment on, the situation evolved towards a real armed conflict, despite the intervention of the United Nations and the OSCE, as well as the mediation attempts of Russia, Kazakhstan, Turkey and Iran, and of other States and international organizations. The Armenians of the Nagorno-Karabakh accumulated military victories in front of the Azerbaijani government troops, thanks to the support of Armenia, the greater motivation and the climate of political instability that reigned in Azerbaijan.

Despite Russia's attempts to mediate the conflict, military operations continued and the military successes of the Armenians of the location allowed to open separate corridors, extending the conflict beyond the enclave. In this way, at the end of 1993, the Armenian forces controlled not only the whole of the Karabakh, but 20% of the total Azerbaijan, that is to say

more than ten thousand km². The number of refugees continued to grow massively, a fact that was a matter of concern of the Security Council of the United Nations.⁵⁶ Between the end of 1993 and the beginning of 1994 an Azeri counter-offensive, strongly supported by Afghan mercenaries, managed to stop the advance of the rebel forces. From that moment, there were new attempts to reach a ceasefire agreement, which was finally proclaimed in May of the same year.

The conflict, which had its most virulent development between 1991 and 1994, entered a new phase favoured by the relative success of the ceasefire and the significance of the different negotiating channels and initiatives. These, however, did not lead to a definitive solution to the present, given the polarized positions of the parties. The Azeri demand respect for the integrity of the territory, which stands against the right of self-determination demanded by the Armenians in the Nagorno-Karabakh, who have the support of Armenia.

Initiatives arising outside of the “Minsk Group” of the OSCE, which was created in 1992 and restructured in 1995 with the creation of a shared co-presidency⁵⁷, were carried out over the past twenty-five years by a series of Western States, such as the United States, Germany, the United Kingdom, France and Russia, with particular interests in the exploitation of Azerbaijani hydrocarbons, have not made significant progress or changes in the positions of the parties.⁵⁸ This situation of impasse was allowed to “freeze” the conflict and to evolve towards the consideration of Nagorno-Karabakh as an independent de facto self-denominated Nagorno-Karabakh Republic (or more recently Republic of Artsakh) which is very close to the Republic of Armenia and even employs its currency: the dram.

⁵⁶ The Security Council repeatedly expressed its concern over the escalation of the conflict in a series of Resolutions adopted in 1993: Resolution 822 (1993), of April 29; Resolution 853 (1993), of July 29; Resolution 874 (1993), of October 14 and Resolution 884 (1993), of November 12. In these resolutions, which were drafted in similar terms, the Council expresses its concern over the continuation of the conflict and condemns, as well, the taking of territories by the Armenian militias, reaffirming the sovereignty and integrity of Azerbaijan and the rest of States in the region, as well as the inviolability of borders and the inadmissibility of the use of force for the acquisition of territories. Since 1994, the Security Council has merely welcomed the agreement reached by both sides for the cessation of hostilities and the theoretical progress of the negotiations within the framework of the Minsk Group.

⁵⁷ It was initially established between Russia and Sweden and it was amended in 1997 by the co-presidency between the United States, Russia and France.

⁵⁸ Among the numerous proposals and pacification plans that have not prospered, the French initiative to recover an old American proposal (initially developed in 1992 by Paul Goble, former senior official of the US State Department) should be highlighted. This initiative was based on the exchange of territories but adapted to the present moment. This would be based on the recognition by Azerbaijan of the independence of the Nagorno-Karabakh and the transfer to Armenia of the Lachyn corridor that links it to the secessionist enclave, in exchange for the Armenian district of Meghri, located on the border with Iran, which was transferred to Azerbaijan, thus uniting its territory with Nakhichevan, from which it is separated by the same district. See J. Gueyras, “Le conflit du Caucase sud dans l'impasse. Impossible troc entre Arménie et Azerbaïdjan”. *Le monde diplomatique*, (March 2001), p. 12.

Currently, the negotiating process within the framework of the aforementioned OSCE Minsk Group, which includes the participation of both contenders, is paralyzed because the two parties do not accept changing their positions. Azerbaijan insists that Armenian troops must leave the region and the displaced must return to their places of origin. Armenia resists admitting that the Karabakh is in legal terms a part of Azerbaijan and it argues that the declaration of independence of the secessionist territory was practically coeval with that of Azerbaijan. Recently, in April 2016, there were new armed clashes in the region which involved the death of two hundred Armenian and Azeri soldiers, which implied the recovery by Azerbaijan of a small strategic enclave. Later on, the conflict has stagnated again but thanks to oil and gas, Azerbaijan has been gaining economic weight and its military budget is already higher than the entire budget of Armenia.

On the other hand, and due to Nagorno-Karabakh, Armenia has been marginalized from the new hydrocarbon transport routes such as the BTC pipeline (Baku-Tbilisi-Ceiyhan) through Georgia; also, its continued marginalization in the new communication routes between Turkey and Baku, via Georgia have been isolating it. Azerbaijan has the unconditional support of Turkey and Armenia enjoys a Russian position, which has been traditionally closer to its thesis than to that of Azerbaijan. The limited role played by the EU in the conflict⁵⁹ is also noteworthy.

In addition, Armenia is part of the Collective Security Treaty, sponsored by Russia, which guarantees Russian military aid in case one of its members is attacked. However, Moscow has warned that the territory of Nagorno-Karabakh would not enter this security guarantee because it is not internationally recognized as Armenian territory, which is interpreted as an attempt by Russia to keep certain equidistance between Armenia and Azerbaijan (which does not prevent Russia from selling heavy weapons to both of them) despite his traditional proximity to Armenia.

(C) IN CONCLUSION: THE DE FACTO STATES IN THE POST-SOVIET SPACE, A LOST LINK WITH WORKS IN FAVOUR OF THE INTERESTS OF RUSSIA

⁵⁹ Apart from some specific actions such as the signing in 1999 of the Cooperation and Association Agreements with Armenia and Azerbaijan or the creation of the Special Representative for the South Caucasus in 2003. From that year, the EU would extend its cooperation policy with the region in the framework of the European Neighbourhood Policy and the Eastern Partnership, starting in 2009. On the other hand, it should be noted that the Action Plans signed by the EU with both republics in 2006 include a proposal for a peaceful solution to the conflict in the Nagorno-Karabakh region. To read its content, see J.A. López Jiménez, “El conflicto de Nagorno-Karabaj: disputa territorial entre Armenia y Azerbaiyán”, in J.A. López Jiménez, J. Morales Hernández, *La política exterior de Rusia. Los conflictos congelados y la construcción de un orden internacional multipolar*, (Dykinson, Madrid, 2017), pp. 186-187.

If we consider defining characteristics of statehood (population, territory, effective government and capacity to establish relations with other States) and accept that the political existence of the State is independent of its recognition by other States, there can be little objection to the characterization as States of the 4 post-Soviet secessionist territories (Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh). However, the Donbass would be in an impasse towards its progressive characterization as a *de facto* State. In fact, all these territories function as political systems of a state nature as they are independent and have full sovereignty over their territory. Various conflicts have occurred in the past and can be considered “frozen” in the present. They lack the legitimization, support and recognition of the international community, which places them in an indefinite and a difficult to classify situation. This situation presents the rupture between internal and external sovereignty and also between statehood, understood empirically, and its legal constitution.

The clash between national sovereignty and the right of self-determination, and the refusal of the international community to recognize new territorial entities have placed these *de facto* States in a legal limbo, far from their recognition as *de jure* States. The precedent of Kosovo has been invoked by the secessionist movements of these territories with the support of Russia, sheltering in situations that are not based on pure colonial emancipation. However, the international community and its most representative international organizations have repeatedly recognized the territorial integrity of the States in which these territories are located, thus avoiding a generalization of the recognition of the right to self-determination which is recognised in processes of decolonization.

The recentralization of power in recent decades and the possibility of using more economic resources for its policy have allowed Russia to recover part of its lost vigour. Together with the support of a fervent nationalism which is widespread among the Russian society it has also managed to maintain vigilance in those problematic border areas of the Caucasus and Eastern Europe. In this way, the Russian presence in the nearby territories abroad and its participation in frozen conflicts has become part of the objectives of Russia’s foreign policy. The justification for this Russian regional presence is based both on the need to fill the gap created by the disappearance of the USSR and on the intention to preserve the interests of the Russian or Russophone population in these territories. These arguments will be part of the Russian interventionist rhetoric until the present.

With the aim of recovering its capacity for action in its immediate area of influence, and at the same time sabotaging any attempt to approach the West, Russia has not hesitated to use both energy and open conflict as means of pressure. This has been confirmed in its recognition of South Ossetia and Abkhazia as *de facto* States, something similar to what it has done with the case of Transnistria and also in a more forceful way, with the annexation of Crimea. The

indisputable reinforcement of Russia as a regional power, which is projected in its strong support for the so-called *de facto* states, is undoubtedly part of a much more ambitious aspiration to recover definitively its status as a great power which has capacity to have global influence.

The feeling that Russia has been relegated from the international scene, widely deployed from the upper echelons of Russian power, has been permeating the majority of the Russian population and with it, the perception of suspicion, resentment or rejection towards the West. This has allowed the Kremlin to intensify a victimise discourse towards its interior and to draw at the same time a series of red lines in what it considers its area of influence, justifying its interventionist rhetoric and foreign policy towards the abroad territories as well as its participation in all the frozen conflicts, using the question of Kosovo as a backdrop.

Undoubtedly, the post-Soviet conflicts are framed within a scenario of geopolitical conflict between Russia and the West, which necessarily implies that the progressive increase in tensions between these actors in recent years has been reflected in the secessionist territories. The war in South Ossetia, and Russia's subsequent recognition of this territory and Abkhazia as *de facto* States, the escalation of tensions in Nagorno-Karabakh and the recent events in Ukraine reflect a very tense atmosphere that complicates finding solutions for the open disputes. These solutions will undoubtedly come by means of the negotiation between the international actors involved.

In this context, the local realities that characterize each of the post-Soviet conflicts and that are key in any plausible attempt to solve them, have been increasingly influenced by the great game of international geopolitics. At the same time, in the secessionist territories, the elites committed to maintaining the status quo have been consolidated, which implies the deadlock and progressive freezing of conflicts with the unconditional support of Russia.

As we have seen, Putin's Russia has progressively achieved its goal of becoming a world power. Due to its wealth of energy resources and its military power, Russian can afford maintaining policies that are not dependent on external pressures. Undoubtedly, the improvement of Russia's position in recent times on the international scene is a verifiable fact which is partially due to the high prices of hydrocarbons. These provided Russia with enormous profits and have been also used as powerful instruments in its foreign policy.

To conclude, we can state that the so-called post-Soviet *de facto* States, which have created the "Community of unrecognized States", provide important services to the interests of Russia. At the internal level, they allow him to obtain a remarkable political yield between the wide social sectors that generally identified themselves with the Russian nationalism. In connection with the foreign policy, these conflicts allow Russia to compensate and try to limit the pro-

Western tendencies of many of the territories that had traditionally been part of its area of influence, using the instruments it considers appropriate in each case, including the use of force.